Electronically Filed
10/22/2014 03:41:45 PM

CLERK OF THE COURT

Mark R. Thierman, Nev. Bar No. 8285
Joshua D. Buck, Nev. Bar No. 12187
Leah L. Jones, Nev. Bar No. 13161
THIERMAN LAW FIRM, P.C.
7287 Lakeside Drive
Reno, Nevada 89511
Tel. (775) 284-1500
Fax. (775) 703-5027

Attorneys for Defendants Melodee Megia and Darlene Lewis in Case No. A-14-702018-C

Electronically Filed
Oct 28 2014 01:21 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

DISTRICT COURT

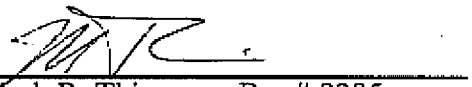
CLARK COUNTY, NEVADA

MELODEE MEGIA, on behalf of herself and all others similarly situated, Plaintiffs, vs. NEVADA PROPERTY 1, LLC, d/b/a the Cosmopolitan of Las Vegas; and DOES 1 through 50, inclusive, Defendant(s).	Case No.: A-12-661665-C Dept. No.: XXXI
NEVADA PROPERTY 1, LLC DBA THE COSMOPOLITAN OF LAS VEGAS, a Delaware limited liability company authorized to do business in Nevada, Plaintiff, MELODEE MEGIA AND DARLENE LEWIS, individuals, Defendants.	Case No.: A-14-702018-C Dept. XXXI **NOTICE OF APPEAL**

NOTICE IS HEREBY GIVEN that MELODEE MEGIA and DARLENE LEWIS, defendants above named, hereby appeal to the Supreme Court of Nevada from Nevada Property 1, LLC's Order Regarding Expunging Liens and Attorney's Fees and Costs entered in this action on September 24, 2014.

Dated this 21st day of October, 2014.

THIERMAN LAW FIRM, P.C.



Mark R. Thierman, Bar # 8285
Joshua D. Buck, Bar #12187
Leah L. Jones, Bar # 13161
7287 Lakeside Drive
Reno, Nevada 89511

Attorneys for Defendants Melodee Megia
and Darlene Lewis in Case No. A-14-702018-C

Exhibit A

Electronically Filed
09/22/2014 08:27:39 AM

CLERK OF THE COURT

Elayna J. Youchah, Bar No. 5837
youchahe@jacksonlewis.com
Paul T. Trimmer, Bar No. 9291
trimmerp@jacksonlewis.com
JACKSON LEWIS P.C.
3800 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Tel: (702) 921-2460
Fax: (702) 921-2461

Paul DeCamp, Virginia Bar No. 76204
DeCampP@jacksonlewis.com
Pro Hac Vice Admission Pending
JACKSON LEWIS P.C.
10701 Parkridge Boulevard, Suite 300
Reston, Virginia 20191
Tel: (703) 483-8305
Fax: (703) 483-8301

Attorneys for Defendant
Nevada Property 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MELODEE MEGIA, on behalf of herself and all others similarly situated,

Plaintiffs,

vs.

NEVADA PROPERTY 1, LLC, d/b/a the Cosmopolitan of Las Vegas; and DOES 1 through 50, inclusive,

Defendant(s).

NEVADA PROPERTY 1, LLC DBA THE COSMOPOLITAN OF LAS VEGAS, a Delaware limited liability company authorized to do business in Nevada,

Plaintiff,

MELODEE MEGIA AND DARLENE LEWIS, individuals,

Defendants.

Case No.: A-12-661665-C

Dept. No.: XXXI

NEVADA PROPERTY 1, LLC'S PROPOSED ORDER REGARDING EXPUNGING LIENS AND ATTORNEY'S FEES AND COSTS

Case No.: A-14-702018-C

Dept. XXXI

09-22-14 P 1:52 IN

Before the Court is Nevada Property 1, LLC dba The Cosmopolitan of Las Vegas' ("The Cosmopolitan") Application for an Order to Show Cause Why Liens Should not be Expunged and for Attorney's Fees and Costs (the "Application" or "Application to Expunge"). The Application was filed on June 6, 2014. Melodee Megia ("Megia") and Darlene Lewis ("Lewis") (Megia and Lewis may also be referred to as "Claimants") filed their Opposition to the Application to Expunge on July 7, 2014 ("Opposition"). The Cosmopolitan filed its Reply in Support of the Application to Expunge on July 28, 2014 ("Reply"). The Court held oral argument on the Application on August 5, 2014. Having considered the Application, Opposition, Reply, and all arguments of counsel, and good cause appearing, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On May 17, 2014, Megia and Lewis transmitted a notice of liens to counsel for The Cosmopolitan purportedly on behalf of approximately 8,000 putative class members in the instant matter and the concomitantly filed and pending matter known as *Darlene Lewis, on behalf of herself and all others similarly situated vs. Nevada Property 1, LLC, dba The Cosmopolitan of Las Vegas; and DOES 1 through 50, inclusive*, Case No. 2:12-cv-01564-MMD-GWF (the "Lewis Matter"). **Ex. 3 to the Application (opening paragraph and paragraph 2).**

2. The liens assert two amounts based on various contentions. First, the lien asserts that the Claimants seek "$81 million in wages due for all employees who worked and/or are working on the property" (*id.* ¶ 2). Second, the lien asserts "approximately $15,120,000.00" for terminated employees or $81 million "[i]n the event that there is a change of ownership of the employing entity" which is The Cosmopolitan. *Id.* ¶ 4. Claimants provide no basis for the increase in the lien amount other than a change in ownership. *Id.*

3. Thus, while the notice of lien states that the amount claimed reflects the alleged damages for terminated employees at alternately $15,120,000 and $81 million, **Application Ex. 3** ¶ 4, Megia and Lewis also purport to represent approximately 8,000 unidentified *current* and former employees of The Cosmopolitan. **Application Ex. 3 ¶ 4; opening paragraph and paragraph 2.**

4. The notice of lien and liens fails to specify the unpaid wages (the amount of the liens) supposedly attributable to Megia or Lewis. **Application Exs. 3 and 4.**

5. The notice of lien and liens also fails to identify any of the current or former employees (other than Megia and Lewis) whose alleged unpaid wages amount to $15 (or $81) million claimed in the lien. *Id.*

6. The notice of lien and liens fails to identify the amounts attributable to any of the 8,000 current or former employees on whose behalf the liens were supposedly filed. *Id.*

7. The liens were recorded with the Clark County Recorders' Office on or about May 19, 2014. **Ex. 4 to the Application.**

8. The liens are against property located in Clark County, Nevada. *Id.*

9. Megia was terminated from employment at The Cosmopolitan on or about September 16, 2011. Megia does not dispute that she has not returned to work at The Cosmopolitan since her termination. **Opposition generally and Opposition, n.1.**

10. Lewis was terminated from The Cosmopolitan on or about May 7, 2012, and does not dispute that she has not returned to The Cosmopolitan as an employee since her termination. *Id.*

11. Megia worked in The Cosmopolitan's "Room Service sales section" and Lewis was "a customer service representative." **Application Ex. 1 ¶ 6; Ex. 2 ¶ 7.**

12. Megia filed her Complaint in this Court against The Cosmopolitan on May 11, 2012, alleging violations of state wage and hour law. **Opposition n.1; Ex. 1 to the Application.**

13. The Lewis Matter was filed in the U.S. District Court for the District of Nevada on August 31, 2012, alleging violations of the Fair Labor Standard Act ("FLSA"), as well as state wage and hour law. **Opposition n.1; Ex. 2 to the Application.**

14. The liens were recorded approximately 1000 days after Megia's termination and approximately 700 days after Lewis' termination. *See* **Application Exs. 1 ¶ 4, 2 ¶ 5, and 4.**

15. The liens were also recorded 738 days after Megia commenced her action in this Court, and 607 days after the Lewis Matter commenced in federal court. *See* **Application Exs. 1, 2, and 4.**

16. As shown on the docket of this matter and the Lewis Matter, The Cosmopolitan answered the Megia and Lewis Complaints denying all violations of law asserted by the Claimants.

17. The Cosmopolitan's Application and Reply argued that neither Megia nor Lewis performed work for an improvement or work of improvement as defined and required by the Nevada Revised Statutes. **Application at 16-19; Reply at 8-9.**

18. Claimants did not oppose or respond to the facts and offered no opposition to The Cosmopolitan's assertion that neither performed work for an improvement or for a work of improvement. **Opposition generally; Reply at 9-10.** Claimants contend they were not required to perform work of improvement in order to record a valid lien. **Opposition at 4.**

19. Also presently pending before this Court is Megia's Motion for Class Certification, filed on March 25, 2014. The Cosmopolitan filed its Opposition and Countermotion to the Motion for Class Certification on August 25, 2014. A consolidated hearing on Megia's Motion for Class Certification and The Cosmopolitan's Countermotion to Dismiss and for Summary Judgment is presently scheduled for September 30, 2014.

20. Pending before the U.S. District Court in the Lewis Matter is The Cosmopolitan's Motion for Decertification of Lien Claimant's uniform subclass conditionally certified under the FLSA. *See* Electronically Filed Document No. 110. Also pending before the U.S. District Court is Lewis' Motion for Class Certification pursuant to Fed. R. Civ. P. 23. *See* Electronically Filed Document No. 109.

CONCLUSIONS OF LAW

1. The Court Has Jurisdiction To Hear This Dispute.

Federal Rule of Civil Procedure ("FRCP") 64 does not deprive this Court of jurisdiction over a motion to expunge a lien recorded in the Clark County Recorder's Office by Lewis against property located in Clark County, Nevada. NRS 108.239 expressly states: "A notice of lien may be enforced by an action in *any court* of competent jurisdiction that is located within the county where the property upon which the work of improvement is located . . . ." (Emphasis added.) While FRCP 64 allows a federal court to invoke state law remedies with respect to seizing a

person or property, the Rule does not contemplate or create exclusive jurisdiction in the federal court simply because a lien claimant also has a matter pending in that court. Rather, FRCP 64 allows a federal court to exercise supplemental jurisdiction to afford parties remedies under state law. *Id.* Contrary to the Lien Claimants' suggestion, FRCP 64 does not divest state courts from subject matter jurisdiction related to those same remedies. *Id.*; *PNC Bank, N.A. v. Smith*, No. 2:10-cv-1916-JAM-EFB, 2014 U.S. Dist. LEXIS 29771, at *14 (, E.D. Cal. March 6. 2014) (*quoting Granny Goose Foods, Inc. v Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S 423. 436 n. 10 (1974)) ("Fed. R. Civ. P. 64(a) . . . codifies the 'long-settled federal law providing that in cases in federal court . . . state law is incorporated to determine the availability of prejudgment remedies for the seizure of person or property to secure satisfaction of the judgment ultimately entered'"). The Court therefore finds it has jurisdiction to hear this matter as to both lien Claimants.

2. Nevada's Lien Statutes Do Not Allow An Individual To File A Lien In A Representational Capacity.

A statutory lien is an "inchoate personal right" that should be brought by the party who has the right to enforce that right. *Gayle Mfg. Co. v. Fed. Sav. & Loan Ins. Corp.*, 910 F.2d 574 580 (9th Cir. 1990); *Painter v. Anderson*, 96 Nev. 941, 943, 620 P.2d 1254, 1255-56 (Nev. 1980). Because a statutory lien effectively gives a lien claimant a pre-suit writ of attachment, strict compliance with the lien statutes is necessary. *See Fisher Bros., Inc. v. Harrah Realty Co.*, 92 Nev. 65, 67. 545 P.2d 203. 204 (1976). In conjunction with these strict requirements. a claimant has the burden to demonstrate that it is the real party in interest with the right to pursue a claim. *Mortgage Elec. Reg. Sys. v. Chong*, No. 2:09-cv-00661-KJD-LRL, 2009 U.S. Dist. LEXIS 127500, at *6 (D. Nev. Dec. 4, 2009).

A party has "representational standing" to assert a claim arising by virtue of a statutory right only if the statute expressly authorizes such standing. *D.R. Horton Inc. v. District Court*, 125 Nev. 449, 455; 215 P.3d 697, 701 (2009) ("in the absence of an express statutory grant" a party "does not have standing to bring suit on behalf of [others]"); *see also Int'l Brotherhood of Elect. Workers Local No. 48 v. Oregon Steel Mills, Inc.*, 5 P.3d 1122, 1126 (Or. Ct. App. 2000)

(finding no representational standing to assert liens). A statute's omission of an express representational standing provision is "strong" evidence that the legislature did not intend to create that right. *See Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 959, 194 P.3d. 96, 101 (2008).

It is undisputed that NRS Chapter 108 provides no express right of representational standing to bring a lien. Indeed, the phrase "a lien claimant" is used repeatedly in the statutory scheme. *See, e.g.*, NRS 108.22132, 22136, 22156, 22184, 222, 226, 229, and 231. *See also* NRS 108.227(3) ("*[e]ach* subcontractor who participates in the construction, improvement, alteration or repair of a work of improvement shall deliver a copy of *each* notice of lien required by NRS 108.226") (emphasis added). NRS Chapter 108 grants no right to enforce a lien in a representational capacity as Claimants effectively admit by virtue of their lack of authority for a contrary position. The statutory framework of NRS Chapter 108 demonstrates that Claimants' assertion that they can lien on behalf of other individuals is simply unsupported as a matter of law.[1] The Court therefore finds that Claimants' liens are invalid to the extent they assert rights on behalf of any individuals other than themselves.[2]

3. Megia and Lewis Are Not Lien Claimants Because They Concede They Do Not Fall Within The Definition Found At NRS 108.2214.

NRS 108.2214 defines a "lien claimant" as one who contributes:

> work, material or equipment with a value of $500 or more to be used in or for the construction, alteration or repair of any improvement, property or work of improvement. The term includes, without limitation, every artisan, builder,

[1] Megia and Lewis argue that because someone other than the lien claimant may verify a notice of lien, such as an attorney or principal of a corporation, they possess authority to assert a lien on behalf of thousands of others. Neither of these examples addresses representational standing. In both examples, the principal *only* authorized the signatory to *verify* the notice of lien. Authorizing an attorney to execute a notice of lien does not make the attorney the real party in interest. While Megia and Lewis have authorized their counsel to verify a notice of lien, there is no legal basis upon which they may authorize their counsel to execute a notice of lien on behalf of nearly 8,000 other individuals.

[2] Lewis also argues that the FLSA opt-in plaintiffs effectively appointed her as their agent for state law remedies solely based upon their consent to sue forms filed in the Lewis Matter. Opposition at 7:8-15. However, the Court takes judicial notice that Lewis recently argued to the U.S. District Court for the District of Nevada that these same consents, filed with the federal court and signed by these same plaintiffs, do not indicate that these plaintiffs "were joining in the Rule 23 action," the mechanism through which Lewis seeks class certification of her state law claims. Lewis Matter, 2:12-cv-01564-RFB-GWF, Electronically Filed Document 116 (Lewis' Opposition to Motion to Dismiss) at 2:16-17. Lewis' agency argument cannot be advanced in this Court to serve Lewis' goal, while simultaneously being contradicted by her filing in the U.S. District Court.

> contractor, laborer, lessor or renter of equipment, materialman, miner, subcontractor or other person who provides work, material or equipment, and any person who performs services as an architect, engineer, land surveyor or geologist, in relation to the improvement, property or work of improvement.

The definition of "improvement," used in NRS 108.2214, is found at NRS 108.22128, and means

> the development, enhancement or addition to property, by the provision of work, materials or equipment. The term includes, without limitation: 1. A building, railway, tramway, toll road, canal, water ditch, flume, aqueduct, reservoir, bridge, fence, street, sidewalk, fixtures or other structure or superstructure; 2. A mine or a shaft, tunnel, adit or other excavation, designed or used to prospect, drain or work a mine; 3. A system for irrigation, plants, sod or other landscaping; 4. The demolition or removal of existing improvements, trees or other vegetation; 5. The drilling of test holes; 6. Grading, grubbing, filling or excavating; 7. Constructing or installing sewers or other public utilities; and 8. Constructing a vault, cellar or room under sidewalks or making improvements to the sidewalks in front of or adjoining the property.

The phrase, "work of improvement" is defined by NRS 108.22188 and consists of

> "the entire structure or scheme of improvement as a whole, including, without limitation, all work, materials and equipment to be used in or for the construction, alteration or repair of the property or any improvement thereon, whether under multiple prime contracts or a single prime contract except as follows: 1. If a scheme of improvement consists of the construction of two or more separate buildings and each building is constructed upon a separate legal parcel of land and pursuant to a separate prime contract for only that building, then each building shall be deemed a separate work of improvement; and 2. If the improvement of the site is provided for in a prime contract that is separate from all prime contracts for the construction of one or more buildings on the property, and if the improvement of the site was contemplated by the contracts to be a separate work of improvement to be completed before the commencement of construction of the buildings, the improvement of the site shall be deemed a separate work of improvement from the construction of the buildings and the commencement of construction of the improvement of the site does not constitute the commencement of construction of the buildings. As used in this subsection, "improvement of the site" means the development or enhancement of the property, preparatory to the commencement of construction of a building, and includes: (a) The demolition or removal of improvements, trees or other vegetation; (b) The drilling of test holes; (c) Grading, grubbing, filling or excavating; (d) Constructing or installing sewers or other public utilities; or (e) Constructing a vault, cellar or room under sidewalks or making improvements to the sidewalks in front of or adjoining the property.

As succinctly put by the Nevada Supreme Court, mechanic's liens provide security "for those who contribute labor or materials to construction projects." *I. Cox Construction Co., LLC, v. CH2 Investments, LLC*, 129 Nev. Adv. Rep. 14, 296 P.3d 1202, 1203 (2013).

In the Application to Expunge, The Cosmopolitan argues that neither Megia nor Lewis performed "work of improvement" as defined by Nevada's statutes, or as explained in *Crestline Investment Group, Inc. v. Lewis*, 119 Nev. 365, 369, 75 P.3d 363, 367 (2003)[3] (a garbage truck driver whose employment contributed nothing to improving the landfill did not improve the owner's property and thus the plaintiff did not have a valid mechanic's lien) and *Didier v. Webster Mines Corp.*, 49 Nev. 5, 17, 234 P. 520, 524 (1925) (a cook's services to a mining camp did not improve the property, thus precluding him from trying to "secure payment for the services rendered" through a lien). Specifically, Megia worked in The Cosmopolitan's "Room Service sales section" and Lewis was "a customer service representative" for the property. **Application Ex. 1 ¶ 6; Ex. 2 ¶ 7.** Neither position "improved" The Cosmopolitan's property and, like the cook in *Didier* and the truck driver in *Crestline*, Claimants' employment did not fall within the definition of the type of work giving rise to a valid lien. NRS 108.2214, 108.22128, 108.22188; *Crestline*, 119 Nev. at 369, 75 P.3d at 367; *Didier*, 49 Nev. at 17, 234 P. at 524.

A thorough review of Claimants' Opposition shows they do not address or mention *Crestline* or *Didier*. While the Opposition mentions works of improvement, it does so only by arguing that "liens filed pursuant to NRS 608.050 are not limited to the class of employees who worked in construction of a 'work of improvement.'" **Opposition at 4:2-3.** Claimants argue that NRS 608.050 expanded the definition of Lien Claimant found in NRS 108.2214 to include "every employee" as defined in NRS 608.010.[4] ***Id.*** **at 4:4-7.** However, as discussed below, the Court concludes that NRS 608.050 does not change, expand or eliminate the definition of "lien claimant" found at NRS 108.2214.

EDCR 2.20 sets forth specific requirements a party must comply with when filing a motion, opposition, or reply in this state district court. EDCR 2.20(e) states: "Failure of the opposing party to serve and file written opposition may be construed as an admission that the

[3] At oral argument, Claimants' counsel suggested that *Crestline* was not good law. That is incorrect. *Crestline* was superseded by statute only with respect to a court's discretion to award attorney's fees pursuant to NRS 108.2275. *See Yonker Const., Inc. v. Hulme*, 126 Nev. __, 248 P.3d 313, 314 (2010). Its application of NRS Chapter 108 and NRS 608.050 remain controlling.

[4] NRS 608.010 defines "employee" as including "both male and female persons in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed."

motion . . . is meritorious and a consent to granting the same."[5] Because the Claimants do not oppose or contest The Cosmopolitan's facts and law demonstrating that they are not "lien claimants" as defined by Nevada law, they concede this issue.

The Court concludes that neither Megia nor Lewis are lien claimants as defined by 108.2214, and discussed in *Crestline* and *Didier*. For this reason their liens must be expunged.

4. Claimants' Liens Are Untimely.

(a) The Nevada Revised Statutes Define When A Lien Must Be Filed.

NRS 108.226, titled "Perfection of lien" establishes, *inter alia*, the time within which a lien must be recorded. Specifically, the statute states that "[t]o perfect a lien, a lien claimant must record a notice of lien in the office of the county recorder of the county where the property or some part thereof is located . . . (a) Within ***90 days after*** the date on which the latest of the following occurs: (1) The completion of the work of improvement; (2) The last delivery of material or furnishing of equipment by the lien claimant for the work of improvement; or (3) The last performance of work by the lien claimant for the work of improvement; or (b) Within 40 days after the recording of a valid notice of completion, if the notice of completion is recorded and served in the manner required pursuant to NRS 108.228." (Emphasis added.)

(b) A Plain Reading Of The Statutes Establishes That The Requirements Of NRS 108.221 To 108.246, Inclusive, Are Incorporated Into And Applicable To The Lien Rights Granted Nevada Employees Under NRS 608.050(2).

NRS 608.050 is a statute with two parts. NRS 608.050(1) states:

> Whenever an employer of labor shall discharge or lay off employees without first paying them the amount of any wages or salary then due them, in cash and lawful money of the United States, or its equivalent, or shall fail, or refuse on demand, to pay them in like money, or its equivalent, the amount of any wages or salary at the time the same becomes due and owing to them under their contract of employment, whether employed by the hour, day, week or month, each of the

[5] While not binding authority, the Court also refers to *Corey v. McNamara*, 409 F.Supp. 2d 1225, 1228-29 (D. Nev. 2006), and *Grove v. Kadlic*, 986 F.Supp. 510, 516 (D. Nev. 1997) (holding a non-opposition is tantamount to an admission that a motion is meritorious is equally applicable when there is a failure to oppose specific arguments advocating dismissal).

> employees may charge and collect wages in the sum agreed upon in the contract of employment for each day the employer is in default, until the employee is paid in full, without rendering any service therefor; but the employee shall cease to draw such wages or salary 30 days after such default.

NRS 608.050(2) then states: "Every employee shall have a lien as provided in NRS 108.221 to 108.246, inclusive, and all other rights and remedies for the protection and enforcement of such salary or wages as the employee would have been entitled to had the employee rendered services therefor in the manner as last employed."

Megia and Lewis contend that the language of NRS 608.050(2) "adds to the definition of the term 'lien claimant' "found at NRS 108.2214 and includes all employees, as defined in NRS 608.010, apparently incorporating" all employees who are terminated from employment with wages owing," not just those who worked "in the construction trades" or "who performed work of improvement." **Opposition at 4:4-9 and 12:23-24.**[6] Claimants also argue that NRS 608.050(2) gives an employee the "right to lien at any time during which ... [a] claim pending [under NRS 608.050, up to and including 90 days from the date of cessation of the business—*i.e.*, the work of improvement has ceased." ***Id.* at 10:3-5.** The Court disagrees with both of these contentions.

Crestline establishes firmly that it is the "plain language" of the mechanics liens statute that controls their interpretation, even when a lien is brought pursuant to NRS 608.050. *Id.* at 119 Nev. at 368-69 and n.9, 75 P.3d at 365-66 and n.9. *Barrick Goldstrike Mine v. Peterson*, 116 Nev. 541, 546, 2 P.3d 850, 853 (2000) also explains that statutes "must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory." *See also Butler v. State*, 120 Nev. 879, 892-93, 102 P.3d 71, 81 (2004) (Nevada courts avoid statutory interpretations that render language meaningless or superfluous).

Consistent with these principles, NRS 608.050(2) states that the provisions of NRS 108.221 through 108.246, ***inclusive***, are applicable to and control the lien rights of employees exercising such rights. *Crestline* 119 Nev. at 369 n.9, 75 P.3d at 366 n.9. The phrase "Every employee shall have a lien as provided in NRS 108.221 to 108.246, inclusive," found in NRS

---

[6] Megia and Lewis argue that absent this expanded definition the rights granted under NRS 608.050(2) would be "totally redundant" of rights granted in NRS Chapter 108. This is simply incorrect. NRS 608.050(2) grants employees 30 days of *penalties* and gives the right to lien for those non-wage amounts in addition to already existing lien rights.

608.050(2) must be given the plain meaning it portends. An employee seeking to assert a lien pursuant to NRS 608.050(2) must comply with the law "as provided in" the lien statutes identified as included. The words "as provided in" and "inclusive" would be meaningless unless the purpose is to incorporate the mechanics' lien statutes into the rights granted pursuant to NRS 608.050. This is confirmed by the entire discussion in *Crestline* in which an employee sought to assert a lien through rights granted to him in NRS 608.050(2). 119 Nev. at 368-69 and n.9, 75 P.3d at 365-66 and n.9.

Further, this Court notes that had the Nevada Legislature wanted to expand the definition of "lien claimant," as argued by Megia and Lewis, it could have done so in either 2003 or 2007 when NRS 108.2214 was amended. NRS 608.050 was *last* amended in 1969. In fact, the definition of "lien claimant" in NRS 108.2214 was added in 2003 and amended in 2007. NRS 608.050; NRS 108.2214, Chapter 427, SB 206 (2003) and Chapter 204, AB 359 (2007).[7] The Legislatures' decision not to expand the definition of "lien claimant" to include every employee as defined in NRS 608.010 or every employee terminated with wages owing demonstrates that it had a clear purpose in limiting those who may lien to those provided for under Chapter 108. *Cal. Commer. Enters. v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 145, 67 P.3d 328, 330 (Nev. 2003) ("[w]hen a statute is not ambiguous, this court has consistently held that we are not empowered to construe the statute beyond its plain meaning, unless the law as stated would yield an absurd result"). The Court finds that the definition of "lien claimant" found in NRS 108.2214 is applicable to employees seeking to enforce liens by virtue of rights granted pursuant to NRS 608.050(2) and that Claimants neither contend they fit within that definition nor provide any basis for the Court to reach this conclusion.

---

[7] Chapter 427, SB 206 added the following to the Nevada Revised Statutes at NRS 108.2214: "'Lien claimant' means any person who provides work, material or equipment with a value of $500 or more to be used in or for the construction, alteration or repair of any improvement, property or work of improvement. The term includes, without limitation, every artisan, builder, contractor, laborer, lessor or renter of equipment, materialman, miner, subcontractor or other person who provides work, material or equipment, and any person who performs services as an architect, engineer, land surveyor or geologist, in relation to the improvement, property or work of improvement." The 2007 amendment to NRS 108.2214 expanded the definition of "laborer" to include, "without limitation, an express trust fund to which any portion of the total compensation of a laborer, including, without limitation, any fringe benefit, must be paid pursuant to an agreement with that laborer or the collective bargaining agent of that laborer."

Claimants' assertions that NRS 608.050 gives every employee a right to lien "anytime during which that claim [under NRS 608.050] is pending, up to and including 90 days from the date of cessation of the business," is equally unsupported by law and would render all the timing requirements found in NRS 108.226 meaningless. NRS 108.226 plainly sets forth the timetables within which a lien claimant must file a notice of lien. The first provides that a lien must be filed within 90 days of one of three triggering events: (1) the date on which a work of improvement is completed, (2) the date of the last delivery of material or furnishing of equipment by the lien claimant for the work of improvement, *or* (3) the last performance of work by the lien claimant for the work of improvement. NRS 108.226(1)(a)(1)-(3). The second, NRS 108.226(1)(b), provides that a lien may also be filed within 40 days after the recording of a valid notice of completion. Megia and Lewis had to file their liens within 90 days of one of the events under NRS 108.226(1)(a)(1) or within 40 days of The Cosmopolitan recording a valid notice of completion.

(c) Claimants' Liens Are Invalid Because They Were Not Filed Within The Time Limits Established In NRS Chapter 108.

Megia and Lewis do not contend that their liens were filed within 40 days of recording of a valid notice of completion and there is no evidence before the Court to allow it to reasonably reach this conclusion. Thus, their liens are untimely under NRS 108.226(1)(b). Megia and Lewis also do not contend they delivered materials or furnished equipment to The Cosmopolitan. Thus, their liens are untimely under NRS 108.226(1)(a)(2). Megia and Lewis do not dispute that they failed to file their liens within 90 days of the last day they performed worked for The Cosmopolitan. Thus, their liens are untimely under NRS 108.226(1)(a)(3).[8] It is not surprising to the Court that Megia and Lewis therefore argue that because The Cosmopolitan continues to operate "the work has never been completed" and their liens are timely pursuant to NRS

[8] It is undisputed that the last day Megia performed work for The Cosmopolitan was September 16, 2011. Opposition n.1. It is also undisputed that the last day Lewis performed work for The Cosmopolitan was May 7, 2012. *Id.* These dates are approximately 1000 and 700 days respectively before Megia and Lewis recorded their liens. Even if the Court were to assume that their work fell within the definition of NRS 108.2214, their liens were substantially more than 90 days after "the last day performance of work by the lien claimant for the work of improvement." NRS 108.226(1)(a)(3).

108.226(1)(a)(1), which requires a lien to be filed within 90 days of "[t]he completion of the work of improvement."[9] The Court rejects this assertion. It is contrary to the plain language of NRS 108.226, and would lead to an unforeseen and unforeseeable extension of time within which liens could be timely noticed and recorded.[10]

While NRS 108.22188 defines a work of improvement to mean more than a particular claimant's work, it nonetheless still means "all work, materials and equipment to be used in or for the construction, alteration or repair of the property or any improvement thereon . . . ." There is no precedent to expand this definition to simply mean the ongoing operation of the business. This conclusion is supported by the reasoning in *I. Cox Construction Co., LLC, v. CH2 Investments, LLC*, 129 Nev. Adv. Rep. 14, 296 P.3d 1202. There, a lien claimant was engaged to construct a shooting range. *Id.* at 296 P. 1203. The lien claimant "worked through October" 2009 and "then left the project" contending it was owed money. *Id.* Months later, in 2010, after the business opened, the business contracted with another entity to install soundproofing. *Id.* The lien claimant alleged his lien was timely in 2010 because it was filed less than 90 days after the soundproofing work was completed. *Id.* The lien claimant sought to "tack" his claim to "the sound proofing to the 'work of improvement' of constructing a shooting range." *Id.* The Nevada Supreme Court rejected this argument. The Supreme Court stated that to adopt the lien claimant's definition of "work of improvement"

> would enlarge the statute to unreasonably extend the time during which a "work of improvement" is ongoing. ... [The owner] may not have become aware of the need for ...[additional work] for months, years, or even decades after opening for business. ... This interpretation would enable any number of unforeseen and unforeseeable projects or repairs to continue the "work of improvement." Such interpretation is far too broad.

Id. at 1205.

---

[9] Megia and Lewis state that they had three years to file a lawsuit under the statute of limitations allegedly applicable to NRS 608.050 and, so long as they brought suit within the three year statute of limitations, they could file a lien "anytime during which that claim is pending, up to and including 90 days from the date of cessation of the business." **Opposition at 10:3-5.**

[10] Megia and Lewis rely on *Knudsen v. Queenstake Resources, USA, Inc.* an improperly cited, non-published, and non-binding case from the U.S. District Court for the District of Nevada, which is not applicable to the case before the Court. *Queenstake* does not support Claimants' theory that NRS 608.050 extends the time within which a former employee may timely file a lien; nor does the decision stand for the proposition that where a business simply continues to operate, the running of the deadline to file a lien continues until business operations cease.

Claimants suggested interpretation of the statutes pertaining to when a lien must be filed is likewise far too broad and would allow a lien claimant to wait years to file a notice of lien despite the cessation of that claimants work for or employment by the owner of a business simply because the business has not ceased to operate. However, continued business operations, as explained by *Cox*, does not toll the timing requirements; nor does the fact that another may continue or commence some form of work for the employer. The unintended consequences of Claimants' contentions would be to eliminate the requirements of NRS 108.226 completely for any employee who seeks to enforce a lien by virtue of rights granted in NRS 608.050(2). But, NRS 608.050(2) did not expressly or impliedly repeal NRS 108.226. Rather, NRS 608.050(2) expressly states that employees seeking to assert a lien must do so "as provided in NRS 108.221 to NRS 108.246, inclusive...." The interpretation of this provision cannot be read to nullify NRS 108.226.

The Court finds that Claimants' liens were untimely noticed and recorded. The Court further finds that based on all of the above, Claimants' liens must be expunged. Claimants cannot file liens in a representational capacity, they are not "lien claimants" as defined by Nevada law, and their liens were untimely.

5. The Cosmopolitan Is Entitled To An Award Of Attorney's Fees.

If a court determines that a notice of lien is frivolous and made without reasonable cause, the court shall make an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant for bringing the motion. NRS 108.2275(6)(a). Here, Claimants have undisputedly failed to establish that reasonable cause existed for filing liens that are: (1) untimely; (2) wrongfully asserted on a representational basis, and (3) in direct contradiction to Nevada case law and statute. Consequentially, pursuant to NRS 108.2275(6), The Cosmopolitan is awarded its reasonable attorney's fees for bringing its Application.

ORDER

IT IS HEREBY ORDERED THAT, the Application for an Order to Show Cause Why Liens Should not be Expunged and for Attorney's Fees and Costs is granted. The liens

recorded by Megia and Lewis regarding certain real property described APN 162-20-603-007, 162-20-615-001, 162-20-615-002, 162-20-616-063, 162-20-616-062, 162-20-616-064, and 162-20-617-232 are hereby expunged.

IT IS FURTHER ORDERED the Notice of Lien filed by Plaintiffs regarding certain real property described as APN 162-20-603-007, 162-20-615-001, 162-20-615-002, 162-20-616-063, 162-20-616-062, 162-20-616-064, and 162-20-617-232 is released.

IT IS FURTHER ORDERED upon entry of this Order with the Clerk of the Court and recording the same with the Clark County Recorder's Office, the aforementioned lien is expunged and the aforementioned Notice of Lien is released.

IT IS FURTHER ORDERED THAT, The Cosmopolitan shall submit a memorandum of attorney's fees and costs reasonably incurred in preparing the Application and Reply within 10 business days of this Order. Megia and Lewis shall have seven days to oppose the request for fees and costs. No reply shall be filed.

IT IS SO ORDERED this 19 day of September, 2014.

District Judge JOANNA S. KISHNER

Respectfully Submitted by:

JACKSON LEWIS P.C.

Elayna J. Youchah, Bar No. 5837
Paul T. Trimmer, Bar No. 9291
3800 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Paul DeCamp, Virginia Bar No. 76204
Pro Hac Vice Admission Pending
JACKSON LEWIS P.C.
10701 Parkridge Boulevard, Suite 300
Reston, Virginia 20191

THIERMAN LAW FIRM, PC
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email laborlawyer@pacbell.net www.laborlawyer.net

PROOF OF SERVICE

CASE NAME: ***Melodee Megia v. THE COSMOPOLITAN RESORT AND CASINO/ Nevada Property 1, LLC, et al. v. Melodee Megia, et al.***
COURT: District Court Clark County, Nevada
CASE NO.: A-12-661665-C/A-14-702018-C

I, Jasmin Williams, am over the age of eighteen years and not a party to the within action; my business address is 7287 Lakeside Drive, Reno, Nevada 89511. On the date last written below, I served the following document(s):

NOTICE OF APPEAL

on the parties stated below, through their attorneys of record, by facsimile transmission, by personal delivery or by placing true copies thereof in sealed envelopes addressed as shown below for service, as designated below:

A: **First Class Mail** - I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in Reno, Nevada, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.
B: **By Courier Service** - I caused each such envelope to be deposited with the Federal Express, a courier service.
C: **By Facsimile Service** - I caused a true copy thereof to be transmitted on the date shown below from telecopier (775) 703-5027 to the telecopier number published for the addressee.
D: **By Personal Service** - I caused each document identified herein to be delivered to a courier employed by a courier service with whom we have a direct billing account, who personally delivered the document identified herein to the addressee on the date below.

Type of Service	Addressee
A	Elayna J. Youchah JACKSON LEWIS LLP 3800 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed on October 22, 2014 at Reno, Nevada.

Jasmin Williams

Mark R. Thierman, Nev. Bar No. 8285
Joshua D. Buck, Nev. Bar No. 12187
Leah L. Jones, Nev. Bar No. 13161
THIERMAN LAW FIRM, P.C.
7287 Lakeside Drive
Reno, Nevada 89511
Tel. (775) 284-1500
Fax. (775) 703-5027

Attorneys for Defendants Melodee Megia and Darlene Lewis in Case No. A-14-702018-C

DISTRICT COURT

CLARK COUNTY, NEVADA

MELODEE MEGIA, on behalf of herself and all others similarly situated, Plaintiffs, vs. NEVADA PROPERTY 1, LLC, d/b/a the Cosmopolitan of Las Vegas; and DOES 1 through 50, inclusive, Defendant(s).	Case No.: A-12-661665-C Dept. No.: XXXI
NEVADA PROPERTY 1, LLC DBA THE COSMOPOLITAN OF LAS VEGAS, a Delaware limited liability company authorized to do business in Nevada, Plaintiff, MELODEE MEGIA AND DARLENE LEWIS, individuals, Defendants.	Case No.: A-14-702018-C Dept. XXXI **CASE APPEAL STATEMENT**

1. Name of appellants filing this case appeal statement: **Melodee Megia and Darlene Lewis.**

2. Identify the judge issuing the decision, judgment, or order appealed from: **Judge Joanna S. Kishner, Clark County District Court, Eighth Judicial.**

3. Identify each appellant and the name and address of counsel for each appellant:

Melodee Megia – Mark R. Thierman, Joshua D. Buck and Leah L. Jones of Thierman Law Firm, 7287 Lakeside Drive, Reno, Nevada 89511;

Darlene Lewis – Mark R. Thierman, Joshua D. Buck and Leah L. Jones of Thierman Law Firm, 7287 Lakeside Drive, Reno, Nevada 89511.

4. Identify each respondent and the name and address of appellate counsel, if known, for each respondent (if the name of a respondent's appellate counsel is unknown, indicate as much and provide the name and address of that respondent's trial counsel): **Nevada Property 1, LLC dba the Cosmopolitan of Las Vegas – appellate counsel is unknown. Nevada Property 1, LLC's trial counsel is Elayna Youchah, Peter Navarro and Paul DeCamp of Jackson Lewis, P.C., 3800 Howard Hughes Parkway, Suite 600, Las Vegas, Nevada 89169.**

5. Indicate whether any attorney identified above in response to question 3 and 4 is not licensed to practice law in Nevada and, if so, whether the district court granted that attorney permission to appear under SCR 42: **With the exception of Paul DeCamp, all attorneys listed above are licensed to practice law in Nevada. Mr. DeCamp was granted permission to appear under SCR 42 by the District Court.**

6. Indicate whether appellant is represented by appointed or retained counsel in the district court: **Appellants are represented by retained counsel.**

7. Indicated whether appellant is represented by appointed or retained counsel on appeal: **Appellants are represented by retained counsel.**

8. Indicate whether appellant was granted leave to proceed in forma pauperis, and the date of entry of the district court order granting such leave: **No such leave has been requested or granted.**

9. Indicate the date the proceedings commenced in the district court (e.g., date complaint, indictment, information, or petition was filed): **Case Number A-14-702018-C was filed on June 6, 2014.**

10. Provide a brief description of the nature of the action and result in the district court, including the type of judgment or order being appealed and the relief granted by the district court: **On May 19, 2014, liens against Nevada Property 1, LLC were recorded in the Clark County Recorder's Office by Melodee Megia, Darlene Lewis and a class of all similarly situated former employees of The Cosmopolitan. These liens were filed after the announcement was made that Nevada Property 1, LLC dba The Cosmopolitan was engaged in negotiations regarding the sale of the property. The property was subsequently sold to Blackstone Group. On or about June 6, 2014, Nevada Property 1, LLC filed a Complaint against Ms. Megia and Ms. Lewis and an Order to Show Cause Why Liens Should Not Be Expunged; And Upon Department Assignment; Motion to Expunge Liens and For Attorneys' Fees On An Order Shortening Time (Case Number A-14-702018-C). Ultimately, Judge Kishner, found in Nevada Property 1, LLC's favor and issued an order expunging the liens and allowing Nevada Property 1, LLC to file a Request for Attorneys' Fees. The Court's decision represents a final and complete disposition of Case No. A-14-702018-C.**

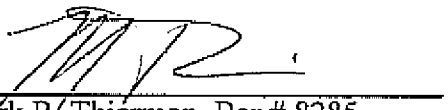
11. Indicate whether the case has previously been the subject of an appeal to or original writ proceeding in the Supreme Court and, if so, the caption and Supreme Court docket number of the prior proceeding: **The case has not previously been the subject of an appeal to or original writ proceeding in the Supreme Court.**

12. Indicate whether this appeal involves child custody or visitation: **This appeal does not involve child custody or visitation.**

13. If this is a civil case, indicate whether this appeal involves the possibility of settlement: **Although the Parties have been involved in settlement negotiations, they have been unable to reach an agreement to date.**

Dated this 21st day of October, 2014.

THIERMAN LAW FIRM, P.C.



Mark R. Thierman, Bar # 8285
Joshua D. Buck, Bar #12187
7287 Lakeside Drive
Reno, Nevada 89511

Attorneys for Defendants Melodee Megia
and Darlene Lewis in Case No. A-14-702018-C

THIERMAN LAW FIRM, PC
7287 Lakeside Drive
Reno, NV 89511
(775) 284-1500 Fax (775) 703-5027
Email laborlawyer@pacbell.net www.laborlawyer.net

PROOF OF SERVICE

CASE NAME: ***Melodee Megia v. THE COSMOPOLITAN RESORT AND CASINO/ Nevada Property 1, LLC, et al. v. Melodee Megia, et al.***
COURT: District Court Clark County, Nevada
CASE NO.: A-12-661665-C/A-14-702018-C

I, Jasmin Williams, am over the age of eighteen years and not a party to the within action; my business address is 7287 Lakeside Drive, Reno, Nevada 89511. On the date last written below, I served the following document(s):

CASE APPEAL STATEMENT

on the parties stated below, through their attorneys of record, by facsimile transmission, by personal delivery or by placing true copies thereof in sealed envelopes addressed as shown below for service, as designated below:

A: **First Class Mail** - I caused each such envelope, with first-class postage thereon fully prepaid, to be deposited in a recognized place of deposit of the U.S. mail in Reno, Nevada, for collection and mailing to the office of the addressee on the date shown below following ordinary business practices.
B: **By Courier Service** - I caused each such envelope to be deposited with the Federal Express, a courier service.
C: **By Facsimile Service** - I caused a true copy thereof to be transmitted on the date shown below from telecopier (775) 703-5027 to the telecopier number published for the addressee.
D: **By Personal Service** - I caused each document identified herein to be delivered to a courier employed by a courier service with whom we have a direct billing account, who personally delivered the document identified herein to the addressee on the date below.

Type of Service	Addressee
A	Elayna J. Youchah JACKSON LEWIS LLP 3800 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct. Executed on October 22, 2014 at Reno, Nevada.

Jasmin Williams

IAFD

DISTRICT COURT

CLARK COUNTY, NEVADA

Melodee Megia, on behalf of herself and all others similarly situated,

Plaintiff(s),

-vs-

Nevada Property I, LLC, d/b/a the Cosmopolitan of Las Vegas, and DOES I through 50, inclusive,

Defendant(s).

AND CONSOLIDATED ACTION.

CASE NO. A-12-661665-C

DEPT. NO. XXXI

INITIAL APPEARANCE FEE DISCLOSURE (NRS CHAPTER 19)

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for parties appearing in the above entitled action as indicated below:

New Complaint Fee	1st Appearance Fee
☐ $1530 ☐ $520 ☐ $299 ☐ $270.00	☐ $1483.00 ☐ $473.00 ☐ $223.00

Name: Notice of Appeal Filing Fee	
	☐ $30
	☐ $30
	☐ $30
	☐ $30
☐ Total of Continuation Sheet Attached	☐ $_____
TOTAL REMITTED: (Required) Total Paid	$ 250.00

DATED this 22nd day of October 2014.



Initial Appearance Fee Disclosure.doc/8/15/2012

DEPARTMENT 31

CASE SUMMARY

CASE NO. A-12-661665-C

Melodee Megia, Plaintiff(s)	§	Location:	**Department 31**
vs.	§	Judicial Officer:	**Kishner, Joanna S.**
Nevada Property I LLC, Defendant(s)	§	Filed on:	**05/11/2012**
	§	Case Number History:	
	§	Cross-Reference Case Number:	**A661665**

CASE INFORMATION

Related Cases
A-14-702018-C (Consolidated)

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**

Case Flags: **Consolidated - Lead Case**
Appealed to Supreme Court
Jury Demand Filed
Automatically Exempt from Arbitration

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	A-12-661665-C
Court	Department 31
Date Assigned	06/18/2012
Judicial Officer	Kishner, Joanna S.

PARTY INFORMATION

		Lead Attorneys
Plaintiff	**Megia, Melodee**	**Thierman, Mark R.** *Retained* 775-284-1500(W)
Defendant	**Cosmopolitan Hotels & Resorts Inc** Removed: 10/12/2012 Inactive	**Youchah, Elayna J** *Retained* 702-921-2460(W)
	Cosmopolitan of Las Vegas Removed: 10/12/2012 Inactive	**Youchah, Elayna J** *Retained* 702-921-2460(W)
	Nevada Property I LLC	**Navarro, Peter** *Retained* 7023627800(W)
	The Cosmopolitan Resort and Casino Removed: 10/12/2012 Inactive	**Youchah, Elayna J** *Retained* 702-921-2460(W)

DATE — EVENTS & ORDERS OF THE COURT — INDEX

05/11/2012 — Complaint
Filed By: Plaintiff Megia, Melodee
Class Action and Individual Complaint

05/11/2012 — Case Opened

05/17/2012 — Affidavit of Service
Filed By: Plaintiff Megia, Melodee
Affidavit of Service Re The Cosmopolitan Resort and Casino AKA The Cosmopolitan Hotel and Casino, The Cosmopolitan of Las Vegas

CASE SUMMARY

CASE NO. A-12-661665-C

05/25/2012	Demand for Jury Trial Filed By: Plaintiff Megia, Melodee *Jury Demand*
06/05/2012	Three Day Notice of Intent to Default Filed by: Plaintiff Megia, Melodee *Notice of Intenet to Take Default*
06/08/2012	Summons Issued Party: Plaintiff Megia, Melodee *Summons issued with affidavit of service*
06/11/2012	Peremptory Challenge Filed by: Defendant The Cosmopolitan Resort and Casino *Peremptory Challenge*
06/11/2012	Initial Appearance Fee Disclosure Filed By: Defendant The Cosmopolitan Resort and Casino *Initial Appearance Fee Disclosures (NRS Chapter 19)*
06/11/2012	Notice of Department Reassignment
06/13/2012	Peremptory Challenge Filed by: Plaintiff Megia, Melodee *Plaintiff's Peremptory Challenge*
06/15/2012	Stipulation and Order Filed by: Defendant The Cosmopolitan Resort and Casino *Stipulation and Order*
06/18/2012	Notice of Entry of Stipulation and Order Filed By: Plaintiff Megia, Melodee *Notice of Entry of Stipulation and Order*
06/18/2012	Notice of Department Reassignment
07/09/2012	Motion to Dismiss Filed By: Defendant The Cosmopolitan Resort and Casino *Defendant's Partial Motion to Dismiss Plaintiff's Sixth, Seventh, Eighth, and Ninth Causes of Action*
07/10/2012	Request for Judicial Notice Filed By: Plaintiff Megia, Melodee *Request to take Judicial Notice of Nevada Equal Rights Commission Granting Right-to-Sue*
07/11/2012	Consent to Service By Electronic Means Filed By: Plaintiff Megia, Melodee *Consent to Service by Electronic Means*
07/11/2012	Answer Filed By: Defendant The Cosmopolitan Resort and Casino *Answer*

07/13/2012	Amended Answer Filed By: Defendant The Cosmopolitan Resort and Casino *Amended Answer*
07/26/2012	Stipulation Filed by: Plaintiff Megia, Melodee *Stipulation to File First Amended Complaint*
07/31/2012	Withdrawal of Motion Filed by: Defendant The Cosmopolitan Resort and Casino *Notice to Withdraw Defendant's Motion to Dismiss and Vacate Hearing Date*
08/02/2012	Stipulation and Order to Amend Filed By: Plaintiff Megia, Melodee *Stipulation and Order to file First Amended Complaint*
08/03/2012	Notice of Entry of Order Filed By: Plaintiff Megia, Melodee *Notice of Entry of Order*
08/10/2012	*CANCELED* **Motion to Dismiss** (9:30 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated* *Defendant's Partial Motion to Dismiss Plaintiff's Sixth, Seventh, Eighth, and Ninth Causes of Action*
09/04/2012	Answer to Amended Complaint Filed By: Defendant The Cosmopolitan Resort and Casino *Answer to First Amended Class Action and Individual Complaint*
10/12/2012	Stipulation and Order to Amend Filed By: Plaintiff Megia, Melodee *Stipulation RE Plaintiff Filing Her Second Amended Complaint and to Amend the Caption*
10/16/2012	Notice of Entry of Order Filed By: Plaintiff Megia, Melodee *Notice of Entry of Order*
10/17/2012	Joint Case Conference Report Filed By: Plaintiff Megia, Melodee *Joint NRCP 16.1 Case Conference Report*
11/08/2012	Answer to Complaint Filed by: Defendant Nevada Property I LLC *Answer to Second Amended Class Action and Individual Complaint*
11/16/2012	Notice to Appear for Discovery Conference *Notice to Appear for Discovery Conference*
12/04/2012	**Discovery Conference** (9:30 AM) (Judicial Officer: Bulla, Bonnie)
01/18/2013	Scheduling Order *Scheduling Order*

01/24/2013	Stipulated Protective Order Filed By: Defendant Nevada Property I LLC *Stipulated Protective Order Governing Confidential Information*
01/25/2013	Notice of Entry Filed By: Defendant Nevada Property I LLC *Notice of Entry of Stipulated Protective Order Governing Confidential Information*
02/11/2013	Order Setting Civil Jury Trial *Order Setting Civil Jury Trial, Pre-Trial Conference, Calendar Call, And Status Check*
02/14/2013	Stipulation Filed by: Defendant Nevada Property I LLC *Stipulation to Stay All Proceedings*
02/15/2013	Notice of Entry Filed By: Defendant Nevada Property I LLC *Notice of Entry of Order Granting Stipulation to Stay All Proceedings*
04/23/2013	Stipulation Filed by: Defendant Nevada Property I LLC *Stipulation To Stay All Proceedings*
04/29/2013	Notice of Entry Filed By: Defendant Nevada Property I LLC *Notice of Entry of Stipulation to Stay All Proceedings*
08/13/2013	Stipulation and Order Filed by: Defendant Nevada Property I LLC *Stipulation and [Proposed] Updated Scheduling Order*
09/03/2013	Stipulation Filed by: Defendant Nevada Property I LLC *Stipulation and [Proposed] Amended Updated Scheduling Order*
10/31/2013	**Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
11/13/2013	Stipulation and Order Filed by: Defendant Nevada Property I LLC *Stipulation and Order Regarding Order Setting Civil Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check*
11/19/2013	Amended Order Setting Jury Trial *Amended Order Setting Civil Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check*
12/05/2013	*CANCELED* **Pre Trial Conference** (10:15 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - Superseding Order*
01/02/2014	*CANCELED* **Calendar Call** (9:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - Superseding Order*
01/06/2014	*CANCELED* **Jury Trial** (10:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - Superseding Order*

02/12/2014	Notice of Appearance Party: Defendant Nevada Property I LLC *Notice of Appearance of Counsel for Defendant*
03/25/2014	Motion for Class Certification Filed By: Plaintiff Megia, Melodee *Plaintiff's Notice of Motion and Motion for Class Certification*
03/25/2014	Declaration Filed By: Plaintiff Megia, Melodee *Declaration of Mark R. Thierman in Support of Plaintiff's Notice of Motion and Motion for Class Certification*
03/25/2014	Declaration Filed By: Plaintiff Megia, Melodee *Declaration of Joshua D. Buck in Support of Plaintiff's Motion for Class Certification*
03/25/2014	Declaration Filed By: Plaintiff Megia, Melodee *Supplemental Declaration of Melodee Megia in Support of Plaintiff's Motion for Class Certification*
04/09/2014	Stipulation and Order Filed by: Defendant Nevada Property I LLC *Stipulation and Order to Extend Deadline to File Opposition to Plaintiff's Notice of Motion and Motion for Class Certification*
04/17/2014	Stipulation and Order Filed by: Defendant Nevada Property I LLC *Stipulation and Order to Stay Proceedings*
04/17/2014	Notice of Entry Filed By: Defendant Nevada Property I LLC *Notice of Entry of Stipulation and Order to Stay Proceedings*
05/06/2014	*CANCELED* **Status Check** (9:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - per Stipulation and Order*
05/16/2014	**Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.) **05/16/2014, 07/11/2014** *Status Check Re: Stay*
05/20/2014	Stipulation Filed by: Defendant Nevada Property I LLC *Status Report and Stipulation and [Proposed] Order to Stay Proceedings*
05/21/2014	Notice of Entry of Stipulation and Order Filed By: Plaintiff Megia, Melodee *Notice of Entry of Order Granting Second Stipulation to Stay All Proceedings*
06/17/2014	Stipulation Filed by: Defendant Nevada Property I LLC *Stipulation and Order to Continue Stay Proceedings*
06/26/2014	Motion to Consolidate

Filed By: Plaintiff Megia, Melodee
Joint Motion to Consolidate on an Order Shortening Time and Proposed Hearing Date and Briefing Schedule

07/01/2014 **Motion to Consolidate** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
Joint Motion to Consolidate on an Order Shortening Time and Proposed Hearing Date and Briefing Schedule

07/01/2014 Stipulation
Filed by: Defendant Nevada Property I LLC
Stipulation to Set Briefing Schedule for Motion for Class Certification; Vacate Pre-Trial Order and Amended Scheduling Order

07/03/2014 *CANCELED* **Pre Trial Conference** (10:15 AM) **(Judicial Officer: Kishner, Joanna S.)**
Vacated - per Stipulation and Order

07/07/2014 Opposition
Filed By: Plaintiff Megia, Melodee
Melodee Megia and Darlene Lewis Opposition to Nevada Property 1 LLC's Application for an Order to Show Cause Why Liens Should not be Expunged andMotionto Expunge Liens andfor Attorney's Fees and Costs on an Order Shortening Time

07/07/2014 Declaration
Filed By: Plaintiff Megia, Melodee
Declaration of Mark R. Thierman in Support of Plaintiff's Opposition to OSC to Expunge Liens Under NRS 108.2275

07/07/2014 Order
Filed By: Plaintiff Megia, Melodee
Order Consolidating Cases and Setting Hearing and Briefing Schedule

07/08/2014 Declaration
Filed By: Plaintiff Megia, Melodee
Supplemental Declaration of Mark R. Thierman in Support of Opposition to OSC to Expunge Liens Under NRS 108.2275

07/11/2014 *CANCELED* **Motion to Certify Class** (3:00 AM) **(Judicial Officer: Kishner, Joanna S.)**
Vacated - per Stipulation and Order
Plaintiff's Notice of Motion and Motion for Class Certification

07/11/2014 **Status Check** (3:00 AM) (Judicial Officer: Kishner, Joanna S.)
Status Check: Order 7/1/14

07/22/2014 Order
Filed By: Defendant Nevada Property I LLC
Stipulation to Extend Deadline to File Reply in Support of Nevada Property 1, LLC's Application for an Order to Show Cause Why Liens Should Not be Expunged and Motion to Expunge Liens and for Attorney's Fees and Costs on an Order Shortening Time

07/23/2014 Notice of Entry of Order
Filed By: Defendant Nevada Property I LLC
Notice of Entry of Order

07/24/2014 Motion to Associate Counsel
Filed By: Defendant Nevada Property I LLC
Motion to Associate Counsel

CASE SUMMARY

CASE NO. A-12-661665-C

07/28/2014	Reply in Support Filed By: Defendant Nevada Property I LLC *Nevada Property 1, LLC's Reply in Support of Application for An Order to Show Cause Why Liens Should Not Be Expunged And Motion to Expunge Liens And For Attorney's Fees And Costs*
07/29/2014	*CANCELED* **Calendar Call** (9:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - per Stipulation and Order*
08/04/2014	*CANCELED* **Jury Trial** (10:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - per Stipulation and Order*
08/05/2014	**Motion to Expunge Lis Pendens** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) **08/05/2014, 08/08/2014, 08/15/2014, 08/22/2014, 09/19/2014** *Order Setting Hearing on Nevada Property 1, LLC's Application for an Order to Show Cause why Liens Should Not Be Expunged; and Motion to Expunge Liens and for Attorney Fees on an Order Shortening Time*
08/05/2014	**Motion for Order to Show Cause** (9:30 AM) (Judicial Officer: Kishner, Joanna S.) **08/05/2014, 08/08/2014, 08/15/2014, 08/22/2014, 09/19/2014** *The Cosmopolitan's Application for an Order to Show Cause and Motion to Expunge Liens*
08/05/2014	**All Pending Motions** (9:30 AM) (Judicial Officer: Kishner, Joanna S.)
08/11/2014	Amended Order Setting Jury Trial *Amended Order Setting Civil Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check*
08/13/2014	Stipulation Filed by: Plaintiff Megia, Melodee *Stipulation to Extend Briefing Schedule for Motion for Class Certification*
08/25/2014	Motion to Extend Party: Defendant Nevada Property I LLC *Nevada Property 1, LLC's Motion to Extend Page Limint In Support of its Opposition to Motion for Class Certification and Countermotions for Judgment on the Pleadings and For Summary Judgment*
08/25/2014	Opposition and Countermotion Filed By: Defendant Nevada Property I LLC *Opposition to Motion for Class Certification and Countermotions for Judgment on The Pleadings and For Summary Judgment*
08/26/2014	Initial Appearance Fee Disclosure Filed By: Defendant Nevada Property I LLC *Initial Fee Disclosure for Countermotion for Summary Judgment*
08/29/2014	**Motion to Associate Counsel** (3:00 AM) (Judicial Officer: Kishner, Joanna S.) *Defendant Nevada Property I LLC's Motion to Associate Counsel (Paul DeCamp, Esq.)*
09/02/2014	Stipulation Filed by: Defendant Nevada Property I LLC *Stipulation to Exclude Certain Individuals From Subclass*
09/02/2014	Notice of Entry Filed By: Defendant Nevada Property I LLC

Notice of Entry of Stipulation to Exclude Certain Individuals from Subclass

09/09/2014 Order Granting Motion
Filed By: Defendant Nevada Property I LLC
Order Granting Defendant's Motion to Associate Counsel

09/12/2014 *CANCELED* **Status Check** (3:00 AM) **(Judicial Officer: Kishner, Joanna S.)**
Vacated - per Order
Status Check: Order 8/29/14

09/15/2014 Opposition
Filed By: Plaintiff Megia, Melodee
Plaintiff's Opposition to Defendant's Countermotion For Judgment on the Pleadings and Summary Judgment

09/15/2014 Declaration
Filed By: Plaintiff Megia, Melodee
Declaration of Joshua D. Buck in Support of Plaintiff's Opposition to Defendant's Countermotion for Judgment on the Pleadings and Summary Judgment

09/18/2014 Stipulation
Filed by: Defendant Nevada Property I LLC
Stipulation to Extend Page Limit for Defendant's Opposition to Motion for Class Certification and Countermotions for Judgment on The Pleadings and for Summary Judgment

09/19/2014 **All Pending Motions** (3:00 AM) (Judicial Officer: Kishner, Joanna S.)

09/22/2014 Errata
Filed By: Defendant Nevada Property I LLC
Errata to Defendant's Opposition to Motion for Class Certification and Countermotions for Judgment on the Pleadings and for Summary Judgment

09/22/2014 Order
Filed By: Defendant Nevada Property I LLC
Nevada Property 1, LLC's Proposed Order Regarding Expunging Liens and Attorney's Fees and Costs

09/23/2014 Reply to Opposition
Filed by: Plaintiff Megia, Melodee
Plaintiff's Reply In Support of Motion for Class Certification

09/23/2014 Declaration
Filed By: Plaintiff Megia, Melodee
Supplemental Declaration of Joshua D. Buck In Support of Plaintiff's Motion for Class Certification

09/23/2014 Reply in Support
Filed By: Defendant Nevada Property I LLC
Nevada Property 1, LLC's Reply in Support of Countermotions for Summary Judgment and Judgment on the Pleadings

09/24/2014 Notice of Entry of Order
Filed By: Defendant Nevada Property I LLC
Notice of Entry of Nevada Property 1, LLC's Order Regarding Expunging Liens and Attorney's Fees and Costs

CASE SUMMARY

CASE NO. A-12-661665-C

09/30/2014	**Motion for Class Certification** (10:00 AM) (Judicial Officer: Kishner, Joanna S.) **09/30/2014, 10/10/2014, 10/17/2014, 10/24/2014** *Stipulation to Set Briefing Schedule for Motion for Class Certification; Vacate Pre-Trial Order and Amended Scheduling Order*
09/30/2014	**Status Check** (10:00 AM) (Judicial Officer: Kishner, Joanna S.) *Status Check: Mandatory Settlement Conference*
09/30/2014	*CANCELED* **Motion** (10:00 AM) **(Judicial Officer: Kishner, Joanna S.)** *Vacated - per Stipulation and Order* *Nevada Property 1, LLC's Motion to Extend Page Limint In Support of its Opposition to Motion for Class Certification and Countermotions for Judgment on the Pleadings and For Summary Judgment*
09/30/2014	**Countermotion** (10:00 AM) (Judicial Officer: Kishner, Joanna S.) **09/30/2014, 10/10/2014, 10/17/2014, 10/24/2014** *Opposition to Motion for Class Certification and Countermotions for Judgment on The Pleadings and For Summary Judgment*
09/30/2014	**All Pending Motions** (10:00 AM) (Judicial Officer: Kishner, Joanna S.)
10/07/2014	Request Filed by: Defendant Nevada Property 1 LLC *Nevada Property 1, LLC's Request for Fees and Costs Pursuant to NRS 108.2275(6)(a) and The Court's Order Releasing Lien*
10/09/2014	Transcript of Proceedings *Transcript of Proceedings: Status Check: Mandatory Settlement Conference Stipulation To Set Briefing Schedule For Motion For Class Certification; Vacate Pretrial Order And Amended Scheduling Order; Opposition To Motion For Class Certification And Countermotions For Judgment On The Pleadings And For Summary Judgment -- 9-30-14*
10/22/2014	Notice of Appeal Filed By: Plaintiff Megia, Melodee *Notice of Appeal*
10/22/2014	Order Approving Filed By: Plaintiff Megia, Melodee *Order Approving Stipulation to Extend Time For Megia and Lewis to Oppose Nevada Property 1, LLC's Request for Fees and Costs Pursuant to NRS 108.2275(6)(a)*
11/04/2014	**Status Check** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
11/13/2014	**Motion for Fees** (9:00 AM) (Judicial Officer: Kishner, Joanna S.) *Nevada Property 1, LLC's Request for Fees and Costs Pursuant to NRS 108.2275(6)(a) and The Court's Order Releasing Lien*
12/04/2014	**Pre Trial Conference** (10:15 AM) (Judicial Officer: Kishner, Joanna S.)
12/18/2014	**Calendar Call** (9:00 AM) (Judicial Officer: Kishner, Joanna S.)
01/05/2015	**Jury Trial** (10:00 AM) (Judicial Officer: Kishner, Joanna S.)

DATE	FINANCIAL INFORMATION	
	Defendant The Cosmopolitan Resort and Casino	
	Total Charges	251.00
	Total Payments and Credits	251.00
	Balance Due as of 10/24/2014	**0.00**

CASE SUMMARY

CASE NO. A-12-661665-C

Defendant Nevada Property I LLC	
Total Charges	305.00
Total Payments and Credits	305.00
Balance Due as of 10/24/2014	**0.00**
Plaintiff Megia, Melodee	
Total Charges	657.00
Total Payments and Credits	657.00
Balance Due as of 10/24/2014	**0.00**

CIVIL COVER SHEET A-12-661665-C

Clark County, Nevada XXIII

Case No. _____
(Assigned by Clerk's Office)

I. Party Information

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
Melodee Megia % Thierman Law Firm, P.C. 7287 Lakeside Drive, Reno, NV 89511 (775) 284-1500	The Cosmopolitan Resort and Casino, aka the Cosmopolitan Hotel and Casino, the Cosmopolitan of Las Vegas; and DOES 1 though 50 3708 Las Vegas Blvd, South, Las Vegas, NV 89109 (702) 698-7000
Attorney (name/address/phone): Mark Thierman, Esq. Jason Kuller, Esq. Joshua Buck, Esq. THIERMAN LAW FIRM, P.C. 7287 Lakeside Drive, Reno, NV 89511 (775) 284-1500	Attorney (name/address/phone):

II. Nature of Controversy (Please check applicable bold category and applicable subcategory, if appropriate)

☐ **Arbitration Requested**

Civil Cases

Real Property

- ☐ **Landlord/Tenant**
  - ☐ Unlawful Detainer
- ☐ **Title to Property**
  - ☐ Foreclosure
  - ☐ Liens
  - ☐ Quiet Title
  - ☐ Specific Performance
- ☐ **Condemnation/Eminent Domain**
- ☐ **Other Real Property**
  - ☐ Partition
  - ☐ Planning/Zoning

Torts

Negligence
- ☐ **Negligence – Auto**
- ☐ **Negligence – Medical/Dental**
- ☐ **Negligence – Premises Liability** (Slip/Fall)
- ☐ **Negligence – Other**

- ☐ **Product Liability**
  - ☐ Product Liability/Motor Vehicle
  - ☐ Other Torts/Product Liability
- ☐ **Intentional Misconduct**
  - ☐ Torts/Defamation (Libel/Slander)
  - ☐ Interfere with Contract Rights
- ☐ **Employment Torts** (Wrongful termination)
- ☐ **Other Torts**
  - ☐ Anti-trust
  - ☐ Fraud/Misrepresentation
  - ☐ Insurance
  - ☐ Legal Tort
  - ☐ Unfair Competition

Probate

Estimated Estate Value: _____

- ☐ **Summary Administration**
- ☐ **General Administration**
- ☐ **Special Administration**
- ☐ **Set Aside Estates**
- ☐ **Trust/Conservatorships**
  - ☐ Individual Trustee
  - ☐ Corporate Trustee
- ☐ **Other Probate**

Other Civil Filing Types

- ☐ **Construction Defect**
  - ☐ Chapter 40
  - ☐ General
- ☐ **Breach of Contract**
  - ☐ Building & Construction
  - ☐ Insurance Carrier
  - ☐ Commercial Instrument
  - ☐ Other Contracts/Acct/Judgment
  - ☐ Collection of Actions
  - ☐ Employment Contract
  - ☐ Guarantee
  - ☐ Sale Contract
  - ☐ Uniform Commercial Code
- ☐ **Civil Petition for Judicial Review**
  - ☐ Foreclosure Mediation
  - ☐ Other Administrative Law
  - ☐ Department of Motor Vehicles
  - ☐ Worker's Compensation Appeal

- ☐ **Appeal from Lower Court** *(also check applicable civil case box)*
  - ☐ Transfer from Justice Court
  - ☐ Justice Court Civil Appeal
- ☐ **Civil Writ**
  - ☐ Other Special Proceeding
- **X Other Civil Filing**
  - ☐ Compromise of Minor's Claim
  - ☐ Conversion of Property
  - ☐ Damage to Property
  - ☐ Employment Security
  - ☐ Enforcement of Judgment
  - ☐ Foreign Judgment – Civil
  - ☐ Other Personal Property
  - ☐ Recovery of Property
  - ☐ Stockholder Suit
  - X Other Civil Matters

III. Business Court Requested (Please check applicable category; *for Clark or Washoe Counties only.*)

☐ NRS Chapters 78-88	☐ Investments (NRS 104 Art. 8)	☐ Enhanced Case Mgmt/Business
☐ Commodities (NRS 90)	☐ Deceptive Trade Practices (NRS 598)	☐ Other Business Court Matters
☐ Securities (NRS 90)	☐ Trademarks (NRS 600A)	

May 11, 2012

Date

Signature of initiating party or representative

Electronically Filed
09/22/2014 08:27:39 AM

CLERK OF THE COURT

Elayna J. Youchah, Bar No. 5837
youchahe@jacksonlewis.com
Paul T. Trimmer, Bar No. 9291
trimmerp@jacksonlewis.com
JACKSON LEWIS P.C.
3800 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Tel: (702) 921-2460
Fax: (702) 921-2461

Paul DeCamp, Virginia Bar No. 76204
DeCampP@jacksonlewis.com
Pro Hac Vice Admission Pending
JACKSON LEWIS P.C.
10701 Parkridge Boulevard, Suite 300
Reston, Virginia 20191
Tel: (703) 483-8305
Fax: (703) 483-8301

Attorneys for Defendant
Nevada Property 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MELODEE MEGIA, on behalf of herself and all others similarly situated,

Plaintiffs,

vs.

NEVADA PROPERTY 1, LLC, d/b/a the Cosmopolitan of Las Vegas; and DOES 1 through 50, inclusive,

Defendant(s).

Case No.: A-12-661665-C

Dept. No.: XXXI

NEVADA PROPERTY 1, LLC'S PROPOSED ORDER REGARDING EXPUNGING LIENS AND ATTORNEY'S FEES AND COSTS

NEVADA PROPERTY 1, LLC DBA THE COSMOPOLITAN OF LAS VEGAS, a Delaware limited liability company authorized to do business in Nevada,

Plaintiff,

MELODEE MEGIA AND DARLENE LEWIS, individuals,

Defendants.

Case No.: A-14-702018-C

Dept. XXXI

Before the Court is Nevada Property 1, LLC dba The Cosmopolitan of Las Vegas' ("The Cosmopolitan") Application for an Order to Show Cause Why Liens Should not be Expunged and for Attorney's Fees and Costs (the "Application" or "Application to Expunge"). The Application was filed on June 6, 2014. Melodee Megia ("Megia") and Darlene Lewis ("Lewis") (Megia and Lewis may also be referred to as "Claimants") filed their Opposition to the Application to Expunge on July 7, 2014 ("Opposition"). The Cosmopolitan filed its Reply in Support of the Application to Expunge on July 28, 2014 ("Reply"). The Court held oral argument on the Application on August 5, 2014. Having considered the Application, Opposition, Reply, and all arguments of counsel, and good cause appearing, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On May 17, 2014, Megia and Lewis transmitted a notice of liens to counsel for The Cosmopolitan purportedly on behalf of approximately 8,000 putative class members in the instant matter and the concomitantly filed and pending matter known as *Darlene Lewis, on behalf of herself and all others similarly situated vs. Nevada Property 1, LLC, dba The Cosmopolitan of Las Vegas; and DOES 1 through 50, inclusive*, Case No. 2:12-cv-01564-MMD-GWF (the "Lewis Matter"). **Ex. 3 to the Application (opening paragraph and paragraph 2).**

2. The liens assert two amounts based on various contentions. First, the lien asserts that the Claimants seek "$81 million in wages due for all employees who worked and/or are working on the property" (***id.*** **¶ 2**). Second, the lien asserts "approximately $15,120,000.00" for terminated employees or $81 million "[i]n the event that there is a change of ownership of the employing entity" which is The Cosmopolitan. ***Id.*** **¶ 4.** Claimants provide no basis for the increase in the lien amount other than a change in ownership. ***Id.***

3. Thus, while the notice of lien states that the amount claimed reflects the alleged damages for terminated employees at alternately $15,120,000 and $81 million, **Application Ex. 3 ¶ 4**, Megia and Lewis also purport to represent approximately 8,000 unidentified *current* and former employees of The Cosmopolitan. **Application Ex. 3 ¶ 4; opening paragraph and paragraph 2.**

4. The notice of lien and liens fails to specify the unpaid wages (the amount of the liens) supposedly attributable to Megia or Lewis. **Application Exs. 3 and 4.**

5. The notice of lien and liens also fails to identify any of the current or former employees (other than Megia and Lewis) whose alleged unpaid wages amount to $15 (or $81) million claimed in the lien. ***Id.***

6. The notice of lien and liens fails to identify the amounts attributable to any of the 8,000 current or former employees on whose behalf the liens were supposedly filed. ***Id.***

7. The liens were recorded with the Clark County Recorders' Office on or about May 19, 2014. **Ex. 4 to the Application.**

8. The liens are against property located in Clark County, Nevada. ***Id.***

9. Megia was terminated from employment at The Cosmopolitan on or about September 16, 2011. Megia does not dispute that she has not returned to work at The Cosmopolitan since her termination. **Opposition generally and Opposition, n.1.**

10. Lewis was terminated from The Cosmopolitan on or about May 7, 2012, and does not dispute that she has not returned to The Cosmopolitan as an employee since her termination. ***Id.***

11. Megia worked in The Cosmopolitan's "Room Service sales section" and Lewis was "a customer service representative." **Application Ex. 1 ¶ 6; Ex. 2 ¶ 7.**

12. Megia filed her Complaint in this Court against The Cosmopolitan on May 11, 2012, alleging violations of state wage and hour law. **Opposition n.1; Ex. 1 to the Application.**

13. The Lewis Matter was filed in the U.S. District Court for the District of Nevada on August 31, 2012, alleging violations of the Fair Labor Standard Act ("FLSA"), as well as state wage and hour law. **Opposition n.1; Ex. 2 to the Application.**

14. The liens were recorded approximately 1000 days after Megia's termination and approximately 700 days after Lewis' termination. ***See* Application Exs. 1 ¶ 4, 2 ¶ 5, and 4.**

15. The liens were also recorded 738 days after Megia commenced her action in this Court, and 607 days after the Lewis Matter commenced in federal court. ***See* Application Exs. 1, 2, and 4.**

16. As shown on the docket of this matter and the Lewis Matter, The Cosmopolitan answered the Megia and Lewis Complaints denying all violations of law asserted by the Claimants.

17. The Cosmopolitan's Application and Reply argued that neither Megia nor Lewis performed work for an improvement or work of improvement as defined and required by the Nevada Revised Statutes. **Application at 16-19; Reply at 8-9.**

18. Claimants did not oppose or respond to the facts and offered no opposition to The Cosmopolitan's assertion that neither performed work for an improvement or for a work of improvement. **Opposition generally; Reply at 9-10.** Claimants contend they were not required to perform work of improvement in order to record a valid lien. **Opposition at 4.**

19. Also presently pending before this Court is Megia's Motion for Class Certification, filed on March 25, 2014. The Cosmopolitan filed its Opposition and Countermotion to the Motion for Class Certification on August 25, 2014. A consolidated hearing on Megia's Motion for Class Certification and The Cosmopolitan's Countermotion to Dismiss and for Summary Judgment is presently scheduled for September 30, 2014.

20. Pending before the U.S. District Court in the Lewis Matter is The Cosmopolitan's Motion for Decertification of Lien Claimant's uniform subclass conditionally certified under the FLSA. *See* Electronically Filed Document No. 110. Also pending before the U.S. District Court is Lewis' Motion for Class Certification pursuant to Fed. R. Civ. P. 23. *See* Electronically Filed Document No. 109.

CONCLUSIONS OF LAW

1. The Court Has Jurisdiction To Hear This Dispute.

Federal Rule of Civil Procedure ("FRCP") 64 does not deprive this Court of jurisdiction over a motion to expunge a lien recorded in the Clark County Recorder's Office by Lewis against property located in Clark County, Nevada. NRS 108.239 expressly states: "A notice of lien may be enforced by an action in *any court* of competent jurisdiction that is located within the county where the property upon which the work of improvement is located . . . ." (Emphasis added.) While FRCP 64 allows a federal court to invoke state law remedies with respect to seizing a

person or property, the Rule does not contemplate or create exclusive jurisdiction in the federal court simply because a lien claimant also has a matter pending in that court. Rather, FRCP 64 allows a federal court to exercise supplemental jurisdiction to afford parties remedies under state law. *Id.* Contrary to the Lien Claimants' suggestion, FRCP 64 does not divest state courts from subject matter jurisdiction related to those same remedies. *Id.*; *PNC Bank, N.A. v. Smith*, No. 2:10-cv-1916-JAM-EFB, 2014 U.S. Dist. LEXIS 29771, at *14 (, E.D. Cal. March 6. 2014) (*quoting Granny Goose Foods, Inc. v Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S 423. 436 n. 10 (1974)) ("Fed. R. Civ. P. 64(a) . . . codifies the 'long-settled federal law providing that in cases in federal court . . . state law is incorporated to determine the availability of prejudgment remedies for the seizure of person or property to secure satisfaction of the judgment ultimately entered'"). The Court therefore finds it has jurisdiction to hear this matter as to both lien Claimants.

2. Nevada's Lien Statutes Do Not Allow An Individual To File A Lien In A Representational Capacity.

A statutory lien is an "inchoate personal right" that should be brought by the party who has the right to enforce that right. *Gayle Mfg. Co. v. Fed. Sav. & Loan Ins. Corp.*, 910 F.2d 574 580 (9th Cir. 1990); *Painter v. Anderson*, 96 Nev. 941, 943, 620 P.2d 1254, 1255-56 (Nev. 1980). Because a statutory lien effectively gives a lien claimant a pre-suit writ of attachment, strict compliance with the lien statutes is necessary. *See Fisher Bros., Inc. v. Harrah Realty Co.*, 92 Nev. 65, 67, 545 P.2d 203, 204 (1976). In conjunction with these strict requirements, a claimant has the burden to demonstrate that it is the real party in interest with the right to pursue a claim. *Mortgage Elec. Reg. Sys. v. Chong*, No. 2:09-cv-00661-KJD-LRL, 2009 U.S. Dist. LEXIS 127500, at *6 (D. Nev. Dec. 4, 2009).

A party has "representational standing" to assert a claim arising by virtue of a statutory right only if the statute expressly authorizes such standing. *D.R. Horton Inc. v. District Court*, 125 Nev. 449, 455; 215 P.3d 697, 701 (2009) ("in the absence of an express statutory grant" a party "does not have standing to bring suit on behalf of [others]"); *see also Int'l Brotherhood of Elect. Workers Local No. 48 v. Oregon Steel Mills, Inc.*, 5 P.3d 1122, 1126 (Or. Ct. App. 2000)

(finding no representational standing to assert liens). A statute's omission of an express representational standing provision is "strong" evidence that the legislature did not intend to create that right. *See Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 959, 194 P.3d. 96, 101 (2008).

It is undisputed that NRS Chapter 108 provides no express right of representational standing to bring a lien. Indeed, the phrase "a lien claimant" is used repeatedly in the statutory scheme. *See, e.g.*, NRS 108.22132, 22136, 22156, 22184, 222, 226, 229, and 231. *See also* NRS 108.227(3) ("*[e]ach* subcontractor who participates in the construction, improvement, alteration or repair of a work of improvement shall deliver a copy of *each* notice of lien required by NRS 108.226") (emphasis added). NRS Chapter 108 grants no right to enforce a lien in a representational capacity as Claimants effectively admit by virtue of their lack of authority for a contrary position. The statutory framework of NRS Chapter 108 demonstrates that Claimants' assertion that they can lien on behalf of other individuals is simply unsupported as a matter of law.[1] The Court therefore finds that Claimants' liens are invalid to the extent they assert rights on behalf of any individuals other than themselves.[2]

3. Megia and Lewis Are Not Lien Claimants Because They Concede They Do Not Fall Within The Definition Found At NRS 108.2214.

NRS 108.2214 defines a "lien claimant" as one who contributes:

> work, material or equipment with a value of $500 or more to be used in or for the construction, alteration or repair of any improvement, property or work of improvement. The term includes, without limitation, every artisan, builder,

---

[1] Megia and Lewis argue that because someone other than the lien claimant may verify a notice of lien, such as an attorney or principal of a corporation, they possess authority to assert a lien on behalf of thousands of others. Neither of these examples addresses representational standing. In both examples, the principal *only* authorized the signatory to *verify* the notice of lien. Authorizing an attorney to execute a notice of lien does not make the attorney the real party in interest. While Megia and Lewis have authorized their counsel to verify a notice of lien, there is no legal basis upon which they may authorize their counsel to execute a notice of lien on behalf of nearly 8,000 other individuals.

[2] Lewis also argues that the FLSA opt-in plaintiffs effectively appointed her as their agent for state law remedies solely based upon their consent to sue forms filed in the Lewis Matter. **Opposition at 7:8-15.** However, the Court takes judicial notice that Lewis recently argued to the U.S. District Court for the District of Nevada that these same consents, filed with the federal court and signed by these same plaintiffs, do not indicate that these plaintiffs "were joining in the Rule 23 action," the mechanism through which Lewis seeks class certification of her state law claims. Lewis Matter, 2:12-cv-01564-RFB-GWF, Electronically Filed Document 116 (Lewis' Opposition to Motion to Dismiss) at 2:16-17. Lewis' agency argument cannot be advanced in this Court to serve Lewis' goal, while simultaneously being contradicted by her filing in the U.S. District Court.

> contractor, laborer, lessor or renter of equipment, materialman, miner, subcontractor or other person who provides work, material or equipment, and any person who performs services as an architect, engineer, land surveyor or geologist, in relation to the improvement, property or work of improvement.

The definition of "improvement," used in NRS 108.2214, is found at NRS 108.22128, and means

> the development, enhancement or addition to property, by the provision of work, materials or equipment. The term includes, without limitation: 1. A building, railway, tramway, toll road, canal, water ditch, flume, aqueduct, reservoir, bridge, fence, street, sidewalk, fixtures or other structure or superstructure; 2. A mine or a shaft, tunnel, adit or other excavation, designed or used to prospect, drain or work a mine; 3. A system for irrigation, plants, sod or other landscaping; 4. The demolition or removal of existing improvements, trees or other vegetation; 5. The drilling of test holes; 6. Grading, grubbing, filling or excavating; 7. Constructing or installing sewers or other public utilities; and 8. Constructing a vault, cellar or room under sidewalks or making improvements to the sidewalks in front of or adjoining the property.

The phrase, "work of improvement" is defined by NRS 108.22188 and consists of

> "the entire structure or scheme of improvement as a whole, including, without limitation, all work, materials and equipment to be used in or for the construction, alteration or repair of the property or any improvement thereon, whether under multiple prime contracts or a single prime contract except as follows: 1. If a scheme of improvement consists of the construction of two or more separate buildings and each building is constructed upon a separate legal parcel of land and pursuant to a separate prime contract for only that building, then each building shall be deemed a separate work of improvement; and 2. If the improvement of the site is provided for in a prime contract that is separate from all prime contracts for the construction of one or more buildings on the property, and if the improvement of the site was contemplated by the contracts to be a separate work of improvement to be completed before the commencement of construction of the buildings, the improvement of the site shall be deemed a separate work of improvement from the construction of the buildings and the commencement of construction of the improvement of the site does not constitute the commencement of construction of the buildings. As used in this subsection, "improvement of the site" means the development or enhancement of the property, preparatory to the commencement of construction of a building, and includes: (a) The demolition or removal of improvements, trees or other vegetation; (b) The drilling of test holes; (c) Grading, grubbing, filling or excavating; (d) Constructing or installing sewers or other public utilities; or (e) Constructing a vault, cellar or room under sidewalks or making improvements to the sidewalks in front of or adjoining the property.

As succinctly put by the Nevada Supreme Court, mechanic's liens provide security "for those who contribute labor or materials to construction projects." *I. Cox Construction Co., LLC, v. CH2 Investments, LLC*, 129 Nev. Adv. Rep. 14, 296 P.3d 1202, 1203 (2013).

In the Application to Expunge, The Cosmopolitan argues that neither Megia nor Lewis performed "work of improvement" as defined by Nevada's statutes, or as explained in *Crestline Investment Group, Inc. v. Lewis*, 119 Nev. 365, 369, 75 P.3d 363, 367 (2003)[3] (a garbage truck driver whose employment contributed nothing to improving the landfill did not improve the owner's property and thus the plaintiff did not have a valid mechanic's lien) and *Didier v. Webster Mines Corp.*, 49 Nev. 5, 17, 234 P. 520, 524 (1925) (a cook's services to a mining camp did not improve the property, thus precluding him from trying to "secure payment for the services rendered" through a lien). Specifically, Megia worked in The Cosmopolitan's "Room Service sales section" and Lewis was "a customer service representative" for the property. **Application Ex. 1 ¶ 6; Ex. 2 ¶ 7.** Neither position "improved" The Cosmopolitan's property and, like the cook in *Didier* and the truck driver in *Crestline*, Claimants' employment did not fall within the definition of the type of work giving rise to a valid lien. NRS 108.2214, 108.22128, 108.22188; *Crestline*, 119 Nev. at 369, 75 P.3d at 367; *Didier*, 49 Nev. at 17, 234 P. at 524.

A thorough review of Claimants' Opposition shows they do not address or mention *Crestline* or *Didier*. While the Opposition mentions works of improvement, it does so only by arguing that "liens filed pursuant to NRS 608.050 are not limited to the class of employees who worked in construction of a 'work of improvement.'" **Opposition at 4:2-3.** Claimants argue that NRS 608.050 expanded the definition of Lien Claimant found in NRS 108.2214 to include "every employee" as defined in NRS 608.010.[4] ***Id.* at 4:4-7.** However, as discussed below, the Court concludes that NRS 608.050 does not change, expand or eliminate the definition of "lien claimant" found at NRS 108.2214.

EDCR 2.20 sets forth specific requirements a party must comply with when filing a motion, opposition, or reply in this state district court. EDCR 2.20(e) states: "Failure of the opposing party to serve and file written opposition may be construed as an admission that the

[3] At oral argument, Claimants' counsel suggested that *Crestline* was not good law. That is incorrect. *Crestline* was superseded by statute only with respect to a court's discretion to award attorney's fees pursuant to NRS 108.2275. *See Yonker Const., Inc. v. Hulme*, 126 Nev. __, 248 P.3d 313, 314 (2010). Its application of NRS Chapter 108 and NRS 608.050 remain controlling.

[4] NRS 608.010 defines "employee" as including "both male and female persons in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed."

motion . . . is meritorious and a consent to granting the same."[5] Because the Claimants do not oppose or contest The Cosmopolitan's facts and law demonstrating that they are not "lien claimants" as defined by Nevada law, they concede this issue.

The Court concludes that neither Megia nor Lewis are lien claimants as defined by 108.2214, and discussed in *Crestline* and *Didier*. For this reason their liens must be expunged.

4. Claimants' Liens Are Untimely.

(a) The Nevada Revised Statutes Define When A Lien Must Be Filed.

NRS 108.226, titled "Perfection of lien" establishes, *inter alia*, the time within which a lien must be recorded. Specifically, the statute states that "[t]o perfect a lien, a lien claimant must record a notice of lien in the office of the county recorder of the county where the property or some part thereof is located . . . (a) Within ***90 days after*** the date on which the latest of the following occurs: (1) The completion of the work of improvement; (2) The last delivery of material or furnishing of equipment by the lien claimant for the work of improvement; or (3) The last performance of work by the lien claimant for the work of improvement; or (b) Within 40 days after the recording of a valid notice of completion, if the notice of completion is recorded and served in the manner required pursuant to NRS 108.228." (Emphasis added.)

(b) A Plain Reading Of The Statutes Establishes That The Requirements Of NRS 108.221 To 108.246, Inclusive, Are Incorporated Into And Applicable To The Lien Rights Granted Nevada Employees Under NRS 608.050(2).

NRS 608.050 is a statute with two parts. NRS 608.050(1) states:

> Whenever an employer of labor shall discharge or lay off employees without first paying them the amount of any wages or salary then due them, in cash and lawful money of the United States, or its equivalent, or shall fail, or refuse on demand, to pay them in like money, or its equivalent, the amount of any wages or salary at the time the same becomes due and owing to them under their contract of employment, whether employed by the hour, day, week or month, each of the

[5] While not binding authority, the Court also refers to *Corey v. McNamara*, 409 F.Supp. 2d 1225, 1228-29 (D. Nev. 2006), and *Grove v. Kadlic*, 986 F.Supp. 510, 516 (D. Nev. 1997) (holding a non-opposition is tantamount to an admission that a motion is meritorious is equally applicable when there is a failure to oppose specific arguments advocating dismissal).

> employees may charge and collect wages in the sum agreed upon in the contract of employment for each day the employer is in default, until the employee is paid in full, without rendering any service therefor; but the employee shall cease to draw such wages or salary 30 days after such default.

NRS 608.050(2) then states: "Every employee shall have a lien as provided in NRS 108.221 to 108.246, inclusive, and all other rights and remedies for the protection and enforcement of such salary or wages as the employee would have been entitled to had the employee rendered services therefor in the manner as last employed."

Megia and Lewis contend that the language of NRS 608.050(2) "adds to the definition of the term 'lien claimant' "found at NRS 108.2214 and includes all employees, as defined in NRS 608.010, apparently incorporating" all employees who are terminated from employment with wages owing," not just those who worked "in the construction trades" or "who performed work of improvement." **Opposition at 4:4-9 and 12:23-24.**[6] Claimants also argue that NRS 608.050(2) gives an employee the "right to lien at any time during which ... [a] claim pending [under NRS 608.050, up to and including 90 days from the date of cessation of the business—*i.e.*, the work of improvement has ceased." ***Id.* at 10:3-5**. The Court disagrees with both of these contentions.

Crestline establishes firmly that it is the "plain language" of the mechanics liens statute that controls their interpretation, even when a lien is brought pursuant to NRS 608.050. *Id.* at 119 Nev. at 368-69 and n.9, 75 P.3d at 365-66 and n.9. *Barrick Goldstrike Mine v. Peterson*, 116 Nev. 541, 546, 2 P.3d 850, 853 (2000) also explains that statutes "must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory." *See also Butler v. State*, 120 Nev. 879, 892-93, 102 P.3d 71, 81 (2004) (Nevada courts avoid statutory interpretations that render language meaningless or superfluous).

Consistent with these principles, NRS 608.050(2) states that the provisions of NRS 108.221 through 108.246, ***inclusive***, are applicable to and control the lien rights of employees exercising such rights. *Crestline* 119 Nev. at 369 n.9, 75 P.3d at 366 n.9. The phrase "Every employee shall have a lien as provided in NRS 108.221 to 108.246, inclusive," found in NRS

---

[6] Megia and Lewis argue that absent this expanded definition the rights granted under NRS 608.050(2) would be "totally redundant" of rights granted in NRS Chapter 108. This is simply incorrect. NRS 608.050(2) grants employees 30 days of *penalties* and gives the right to lien for those non-wage amounts in addition to already existing lien rights.

608.050(2) must be given the plain meaning it portends. An employee seeking to assert a lien pursuant to NRS 608.050(2) must comply with the law "as provided in" the lien statutes identified as included. The words "as provided in" and "inclusive" would be meaningless unless the purpose is to incorporate the mechanics' lien statutes into the rights granted pursuant to NRS 608.050. This is confirmed by the entire discussion in *Crestline* in which an employee sought to assert a lien through rights granted to him in NRS 608.050(2). 119 Nev. at 368-69 and n.9, 75 P.3d at 365-66 and n.9.

Further, this Court notes that had the Nevada Legislature wanted to expand the definition of "lien claimant," as argued by Megia and Lewis, it could have done so in either 2003 or 2007 when NRS 108.2214 was amended. NRS 608.050 was *last* amended in 1969. In fact, the definition of "lien claimant" in NRS 108.2214 was added in 2003 and amended in 2007. NRS 608.050; NRS 108.2214, Chapter 427, SB 206 (2003) and Chapter 204, AB 359 (2007).[7] The Legislatures' decision not to expand the definition of "lien claimant" to include every employee as defined in NRS 608.010 or every employee terminated with wages owing demonstrates that it had a clear purpose in limiting those who may lien to those provided for under Chapter 108. *Cal. Commer. Enters. v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 145, 67 P.3d 328, 330 (Nev. 2003) ("[w]hen a statute is not ambiguous, this court has consistently held that we are not empowered to construe the statute beyond its plain meaning, unless the law as stated would yield an absurd result"). The Court finds that the definition of "lien claimant" found in NRS 108.2214 is applicable to employees seeking to enforce liens by virtue of rights granted pursuant to NRS 608.050(2) and that Claimants neither contend they fit within that definition nor provide any basis for the Court to reach this conclusion.

[7] Chapter 427, SB 206 added the following to the Nevada Revised Statutes at NRS 108.2214: "'Lien claimant' means any person who provides work, material or equipment with a value of $500 or more to be used in or for the construction, alteration or repair of any improvement, property or work of improvement. The term includes, without limitation, every artisan, builder, contractor, laborer, lessor or renter of equipment, materialman, miner, subcontractor or other person who provides work, material or equipment, and any person who performs services as an architect, engineer, land surveyor or geologist, in relation to the improvement, property or work of improvement." The 2007 amendment to NRS 108.2214 expanded the definition of "laborer" to include, "without limitation, an express trust fund to which any portion of the total compensation of a laborer, including, without limitation, any fringe benefit, must be paid pursuant to an agreement with that laborer or the collective bargaining agent of that laborer."

Claimants' assertions that NRS 608.050 gives every employee a right to lien "anytime during which that claim [under NRS 608.050] is pending, up to and including 90 days from the date of cessation of the business," is equally unsupported by law and would render all the timing requirements found in NRS 108.226 meaningless. NRS 108.226 plainly sets forth the timetables within which a lien claimant must file a notice of lien. The first provides that a lien must be filed within 90 days of one of three triggering events: (1) the date on which a work of improvement is completed, (2) the date of the last delivery of material or furnishing of equipment by the lien claimant for the work of improvement, *or* (3) the last performance of work by the lien claimant for the work of improvement. NRS 108.226(1)(a)(1)-(3). The second, NRS 108.226(1)(b), provides that a lien may also be filed within 40 days after the recording of a valid notice of completion. Megia and Lewis had to file their liens within 90 days of one of the events under NRS 108.226(1)(a)(1) or within 40 days of The Cosmopolitan recording a valid notice of completion.

(c) Claimants' Liens Are Invalid Because They Were Not Filed Within The Time Limits Established In NRS Chapter 108.

Megia and Lewis do not contend that their liens were filed within 40 days of recording of a valid notice of completion and there is no evidence before the Court to allow it to reasonably reach this conclusion. Thus, their liens are untimely under NRS 108.226(1)(b). Megia and Lewis also do not contend they delivered materials or furnished equipment to The Cosmopolitan. Thus, their liens are untimely under NRS 108.226(1)(a)(2). Megia and Lewis do not dispute that they failed to file their liens within 90 days of the last day they performed worked for The Cosmopolitan. Thus, their liens are untimely under NRS 108.226(1)(a)(3).[8] It is not surprising to the Court that Megia and Lewis therefore argue that because The Cosmopolitan continues to operate "the work has never been completed" and their liens are timely pursuant to NRS

[8] It is undisputed that the last day Megia performed work for The Cosmopolitan was September 16, 2011. **Opposition n.1.** It is also undisputed that the last day Lewis performed work for The Cosmopolitan was May 7, 2012. ***Id.*** These dates are approximately 1000 and 700 days respectively before Megia and Lewis recorded their liens. Even if the Court were to assume that their work fell within the definition of NRS 108.2214, their liens were substantially more than 90 days after "the last day performance of work by the lien claimant for the work of improvement." NRS 108.226(1)(a)(3).

108.226(1)(a)(1), which requires a lien to be filed within 90 days of "[t]he completion of the work of improvement."[9] The Court rejects this assertion. It is contrary to the plain language of NRS 108.226, and would lead to an unforeseen and unforeseeable extension of time within which liens could be timely noticed and recorded.[10]

While NRS 108.22188 defines a work of improvement to mean more than a particular claimant's work, it nonetheless still means "all work, materials and equipment to be used in or for the construction, alteration or repair of the property or any improvement thereon . . . ." There is no precedent to expand this definition to simply mean the ongoing operation of the business. This conclusion is supported by the reasoning in *I. Cox Construction Co., LLC, v. CH2 Investments, LLC*, 129 Nev. Adv. Rep. 14, 296 P.3d 1202. There, a lien claimant was engaged to construct a shooting range. *Id.* at 296 P. 1203. The lien claimant "worked through October" 2009 and "then left the project" contending it was owed money. *Id.* Months later, in 2010, after the business opened, the business contracted with another entity to install soundproofing. *Id.* The lien claimant alleged his lien was timely in 2010 because it was filed less than 90 days after the soundproofing work was completed. *Id.* The lien claimant sought to "tack" his claim to "the sound proofing to the 'work of improvement' of constructing a shooting range." *Id.* The Nevada Supreme Court rejected this argument. The Supreme Court stated that to adopt the lien claimant's definition of "work of improvement"

> would enlarge the statute to unreasonably extend the time during which a "work of improvement" is ongoing. ... [The owner] may not have become aware of the need for ...[additional work] for months, years, or even decades after opening for business. ... This interpretation would enable any number of unforeseen and unforeseeable projects or repairs to continue the "work of improvement." Such interpretation is far too broad.

Id. at 1205.

---

[9] Megia and Lewis state that they had three years to file a lawsuit under the statute of limitations allegedly applicable to NRS 608.050 and, so long as they brought suit within the three year statute of limitations, they could file a lien "anytime during which that claim is pending, up to and including 90 days from the date of cessation of the business." **Opposition at 10:3-5.**

[10] Megia and Lewis rely on *Knudsen v. Queenstake Resources, USA, Inc.* an improperly cited, non-published, and non-binding case from the U.S. District Court for the District of Nevada, which is not applicable to the case before the Court. *Queenstake* does not support Claimants' theory that NRS 608.050 extends the time within which a former employee may timely file a lien; nor does the decision stand for the proposition that where a business simply continues to operate, the running of the deadline to file a lien continues until business operations cease.

Claimants suggested interpretation of the statutes pertaining to when a lien must be filed is likewise far too broad and would allow a lien claimant to wait years to file a notice of lien despite the cessation of that claimants work for or employment by the owner of a business simply because the business has not ceased to operate. However, continued business operations, as explained by *Cox*, does not toll the timing requirements; nor does the fact that another may continue or commence some form of work for the employer. The unintended consequences of Claimants' contentions would be to eliminate the requirements of NRS 108.226 completely for any employee who seeks to enforce a lien by virtue of rights granted in NRS 608.050(2). But, NRS 608.050(2) did not expressly or impliedly repeal NRS 108.226. Rather, NRS 608.050(2) expressly states that employees seeking to assert a lien must do so "as provided in NRS 108.221 to NRS 108.246, inclusive...." The interpretation of this provision cannot be read to nullify NRS 108.226.

The Court finds that Claimants' liens were untimely noticed and recorded. The Court further finds that based on all of the above, Claimants' liens must be expunged. Claimants cannot file liens in a representational capacity, they are not "lien claimants" as defined by Nevada law, and their liens were untimely.

5. The Cosmopolitan Is Entitled To An Award Of Attorney's Fees.

If a court determines that a notice of lien is frivolous and made without reasonable cause, the court shall make an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant for bringing the motion. NRS 108.2275(6)(a). Here, Claimants have undisputedly failed to establish that reasonable cause existed for filing liens that are: (1) untimely; (2) wrongfully asserted on a representational basis, and (3) in direct contradiction to Nevada case law and statute. Consequentially, pursuant to NRS 108.2275(6). The Cosmopolitan is awarded its reasonable attorney's fees for bringing its Application.

ORDER

IT IS HEREBY ORDERED THAT, the Application for an Order to Show Cause Why Liens Should not be Expunged and for Attorney's Fees and Costs is granted. The liens

recorded by Megia and Lewis regarding certain real property described APN 162-20-603-007, 162-20-615-001, 162-20-615-002, 162-20-616-063, 162-20-616-062, 162-20-616-064, and 162-20-617-232 are hereby expunged.

IT IS FURTHER ORDERED the Notice of Lien filed by Plaintiffs regarding certain real property described as APN 162-20-603-007, 162-20-615-001, 162-20-615-002, 162-20-616-063, 162-20-616-062, 162-20-616-064, and 162-20-617-232 is released.

IT IS FURTHER ORDERED upon entry of this Order with the Clerk of the Court and recording the same with the Clark County Recorder's Office, the aforementioned lien is expunged and the aforementioned Notice of Lien is released.

IT IS FURTHER ORDERED THAT, The Cosmopolitan shall submit a memorandum of attorney's fees and costs reasonably incurred in preparing the Application and Reply within 10 business days of this Order. Megia and Lewis shall have seven days to oppose the request for fees and costs. No reply shall be filed.

IT IS SO ORDERED this 19 day of September, 2014.

District Judge JOANNA S. KISHNER

Respectfully Submitted by:

JACKSON LEWIS P.C.

Elayna J. Youchah, Bar No. 5837
Paul T. Trimmer, Bar No. 9291
3800 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Paul DeCamp, Virginia Bar No. 76204
Pro Hac Vice Admission Pending
JACKSON LEWIS P.C.
10701 Parkridge Boulevard, Suite 300
Reston, Virginia 20191

Electronically Filed
09/24/2014 02:38:48 PM

CLERK OF THE COURT

Elayna J. Youchah, Bar No. 5837
youchahe@jacksonlewis.com
Paul T. Trimmer, Bar No. 9291
trimmerp@jacksonlewis.com
JACKSON LEWIS P.C.
3800 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Tel: (702) 921-2460
Fax: (702) 921-2461

Paul DeCamp, Virginia Bar No. 76204
DeCampP@jacksonlewis.com
Admitted Pro Hac Vice
JACKSON LEWIS P.C.
10701 Parkridge Boulevard, Suite 300
Reston, Virginia 20191
Tel: (703) 483-8305
Fax: (703) 483-8301

Attorneys for Defendant
Nevada Property 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MELODEE MEGIA, on behalf of herself and all others similarly situated,

Plaintiffs,

vs.

NEVADA PROPERTY 1, LLC, d/b/a the Cosmopolitan of Las Vegas; and DOES 1 through 50, inclusive,

Defendant(s).

Case No.: A-12-661665-C

Dept. No.: XXXI

NOTICE OF ENTRY OF NEVADA PROPERTY 1, LLC'S ORDER REGARDING EXPUNGING LIENS AND ATTORNEY'S FEES AND COSTS

NEVADA PROPERTY 1, LLC DBA THE COSMOPOLITAN OF LAS VEGAS, a Delaware limited liability company authorized to do business in Nevada,

Plaintiff,

MELODEE MEGIA AND DARLENE LEWIS, individuals,

Defendants.

Case No.: A-14-702018-C

Dept. XXXI

PLEASE TAKE NOTICE that Nevada Property 1, LLC's Order Regarding Expunging Liens and Attorney's Fees and Costs was entered in the above-captioned matter on September 22, 2014, a true and correct copy of which is attached hereto as Exhibit A.

Dated this 24th day of September, 2014.

JACKSON LEWIS P.C.

/s/ Elayna J. Youchah
Elayna J. Youchah, Bar # 5837
Paul T. Trimmer, Bar # 10168
3800 Howard Hughes Parkway, Ste. 600
Las Vegas, Nevada 89169

Paul DeCamp, Virginia Bar # 76204
10701 Parkridge Boulevard, Suite 300
Reston, Virginia 20191
Admitted Pro Hac Vice

Attorneys for Defendant
Nevada Property 1, LLC

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Jackson Lewis P.C. and that on this 24th day of September, 2014, I caused to be served via the Court's ECF filing, a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF NEVADA PROPERTY 1, LLC'S ORDER REGARDING EXPUNGING LIENS AND ATTORNEY'S FEES AND COSTS,** properly addressed to the following:

Mark R. Thierman
Joshua Buck
Thierman Law Firm, P.C.
7287 Lakeside Drive
Reno, Nevada 89511

Attorneys for Plaintiff

/s/ Emily Santiago
Employee of Jackson Lewis P.C.

EXHIBIT A

EXHIBIT A

Electronically Filed
09/22/2014 08:27:39 AM

CLERK OF THE COURT

Elayna J. Youchah, Bar No. 5837
youchahe@jacksonlewis.com
Paul T. Trimmer, Bar No. 9291
trimmerp@jacksonlewis.com
JACKSON LEWIS P.C.
3800 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169
Tel: (702) 921-2460
Fax: (702) 921-2461

Paul DeCamp, Virginia Bar No. 76204
DeCampP@jacksonlewis.com
Pro Hac Vice Admission Pending
JACKSON LEWIS P.C.
10701 Parkridge Boulevard, Suite 300
Reston, Virginia 20191
Tel: (703) 483-8305
Fax: (703) 483-8301

Attorneys for Defendant
Nevada Property 1, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

MELODEE MEGIA, on behalf of herself and all others similarly situated,

Plaintiffs,

vs.

NEVADA PROPERTY 1, LLC, d/b/a the Cosmopolitan of Las Vegas; and DOES 1 through 50, inclusive,

Defendant(s).

Case No.: A-12-661665-C

Dept. No.: XXXI

NEVADA PROPERTY 1, LLC'S PROPOSED ORDER REGARDING EXPUNGING LIENS AND ATTORNEY'S FEES AND COSTS

NEVADA PROPERTY 1, LLC DBA THE COSMOPOLITAN OF LAS VEGAS, a Delaware limited liability company authorized to do business in Nevada,

Plaintiff,

MELODEE MEGIA AND DARLENE LEWIS, individuals,

Defendants.

Case No.: A-14-702018-C

Dept. XXXI

09-22-14 P11:52 IN

TC3

Before the Court is Nevada Property 1, LLC dba The Cosmopolitan of Las Vegas' ("The Cosmopolitan") Application for an Order to Show Cause Why Liens Should not be Expunged and for Attorney's Fees and Costs (the "Application" or "Application to Expunge"). The Application was filed on June 6, 2014. Melodee Megia ("Megia") and Darlene Lewis ("Lewis") (Megia and Lewis may also be referred to as "Claimants") filed their Opposition to the Application to Expunge on July 7, 2014 ("Opposition"). The Cosmopolitan filed its Reply in Support of the Application to Expunge on July 28, 2014 ("Reply"). The Court held oral argument on the Application on August 5, 2014. Having considered the Application, Opposition, Reply, and all arguments of counsel, and good cause appearing, the Court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1. On May 17, 2014, Megia and Lewis transmitted a notice of liens to counsel for The Cosmopolitan purportedly on behalf of approximately 8,000 putative class members in the instant matter and the concomitantly filed and pending matter known as *Darlene Lewis, on behalf of herself and all others similarly situated vs. Nevada Property 1, LLC, dba The Cosmopolitan of Las Vegas; and DOES 1 through 50, inclusive*, Case No. 2:12-cv-01564-MMD-GWF (the "Lewis Matter"). **Ex. 3 to the Application (opening paragraph and paragraph 2).**

2. The liens assert two amounts based on various contentions. First, the lien asserts that the Claimants seek "$81 million in wages due for all employees who worked and/or are working on the property" (***id.*** **¶ 2**). Second, the lien asserts "approximately $15,120,000.00" for terminated employees or $81 million "[i]n the event that there is a change of ownership of the employing entity" which is The Cosmopolitan. ***Id.*** **¶ 4**. Claimants provide no basis for the increase in the lien amount other than a change in ownership. *Id.*

3. Thus, while the notice of lien states that the amount claimed reflects the alleged damages for terminated employees at alternately $15,120,000 and $81 million, **Application Ex. 3 ¶ 4**, Megia and Lewis also purport to represent approximately 8,000 unidentified *current* and former employees of The Cosmopolitan. **Application Ex. 3 ¶ 4; opening paragraph and paragraph 2.**

4. The notice of lien and liens fails to specify the unpaid wages (the amount of the liens) supposedly attributable to Megia or Lewis. **Application Exs. 3 and 4.**

5. The notice of lien and liens also fails to identify any of the current or former employees (other than Megia and Lewis) whose alleged unpaid wages amount to $15 (or $81) million claimed in the lien. ***Id.***

6. The notice of lien and liens fails to identify the amounts attributable to any of the 8,000 current or former employees on whose behalf the liens were supposedly filed. ***Id.***

7. The liens were recorded with the Clark County Recorders' Office on or about May 19, 2014. **Ex. 4 to the Application.**

8. The liens are against property located in Clark County, Nevada. ***Id.***

9. Megia was terminated from employment at The Cosmopolitan on or about September 16, 2011. Megia does not dispute that she has not returned to work at The Cosmopolitan since her termination. **Opposition generally and Opposition, n.1.**

10. Lewis was terminated from The Cosmopolitan on or about May 7, 2012, and does not dispute that she has not returned to The Cosmopolitan as an employee since her termination. ***Id.***

11. Megia worked in The Cosmopolitan's "Room Service sales section" and Lewis was "a customer service representative." **Application Ex. 1 ¶ 6; Ex. 2 ¶ 7.**

12. Megia filed her Complaint in this Court against The Cosmopolitan on May 11, 2012, alleging violations of state wage and hour law. **Opposition n.1; Ex. 1 to the Application.**

13. The Lewis Matter was filed in the U.S. District Court for the District of Nevada on August 31, 2012, alleging violations of the Fair Labor Standard Act ("FLSA"), as well as state wage and hour law. **Opposition n.1; Ex. 2 to the Application.**

14. The liens were recorded approximately 1000 days after Megia's termination and approximately 700 days after Lewis' termination. ***See* Application Exs. 1 ¶ 4, 2 ¶ 5, and 4.**

15. The liens were also recorded 738 days after Megia commenced her action in this Court, and 607 days after the Lewis Matter commenced in federal court. ***See* Application Exs. 1, 2, and 4.**

16. As shown on the docket of this matter and the Lewis Matter, The Cosmopolitan answered the Megia and Lewis Complaints denying all violations of law asserted by the Claimants.

17. The Cosmopolitan's Application and Reply argued that neither Megia nor Lewis performed work for an improvement or work of improvement as defined and required by the Nevada Revised Statutes. **Application at 16-19; Reply at 8-9.**

18. Claimants did not oppose or respond to the facts and offered no opposition to The Cosmopolitan's assertion that neither performed work for an improvement or for a work of improvement. **Opposition generally; Reply at 9-10**. Claimants contend they were not required to perform work of improvement in order to record a valid lien. **Opposition at 4.**

19. Also presently pending before this Court is Megia's Motion for Class Certification, filed on March 25, 2014. The Cosmopolitan filed its Opposition and Countermotion to the Motion for Class Certification on August 25, 2014. A consolidated hearing on Megia's Motion for Class Certification and The Cosmopolitan's Countermotion to Dismiss and for Summary Judgment is presently scheduled for September 30, 2014.

20. Pending before the U.S. District Court in the Lewis Matter is The Cosmopolitan's Motion for Decertification of Lien Claimant's uniform subclass conditionally certified under the FLSA. *See* Electronically Filed Document No. 110. Also pending before the U.S. District Court is Lewis' Motion for Class Certification pursuant to Fed. R. Civ. P. 23. *See* Electronically Filed Document No. 109.

CONCLUSIONS OF LAW

1. The Court Has Jurisdiction To Hear This Dispute.

Federal Rule of Civil Procedure ("FRCP") 64 does not deprive this Court of jurisdiction over a motion to expunge a lien recorded in the Clark County Recorder's Office by Lewis against property located in Clark County, Nevada. NRS 108.239 expressly states: "A notice of lien may be enforced by an action in *any court* of competent jurisdiction that is located within the county where the property upon which the work of improvement is located . . . ." (Emphasis added.) While FRCP 64 allows a federal court to invoke state law remedies with respect to seizing a

person or property, the Rule does not contemplate or create exclusive jurisdiction in the federal court simply because a lien claimant also has a matter pending in that court. Rather, FRCP 64 allows a federal court to exercise supplemental jurisdiction to afford parties remedies under state law. *Id.* Contrary to the Lien Claimants' suggestion, FRCP 64 does not divest state courts from subject matter jurisdiction related to those same remedies. *Id.*; *PNC Bank, N.A. v. Smith*, No. 2:10-cv-1916-JAM-EFB, 2014 U.S. Dist. LEXIS 29771, at *14 (, E.D. Cal. March 6, 2014) (*quoting Granny Goose Foods, Inc. v Bhd. Of Teamsters & Auto Truck Drivers Local No. 70 of Alameda Cnty.*, 415 U.S 423, 436 n. 10 (1974)) ("Fed. R. Civ. P. 64(a) . . . codifies the 'long-settled federal law providing that in cases in federal court . . . state law is incorporated to determine the availability of prejudgment remedies for the seizure of person or property to secure satisfaction of the judgment ultimately entered'"). The Court therefore finds it has jurisdiction to hear this matter as to both lien Claimants.

2. Nevada's Lien Statutes Do Not Allow An Individual To File A Lien In A Representational Capacity.

A statutory lien is an "inchoate personal right" that should be brought by the party who has the right to enforce that right. *Gayle Mfg. Co. v. Fed. Sav. & Loan Ins. Corp.*, 910 F.2d 574 580 (9th Cir. 1990); *Painter v. Anderson*, 96 Nev. 941, 943, 620 P.2d 1254, 1255-56 (Nev. 1980). Because a statutory lien effectively gives a lien claimant a pre-suit writ of attachment, strict compliance with the lien statutes is necessary. *See Fisher Bros., Inc. v. Harrah Realty Co.*, 92 Nev. 65, 67, 545 P.2d 203, 204 (1976). In conjunction with these strict requirements, a claimant has the burden to demonstrate that it is the real party in interest with the right to pursue a claim. *Mortgage Elec. Reg. Sys. v. Chong*, No. 2:09-cv-00661-KJD-LRL, 2009 U.S. Dist. LEXIS 127500, at *6 (D. Nev. Dec. 4, 2009).

A party has "representational standing" to assert a claim arising by virtue of a statutory right only if the statute expressly authorizes such standing. *D.R. Horton Inc. v. District Court*, 125 Nev. 449, 455; 215 P.3d 697, 701 (2009) ("in the absence of an express statutory grant" a party "does not have standing to bring suit on behalf of [others]"); *see also Int'l Brotherhood of Elect. Workers Local No. 48 v. Oregon Steel Mills, Inc.*, 5 P.3d 1122, 1126 (Or. Ct. App. 2000)

(finding no representational standing to assert liens). A statute's omission of an express representational standing provision is "strong" evidence that the legislature did not intend to create that right. *See Baldonado v. Wynn Las Vegas, LLC*, 124 Nev. 951, 959, 194 P.3d. 96, 101 (2008).

It is undisputed that NRS Chapter 108 provides no express right of representational standing to bring a lien. Indeed, the phrase "a lien claimant" is used repeatedly in the statutory scheme. *See, e.g.*, NRS 108.22132, 22136, 22156, 22184, 222, 226, 229, and 231. *See also* NRS 108.227(3) ("*[e]ach* subcontractor who participates in the construction, improvement, alteration or repair of a work of improvement shall deliver a copy of *each* notice of lien required by NRS 108.226") (emphasis added). NRS Chapter 108 grants no right to enforce a lien in a representational capacity as Claimants effectively admit by virtue of their lack of authority for a contrary position. The statutory framework of NRS Chapter 108 demonstrates that Claimants' assertion that they can lien on behalf of other individuals is simply unsupported as a matter of law.[1] The Court therefore finds that Claimants' liens are invalid to the extent they assert rights on behalf of any individuals other than themselves.[2]

3. Megia and Lewis Are Not Lien Claimants Because They Concede They Do Not Fall Within The Definition Found At NRS 108.2214.

NRS 108.2214 defines a "lien claimant" as one who contributes:

> work, material or equipment with a value of $500 or more to be used in or for the construction, alteration or repair of any improvement, property or work of improvement. The term includes, without limitation, every artisan, builder,

[1] Megia and Lewis argue that because someone other than the lien claimant may verify a notice of lien, such as an attorney or principal of a corporation, they possess authority to assert a lien on behalf of thousands of others. Neither of these examples addresses representational standing. In both examples, the principal *only* authorized the signatory to *verify* the notice of lien. Authorizing an attorney to execute a notice of lien does not make the attorney the real party in interest. While Megia and Lewis have authorized their counsel to verify a notice of lien, there is no legal basis upon which they may authorize their counsel to execute a notice of lien on behalf of nearly 8,000 other individuals.

[2] Lewis also argues that the FLSA opt-in plaintiffs effectively appointed her as their agent for state law remedies solely based upon their consent to sue forms filed in the Lewis Matter. Opposition at 7:8-15. However, the Court takes judicial notice that Lewis recently argued to the U.S. District Court for the District of Nevada that these same consents, filed with the federal court and signed by these same plaintiffs, do not indicate that these plaintiffs "were joining in the Rule 23 action," the mechanism through which Lewis seeks class certification of her state law claims. Lewis Matter, 2:12-cv-01564-RFB-GWF, Electronically Filed Document 116 (Lewis' Opposition to Motion to Dismiss) at 2:16-17. Lewis' agency argument cannot be advanced in this Court to serve Lewis' goal, while simultaneously being contradicted by her filing in the U.S. District Court.

> contractor, laborer, lessor or renter of equipment, materialman, miner, subcontractor or other person who provides work, material or equipment, and any person who performs services as an architect, engineer, land surveyor or geologist, in relation to the improvement, property or work of improvement.

The definition of "improvement," used in NRS 108.2214, is found at NRS 108.22128, and means

> the development, enhancement or addition to property, by the provision of work, materials or equipment. The term includes, without limitation: 1. A building, railway, tramway, toll road, canal, water ditch, flume, aqueduct, reservoir, bridge, fence, street, sidewalk, fixtures or other structure or superstructure; 2. A mine or a shaft, tunnel, adit or other excavation, designed or used to prospect, drain or work a mine; 3. A system for irrigation, plants, sod or other landscaping; 4. The demolition or removal of existing improvements, trees or other vegetation; 5. The drilling of test holes; 6. Grading, grubbing, filling or excavating; 7. Constructing or installing sewers or other public utilities; and 8. Constructing a vault, cellar or room under sidewalks or making improvements to the sidewalks in front of or adjoining the property.

The phrase, "work of improvement" is defined by NRS 108.22188 and consists of

> "the entire structure or scheme of improvement as a whole, including, without limitation, all work, materials and equipment to be used in or for the construction, alteration or repair of the property or any improvement thereon, whether under multiple prime contracts or a single prime contract except as follows: 1. If a scheme of improvement consists of the construction of two or more separate buildings and each building is constructed upon a separate legal parcel of land and pursuant to a separate prime contract for only that building, then each building shall be deemed a separate work of improvement; and 2. If the improvement of the site is provided for in a prime contract that is separate from all prime contracts for the construction of one or more buildings on the property, and if the improvement of the site was contemplated by the contracts to be a separate work of improvement to be completed before the commencement of construction of the buildings, the improvement of the site shall be deemed a separate work of improvement from the construction of the buildings and the commencement of construction of the improvement of the site does not constitute the commencement of construction of the buildings. As used in this subsection, "improvement of the site" means the development or enhancement of the property, preparatory to the commencement of construction of a building, and includes: (a) The demolition or removal of improvements, trees or other vegetation; (b) The drilling of test holes; (c) Grading, grubbing, filling or excavating; (d) Constructing or installing sewers or other public utilities; or (e) Constructing a vault, cellar or room under sidewalks or making improvements to the sidewalks in front of or adjoining the property.

As succinctly put by the Nevada Supreme Court, mechanic's liens provide security "for those who contribute labor or materials to construction projects." *I. Cox Construction Co., LLC. v. CH2 Investments, LLC*, 129 Nev. Adv. Rep. 14, 296 P.3d 1202, 1203 (2013).

In the Application to Expunge, The Cosmopolitan argues that neither Megia nor Lewis performed "work of improvement" as defined by Nevada's statutes, or as explained in *Crestline Investment Group, Inc. v. Lewis*, 119 Nev. 365, 369, 75 P.3d 363, 367 (2003)[3] (a garbage truck driver whose employment contributed nothing to improving the landfill did not improve the owner's property and thus the plaintiff did not have a valid mechanic's lien) and *Didier v. Webster Mines Corp.*, 49 Nev. 5, 17, 234 P. 520, 524 (1925) (a cook's services to a mining camp did not improve the property, thus precluding him from trying to "secure payment for the services rendered" through a lien). Specifically, Megia worked in The Cosmopolitan's "Room Service sales section" and Lewis was "a customer service representative" for the property. **Application Ex. 1 ¶ 6; Ex. 2 ¶ 7.** Neither position "improved" The Cosmopolitan's property and, like the cook in *Didier* and the truck driver in *Crestline*, Claimants' employment did not fall within the definition of the type of work giving rise to a valid lien. NRS 108.2214, 108.22128, 108.22188; *Crestline*, 119 Nev. at 369, 75 P.3d at 367; *Didier*, 49 Nev. at 17, 234 P. at 524.

A thorough review of Claimants' Opposition shows they do not address or mention *Crestline* or *Didier*. While the Opposition mentions works of improvement, it does so only by arguing that "liens filed pursuant to NRS 608.050 are not limited to the class of employees who worked in construction of a 'work of improvement.'" **Opposition at 4:2-3.** Claimants argue that NRS 608.050 expanded the definition of Lien Claimant found in NRS 108.2214 to include "every employee" as defined in NRS 608.010.[4] ***Id.* at 4:4-7.** However, as discussed below, the Court concludes that NRS 608.050 does not change, expand or eliminate the definition of "lien claimant" found at NRS 108.2214.

EDCR 2.20 sets forth specific requirements a party must comply with when filing a motion, opposition, or reply in this state district court. EDCR 2.20(e) states: "Failure of the opposing party to serve and file written opposition may be construed as an admission that the

[3] At oral argument, Claimants' counsel suggested that *Crestline* was not good law. That is incorrect. *Crestline* was superseded by statute only with respect to a court's discretion to award attorney's fees pursuant to NRS 108.2275. *See Yonker Const., Inc. v. Hulme*, 126 Nev. __, 248 P.3d 313, 314 (2010). Its application of NRS Chapter 108 and NRS 608.050 remain controlling.

[4] NRS 608.010 defines "employee" as including "both male and female persons in the service of an employer under any appointment or contract of hire or apprenticeship, express or implied, oral or written, whether lawfully or unlawfully employed."

motion . . . is meritorious and a consent to granting the same."[5] Because the Claimants do not oppose or contest The Cosmopolitan's facts and law demonstrating that they are not "lien claimants" as defined by Nevada law, they concede this issue.

The Court concludes that neither Megia nor Lewis are lien claimants as defined by 108.2214, and discussed in *Crestline* and *Didier*. For this reason their liens must be expunged.

4. Claimants' Liens Are Untimely.

(a) The Nevada Revised Statutes Define When A Lien Must Be Filed.

NRS 108.226, titled "Perfection of lien" establishes, *inter alia*, the time within which a lien must be recorded. Specifically, the statute states that "[t]o perfect a lien, a lien claimant must record a notice of lien in the office of the county recorder of the county where the property or some part thereof is located . . . (a) Within ***90 days after*** the date on which the latest of the following occurs: (1) The completion of the work of improvement; (2) The last delivery of material or furnishing of equipment by the lien claimant for the work of improvement; or (3) The last performance of work by the lien claimant for the work of improvement; or (b) Within 40 days after the recording of a valid notice of completion, if the notice of completion is recorded and served in the manner required pursuant to NRS 108.228." (Emphasis added.)

(b) A Plain Reading Of The Statutes Establishes That The Requirements Of NRS 108.221 To 108.246, Inclusive, Are Incorporated Into And Applicable To The Lien Rights Granted Nevada Employees Under NRS 608.050(2).

NRS 608.050 is a statute with two parts. NRS 608.050(1) states:

> Whenever an employer of labor shall discharge or lay off employees without first paying them the amount of any wages or salary then due them, in cash and lawful money of the United States, or its equivalent, or shall fail, or refuse on demand, to pay them in like money, or its equivalent, the amount of any wages or salary at the time the same becomes due and owing to them under their contract of employment, whether employed by the hour, day, week or month, each of the

[5] While not binding authority, the Court also refers to *Corey v. McNamara*, 409 F.Supp. 2d 1225, 1228-29 (D. Nev. 2006), and *Grove v. Kadlic*, 986 F.Supp. 510, 516 (D. Nev. 1997) (holding a non-opposition is tantamount to an admission that a motion is meritorious is equally applicable when there is a failure to oppose specific arguments advocating dismissal).

> employees may charge and collect wages in the sum agreed upon in the contract of employment for each day the employer is in default, until the employee is paid in full, without rendering any service therefor; but the employee shall cease to draw such wages or salary 30 days after such default.

NRS 608.050(2) then states: "Every employee shall have a lien as provided in NRS 108.221 to 108.246, inclusive, and all other rights and remedies for the protection and enforcement of such salary or wages as the employee would have been entitled to had the employee rendered services therefor in the manner as last employed."

Megia and Lewis contend that the language of NRS 608.050(2) "adds to the definition of the term 'lien claimant' "found at NRS 108.2214 and includes all employees, as defined in NRS 608.010, apparently incorporating" all employees who are terminated from employment with wages owing," not just those who worked "in the construction trades" or "who performed work of improvement." **Opposition at 4:4-9 and 12:23-24.**[6] Claimants also argue that NRS 608.050(2) gives an employee the "right to lien at any time during which ... [a] claim pending [under NRS 608.050, up to and including 90 days from the date of cessation of the business—*i.e.*, the work of improvement has ceased." ***Id.* at 10:3-5.** The Court disagrees with both of these contentions.

Crestline establishes firmly that it is the "plain language" of the mechanics liens statute that controls their interpretation, even when a lien is brought pursuant to NRS 608.050. *Id.* at 119 Nev. at 368-69 and n.9, 75 P.3d at 365-66 and n.9. *Barrick Goldstrike Mine v. Peterson*, 116 Nev. 541, 546, 2 P.3d 850, 853 (2000) also explains that statutes "must be construed as a whole and not be read in a way that would render words or phrases superfluous or make a provision nugatory." *See also Butler v. State*, 120 Nev. 879, 892-93, 102 P.3d 71, 81 (2004) (Nevada courts avoid statutory interpretations that render language meaningless or superfluous).

Consistent with these principles, NRS 608.050(2) states that the provisions of NRS 108.221 through 108.246, ***inclusive***, are applicable to and control the lien rights of employees exercising such rights. *Crestline* 119 Nev. at 369 n.9, 75 P.3d at 366 n.9. The phrase "Every employee shall have a lien as provided in NRS 108.221 to 108.246, inclusive," found in NRS

---

[6] Megia and Lewis argue that absent this expanded definition the rights granted under NRS 608.050(2) would be "totally redundant" of rights granted in NRS Chapter 108. This is simply incorrect. NRS 608.050(2) grants employees 30 days of *penalties* and gives the right to lien for those non-wage amounts in addition to already existing lien rights.

608.050(2) must be given the plain meaning it portends. An employee seeking to assert a lien pursuant to NRS 608.050(2) must comply with the law "as provided in" the lien statutes identified as included. The words "as provided in" and "inclusive" would be meaningless unless the purpose is to incorporate the mechanics' lien statutes into the rights granted pursuant to NRS 608.050. This is confirmed by the entire discussion in *Crestline* in which an employee sought to assert a lien through rights granted to him in NRS 608.050(2). 119 Nev. at 368-69 and n.9, 75 P.3d at 365-66 and n.9.

Further, this Court notes that had the Nevada Legislature wanted to expand the definition of "lien claimant," as argued by Megia and Lewis, it could have done so in either 2003 or 2007 when NRS 108.2214 was amended. NRS 608.050 was *last* amended in 1969. In fact, the definition of "lien claimant" in NRS 108.2214 was added in 2003 and amended in 2007. NRS 608.050; NRS 108.2214, Chapter 427, SB 206 (2003) and Chapter 204, AB 359 (2007).[7] The Legislatures' decision not to expand the definition of "lien claimant" to include every employee as defined in NRS 608.010 or every employee terminated with wages owing demonstrates that it had a clear purpose in limiting those who may lien to those provided for under Chapter 108. *Cal. Commer. Enters. v. Amedeo Vegas I, Inc.*, 119 Nev. 143, 145, 67 P.3d 328, 330 (Nev. 2003) ("[w]hen a statute is not ambiguous, this court has consistently held that we are not empowered to construe the statute beyond its plain meaning, unless the law as stated would yield an absurd result"). The Court finds that the definition of "lien claimant" found in NRS 108.2214 is applicable to employees seeking to enforce liens by virtue of rights granted pursuant to NRS 608.050(2) and that Claimants neither contend they fit within that definition nor provide any basis for the Court to reach this conclusion.

---

[7] Chapter 427, SB 206 added the following to the Nevada Revised Statutes at NRS 108.2214: "'Lien claimant' means any person who provides work, material or equipment with a value of $500 or more to be used in or for the construction, alteration or repair of any improvement, property or work of improvement. The term includes, without limitation, every artisan, builder, contractor, laborer, lessor or renter of equipment, materialman, miner, subcontractor or other person who provides work, material or equipment, and any person who performs services as an architect, engineer, land surveyor or geologist, in relation to the improvement, property or work of improvement." The 2007 amendment to NRS 108.2214 expanded the definition of "laborer" to include, "without limitation, an express trust fund to which any portion of the total compensation of a laborer, including, without limitation, any fringe benefit, must be paid pursuant to an agreement with that laborer or the collective bargaining agent of that laborer."

Claimants' assertions that NRS 608.050 gives every employee a right to lien "anytime during which that claim [under NRS 608.050] is pending, up to and including 90 days from the date of cessation of the business," is equally unsupported by law and would render all the timing requirements found in NRS 108.226 meaningless. NRS 108.226 plainly sets forth the timetables within which a lien claimant must file a notice of lien. The first provides that a lien must be filed within 90 days of one of three triggering events: (1) the date on which a work of improvement is completed, (2) the date of the last delivery of material or furnishing of equipment by the lien claimant for the work of improvement, *or* (3) the last performance of work by the lien claimant for the work of improvement. NRS 108.226(1)(a)(1)-(3). The second, NRS 108.226(1)(b), provides that a lien may also be filed within 40 days after the recording of a valid notice of completion. Megia and Lewis had to file their liens within 90 days of one of the events under NRS 108.226(1)(a)(1) or within 40 days of The Cosmopolitan recording a valid notice of completion.

(c) Claimants' Liens Are Invalid Because They Were Not Filed Within The Time Limits Established In NRS Chapter 108.

Megia and Lewis do not contend that their liens were filed within 40 days of recording of a valid notice of completion and there is no evidence before the Court to allow it to reasonably reach this conclusion. Thus, their liens are untimely under NRS 108.226(1)(b). Megia and Lewis also do not contend they delivered materials or furnished equipment to The Cosmopolitan. Thus, their liens are untimely under NRS 108.226(1)(a)(2). Megia and Lewis do not dispute that they failed to file their liens within 90 days of the last day they performed worked for The Cosmopolitan. Thus, their liens are untimely under NRS 108.226(1)(a)(3).[8] It is not surprising to the Court that Megia and Lewis therefore argue that because The Cosmopolitan continues to operate "the work has never been completed" and their liens are timely pursuant to NRS

[8] It is undisputed that the last day Megia performed work for The Cosmopolitan was September 16, 2011. Opposition n.1. It is also undisputed that the last day Lewis performed work for The Cosmopolitan was May 7, 2012. *Id.* These dates are approximately 1000 and 700 days respectively before Megia and Lewis recorded their liens. Even if the Court were to assume that their work fell within the definition of NRS 108.2214, their liens were substantially more than 90 days after "the last day performance of work by the lien claimant for the work of improvement." NRS 108.226(1)(a)(3).

108.226(1)(a)(1), which requires a lien to be filed within 90 days of "[t]he completion of the work of improvement."[9] The Court rejects this assertion. It is contrary to the plain language of NRS 108.226, and would lead to an unforeseen and unforeseeable extension of time within which liens could be timely noticed and recorded.[10]

While NRS 108.22188 defines a work of improvement to mean more than a particular claimant's work, it nonetheless still means "all work, materials and equipment to be used in or for the construction, alteration or repair of the property or any improvement thereon . . . ." There is no precedent to expand this definition to simply mean the ongoing operation of the business. This conclusion is supported by the reasoning in *I. Cox Construction Co., LLC, v. CH2 Investments, LLC*, 129 Nev. Adv. Rep. 14, 296 P.3d 1202. There, a lien claimant was engaged to construct a shooting range. *Id.* at 296 P. 1203. The lien claimant "worked through October" 2009 and "then left the project" contending it was owed money. *Id.* Months later, in 2010, after the business opened, the business contracted with another entity to install soundproofing. *Id.* The lien claimant alleged his lien was timely in 2010 because it was filed less than 90 days after the soundproofing work was completed. *Id.* The lien claimant sought to "tack" his claim to "the sound proofing to the 'work of improvement' of constructing a shooting range." *Id.* The Nevada Supreme Court rejected this argument. The Supreme Court stated that to adopt the lien claimant's definition of "work of improvement"

> would enlarge the statute to unreasonably extend the time during which a "work of improvement" is ongoing. ... [The owner] may not have become aware of the need for ...[additional work] for months, years, or even decades after opening for business. ... This interpretation would enable any number of unforeseen and unforeseeable projects or repairs to continue the "work of improvement." Such interpretation is far too broad.

Id. at 1205.

---

[9] Megia and Lewis state that they had three years to file a lawsuit under the statute of limitations allegedly applicable to NRS 608.050 and, so long as they brought suit within the three year statute of limitations, they could file a lien "anytime during which that claim is pending, up to and including 90 days from the date of cessation of the business." **Opposition at 10:3-5.**

[10] Megia and Lewis rely on *Knudsen v. Queenstake Resources, USA, Inc.* an improperly cited, non-published, and non-binding case from the U.S. District Court for the District of Nevada, which is not applicable to the case before the Court. *Queenstake* does not support Claimants' theory that NRS 608.050 extends the time within which a former employee may timely file a lien; nor does the decision stand for the proposition that where a business simply continues to operate, the running of the deadline to file a lien continues until business operations cease.

Claimants suggested interpretation of the statutes pertaining to when a lien must be filed is likewise far too broad and would allow a lien claimant to wait years to file a notice of lien despite the cessation of that claimants work for or employment by the owner of a business simply because the business has not ceased to operate. However, continued business operations, as explained by *Cox*, does not toll the timing requirements; nor does the fact that another may continue or commence some form of work for the employer. The unintended consequences of Claimants' contentions would be to eliminate the requirements of NRS 108.226 completely for any employee who seeks to enforce a lien by virtue of rights granted in NRS 608.050(2). But, NRS 608.050(2) did not expressly or impliedly repeal NRS 108.226. Rather, NRS 608.050(2) expressly states that employees seeking to assert a lien must do so "as provided in NRS 108.221 to NRS 108.246, inclusive...." The interpretation of this provision cannot be read to nullify NRS 108.226.

The Court finds that Claimants' liens were untimely noticed and recorded. The Court further finds that based on all of the above, Claimants' liens must be expunged. Claimants cannot file liens in a representational capacity, they are not "lien claimants" as defined by Nevada law, and their liens were untimely.

5. The Cosmopolitan Is Entitled To An Award Of Attorney's Fees.

If a court determines that a notice of lien is frivolous and made without reasonable cause, the court shall make an order releasing the lien and awarding costs and reasonable attorney's fees to the applicant for bringing the motion. NRS 108.2275(6)(a). Here, Claimants have undisputedly failed to establish that reasonable cause existed for filing liens that are: (1) untimely; (2) wrongfully asserted on a representational basis, and (3) in direct contradiction to Nevada case law and statute. Consequentially, pursuant to NRS 108.2275(6). The Cosmopolitan is awarded its reasonable attorney's fees for bringing its Application.

ORDER

IT IS HEREBY ORDERED THAT, the Application for an Order to Show Cause Why Liens Should not be Expunged and for Attorney's Fees and Costs is granted. The liens

recorded by Megia and Lewis regarding certain real property described APN 162-20-603-007, 162-20-615-001, 162-20-615-002, 162-20-616-063, 162-20-616-062, 162-20-616-064, and 162-20-617-232 are hereby expunged.

IT IS FURTHER ORDERED the Notice of Lien filed by Plaintiffs regarding certain real property described as APN 162-20-603-007, 162-20-615-001, 162-20-615-002, 162-20-616-063, 162-20-616-062, 162-20-616-064, and 162-20-617-232 is released.

IT IS FURTHER ORDERED upon entry of this Order with the Clerk of the Court and recording the same with the Clark County Recorder's Office, the aforementioned lien is expunged and the aforementioned Notice of Lien is released.

IT IS FURTHER ORDERED THAT, The Cosmopolitan shall submit a memorandum of attorney's fees and costs reasonably incurred in preparing the Application and Reply within 10 business days of this Order. Megia and Lewis shall have seven days to oppose the request for fees and costs. No reply shall be filed.

IT IS SO ORDERED this 19 day of September, 2014.

District Judge JOANNA S. KISHNER

Respectfully Submitted by:

JACKSON LEWIS P.C.

Elayna J. Youchah, Bar No. 5837
Paul T. Trimmer, Bar No. 9291
3800 Howard Hughes Parkway, Suite 600
Las Vegas, Nevada 89169

Paul DeCamp, Virginia Bar No. 76204
Pro Hac Vice Admission Pending
JACKSON LEWIS P.C.
10701 Parkridge Boulevard, Suite 300
Reston, Virginia 20191

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	December 04, 2012

A-12-661665-C Melodee Megia, Plaintiff(s)
vs.
Nevada Property I LLC, Defendant(s)

December 04, 2012 **9:30 AM** **Discovery Conference**

HEARD BY: Bulla, Bonnie **COURTROOM:** RJC Level 5 Hearing Room

COURT CLERK: Alan Castle

RECORDER: Richard Kangas

REPORTER:

PARTIES PRESENT:

Buck, Joshua D.	Attorney
Trimmer, Paul T.	Attorney

JOURNAL ENTRIES

- Counsel anticipate 10 days for trial re: Doscrimination / Unpaid wages. No Settlement conference requested. COMMISSIONER RECOMMENDED, discovery cutoff is 10/15/13; adding parties, amended pleadings, and initial expert disclosures DUE 7/17/13; rebuttal expert disclosures DUE 8/16/13; dispositive motions TO BE FILED BY 11/15/13. Scheduling Order will issue.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	July 01, 2014

A-12-661665-C Melodee Megia, Plaintiff(s)
vs.
Nevada Property I LLC, Defendant(s)

July 01, 2014 **9:00 AM** **Motion to Consolidate**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Sandra Pruchnic

REPORTER:

PARTIES PRESENT:

Thierman, Mark R.	Attorney
Youchah, Elayna J	Attorney

JOURNAL ENTRIES

- JOINT MOTION TO CONSOLIDATE ON AN ORDER SHORTENING TIME AND PROPOSED HEARING DATE AND BRIEFING SCHEDULE

Mark Thierman, Esq. present via CourtCall.
Statements by counsel. COURT ORDERED, Joint Motion to Consolidate A661665 and A702018 is GRANTED. COURT FURTHER ORDERED, Stipulation to set briefing schedule on motion for class certification, vacate pre-trial order, proposed amended scheduling order GRANTED and SIGNED IN OPEN COURT. Court directed counsel to provide copy of Stipulation to Discovery with cover note. Upon Court's inquiry, counsel state they would revisit offer of mandatory settlement conference at a later date. Per stipulation, Nevada Property 1, LLC's Application for an Order to Show Cause why Liens Should Not Be Expunged; and Motion to Expunge Liens and for Attorney Fees on an Order Shortening Time currently on calendar for 7/8/14 will now be heard on 9/16/14 at 10:00 am. Ms. Youchah to prepare the Order granting consolidation, to include new caption, circulating to Mr. Thierman for approval as to form and content. Matter SET for Status Check regarding receipt of

proposed order.

7/11/14 STATUS CHECK: ORDER (CHAMBERS)

9/16/14 10:00 AM NEVADA PROPERTY 1, LLC'S APPLICATION FOR AN ORDER TO SHOW CAUSE WHY LIENS SHOULD NOT BE EXPUNGED; AND
MOTION TO EXPUNGE LIENS AND FOR ATTORNEY FEES

9/16/14 10:00 AM STATUS CHECK: MANDATORY SETTLEMENT CONFERENCE

CLERK'S NOTE: Master Calendar notified by Clerk of Consolidation of A661665 & A702018 being Granted by the Court./sjh

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	August 05, 2014

A-12-661665-C Melodee Megia, Plaintiff(s)
vs.
Nevada Property I LLC, Defendant(s)

August 05, 2014 **9:30 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Buck, Joshua D.	Attorney
Navarro, Peter	Attorney
Thierman, Mark R.	Attorney
Trimmer, Paul T.	Attorney

JOURNAL ENTRIES

- NEVADA PROPERTY 1, LLC'S APPLICATION FOR AN ORDER TO SHOW CAUSE WHY LIENS SHOULD NOT BE EXPUNGED; AND MOTION TO EXPUNGE LIENS AND FOR ATTORNEY FEES ON AN ORDER SHORTENING TIME...THE COSMOPOLITAN'S APPLICATION FOR AN ORDER TO SHOW CAUSE AND MOTION TO EXPUNGE LIENS

Extensive arguments by counsel. Mr. Thierman states evidentiary hearing needed as to the merits and on the representative capacity. Mr. Trimmer states no need for evidentiary hearing. RULINGS DEFERRED; Court to further review and review the Federal case. Counsel will hear from the Court on Friday 8/8/14 as to whether or not the Court will make a ruling, or finds the need for an evidentiary hearing, or if will allow supplemental briefing.

CONTINUED FOR DECISION: 8/8/14 (CHAMBERS)

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	**COURT MINUTES**	**August 29, 2014**

A-12-661665-C Melodee Megia, Plaintiff(s)
vs.
Nevada Property I LLC, Defendant(s)

August 29, 2014 **3:00 AM** **Motion to Associate Counsel**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Sandra Harrell

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- On July 24, 2014, a Motion to Associate Counsel was filed by ELAYNA J. YOUCHAH, Esq. on behalf of PAUL DeCAMP Esq. who seeks to represent DEFENDANT NEVADA PROPERTY I, LLC. in the present matter. The matter was placed on the Department XXXI's Chamber Calendar. Pursuant to EDCR 2.20, as no Opposition has been filed in the matter and for good cause, the Motion to Associate Counsel is hereby GRANTED. Counsel to prepare the Order in accordance with EDCR 7.21. Status check for Order to be received is set for 9/12/14 on the Chamber's calendar.

9/12/14 STATUS CHECK: ORDER (CHAMBERS)

CLERK'S NOTE: The above minute order has been distributed via e-mail to: Elayna Youchah, Esq., Peter Navarro, Esq. and Mark Thierman, Esq./sjh

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	September 19, 2014

A-12-661665-C Melodee Megia, Plaintiff(s)
vs.
Nevada Property I LLC, Defendant(s)

September 19, 2014 **3:00 AM** **Motion to Expunge Lis Pendens**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- Defendant's Order signed and returned to counsel for filing, to be filed separately by Defendants counsel.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	September 19, 2014

A-12-661665-C Melodee Megia, Plaintiff(s)
vs.
Nevada Property I LLC, Defendant(s)

September 19, 2014 **3:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:**

COURT CLERK: Shelly Landwehr

RECORDER:

REPORTER:

PARTIES PRESENT:

JOURNAL ENTRIES

- ORDER SETTING HEARING ON NEVADA PROPERTY 1, LLC'S APPLICATION FOR AN ORDER TO SHOW CAUSE WHY LIENS SHOULD NOT BE EXPUNGED; AND MOTION TO EXPUNGE LIENS AND FOR ATTORNEY FEES ON AN ORDER SHORTENING TIME THE COSMOPOLITAN'S APPLICATION FOR AN ORDER TO SHOW CAUSE AND MOTION TO EXPUNGE LIENS

Defendant's Orders signed and returned to counsel for filing, to be filed separately by counsel.

DISTRICT COURT
CLARK COUNTY, NEVADA

Other Civil Filing	COURT MINUTES	September 30, 2014

A-12-661665-C Melodee Megia, Plaintiff(s)
vs.
Nevada Property I LLC, Defendant(s)

September 30, 2014 **10:00 AM** **All Pending Motions**

HEARD BY: Kishner, Joanna S. **COURTROOM:** RJC Courtroom 12B

COURT CLERK: Sandra Harrell

RECORDER: Rachelle Hamilton

REPORTER:

PARTIES PRESENT:

Buck, Joshua D.	Attorney
DeCamp, Paul	Attorney
Navarro, Peter	Attorney
Thierman, Mark R.	Attorney

JOURNAL ENTRIES

- STATUS CHECK: MANDATORY SETTLEMENT CONFERENCE...MOTION FOR CLASS CERTIFICATION; VACATE PRE-TRIAL ORDER AND AMENDED SCHEDULING ORDER...OPPOSITION TO MOTION FOR CLASS CERTIFICATION AND COUNTERMOTIONS FOR JUDGMENT ON THE PLEADINGS AND FOR SUMMARY JUDGMENT

Extensive arguments by counsel. RULING DEFERRED; Court to further review and a Decision will issue from Chambers.

CONTINUED FOR DECISION: 10/10/14 (CHAMBERS)

EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE

NOTICE OF DEFICIENCY

ON APPEAL TO NEVADA SUPREME COURT

MARK R. THIERMAN
7287 LAKESIDE DR.
RENO, NV 89511

DATE: October 24, 2014
CASE: A661665 c/w A702018

RE CASE: MELODEE MEGIA vs. NEVADA PROPERTY 1, LLC dba THE COSMOPOLITAN OF LAS VEGAS

NOTICE OF APPEAL FILED: October 22, 2014

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

☒ $250 – Supreme Court Filing Fee**
- If the $250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.

☐ $24 – District Court Filing Fee (Make Check Payable to the District Court)**

☒ $500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
- NRAP 7: Bond For Costs On Appeal in Civil Cases

☐ Case Appeal Statement
- NRAP 3 (a)(1), Form 2

☐ Order

☐ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (e) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

***Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.*

Certification of Copy

State of Nevada
County of Clark } **SS:**

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL (INCLUDES CASE APPEAL STATEMENT); DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; NEVADA PROPERTY 1, LLC'S PROPOSED ORDER REGARDING EXPUNGING LIENS AND ATTORNEY'S FEES AND COSTS; NOTICE OF ENTRY OF NEVADA PROPERTY 1, LLC'S ORDER REGARDING EXPUNGING LIENS AND ATTORNEY'S FEES AND COSTS; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

MELODEE MEGIA,

Plaintiff(s),

vs.

NEVADA PROPERTY 1, LLC dba THE COSMOPOLITAN OF LAS VEGAS,

Defendant(s),

Case No: A661665
Consolidated with A702018
Dept No: XXXI

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto Set my hand and Affixed the seal of the Court at my office, Las Vegas, Nevada This 24 day of October 2014.

Steven D. Grierson, Clerk of the Court

Heather Ungermann, Deputy Clerk