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1 Case No. 10197

2 Dept. No. 1

3 The undersigned hereby affirms this document  
4 does not contain a social security number.

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7 IN THE SIXTH JUDICIAL DISTRICT COURT  
8 COUNTY OF LANDER, STATE OF NEVADA

9 MICHAEL MARKING and  
10 ELIZABETH FLEMING,

11 Plaintiffs,

12 **MOTION FOR MORE DEFINITE STATEMENT**

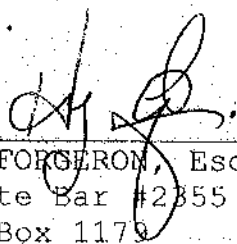
13 -vs-

14 AUSTIN ROPING CLUB.

15 Defendant.

16 COMES NOW, Defendant above-named, by and through it's  
17 attorney HY FORGERON, Esq., on information and belief, and moves  
18 this honorable Court for an Order requiring Plaintiffs to furnish  
19 a more definite statement before Defendant answers the Complaint,  
20 all as is more fully set forth in the Points and Authorities  
21 annexed hereto.

22 Dated this 11<sup>th</sup> day of March, 2012.

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24   
25 HY FORGERON, Esq.  
26 State Bar #2855  
PO Box 1179  
Battle Mountain, NV 89820  
775-635-8100  
Fax: 775-635-3118  
Attorney for Defendant

1 I.

2 **POINTS AND AUTHORITIES**

3 Defendant is a nonprofit cooperative corporation without  
4 stock organized under Title 7, Chapter 81 of the Nevada Revised  
5 Statutes. Defendant's formal corporate name is denominated in  
6 it's Articles Of Incorporation as "The Austin Roping Club,  
7 Incorporated" and shall hereinafter be referred to as Defendant or  
8 as "the Club".

9 On or about February 22, 2012, the Club's resident agent,  
10 Joseph P. Ramos, was served with a copy of the Complaint filed by  
11 the Plaintiffs herein on February 7, 2012.

12 Having reviewed the 231 separately numbered Paragraphs in the  
13 Complaint, the undersigned counsel is of the opinion that it  
14 cannot be adequately responded to in it's entirety without a more  
15 definite statement of Plaintiffs' allegations.

16 For example:

17 Paragraph 13, Plaintiffs allege "Under Nevada law . . ."   
18 without any citation to Nevada statute or case law.

19 Paragraph 24, Plaintiffs allege "the Club's function has been  
20 perverted to that of a private society" with no factual allegation  
21 of the meaning of that phrase or the manner in which the alleged  
22 "certain four members" improperly benefit.

23 Paragraphs 31, 32, 33 and 34 allege improper application of  
24 Club funds without any factual allegations to support the same or  
25 any explanation of the manner in which the funds are diverted or  
26 the method of their alleged misapplication.

1 Paragraph 36 alleges "systematic violation of the Contract"  
2 by the Club without specifying which Contract, the terms thereof,  
3 nor the manner of its' alleged violation.

4 Paragraph 37 alleges "systematic violation of the Contract,  
5 violation of the law, misrepresentations, harassment, and even  
6 assault" by the Club without specifying which Contract, the terms  
7 thereof, the law allegedly violated, the nature of the  
8 misrepresentations, the nature of the harassment, nor the manner  
9 of the alleged violations.

10 Paragraphs 41, 42, 43, 45 and 54 generally allege meeting  
11 date and posting violations described with terms such as "For a  
12 while" and "Sometimes", without setting forth the dates, or even a  
13 time frame, on or during which such actions did or did not occur.

14 Paragraphs 56, 57, 58, 59, 61, 63, 64 and 66 generally allege  
15 meeting agenda and minute keeping violations without setting forth  
16 the dates, or even a time frame, on or during which such actions  
17 did or did not occur.

18 Paragraph 74 alleges a violation of the Open Meeting Law  
19 without setting forth the dates, or even a time frame, on or  
20 during which such actions did or did not occur or the manner of  
21 its violation.

22 Paragraph 76 alleges "violation of the laws and the  
23 Constitution of Nevada" without setting forth the dates, or even a  
24 time frame, on or during which such actions did or did not occur  
25 or the manner of the violations.

26

1 Paragraph 99 alleges the Club has "violated the statutes" by  
2 failing "to mitigate the risk" without setting forth the statutes  
3 violated, nor any factual allegation as to the dates, or even a  
4 time frame, on or during which such actions did or did not occur  
5 or the manner of the violations.

6 Paragraph 102 and 103 fail to denominate the issues  
7 complained of and further fail to describe the actions taken by  
8 Plaintiffs "for the members".

9 Paragraph 104 alleges the certain "others" have been involved  
10 with protests and notifications of wrongdoing to the Club without  
11 further description of the "others".

12 Paragraph 105 accuses Lander County Commissioner Ray  
13 Williams, Jr. of "openly oppos(ing) reform" without setting forth  
14 the reforms opposed, nor any factual allegation as to the dates,  
15 or even a time frame, on or during which such actions did or did  
16 not occur or the manner of the violations.

17 Paragraph 108 alleges "the Club once, twice, or three few  
18 (sic) times a year rents its facilities to other organizations"  
19 without any further description of these "other organizations".

20 Paragraph 128 alleges "Outside of meetings, individual  
21 members began to harass Plaintiffs." No factual allegations  
22 accompany this as to time, place, names of those involved or the  
23 manner of the "harassment".

24 Paragraph 146 alleges that "The Club harassed Plaintiffs  
25 through the Club's Officers". No factual allegations accompany  
26

1 this as to time, place, names of those involved or the manner of  
2 the "harassment".

3 Paragraphs 149, 150, 151, 152, 153, 154 and 155 generally  
4 accuse Club "Officers" of theft of Club property. No factual  
5 allegations accompany this as to time, place, names of those  
6 involved or the manner of the theft.

7 Paragraph 164 alleges that certain of "the Club's Members  
8 came up with a different story". No factual allegations accompany  
9 this as to time, place, names of those "Members" involved or the  
10 details of the "story".

11 Paragraph 179 alleges the Club failed "to observe the Open  
12 Meeting Law in almost all respects." This is a huge  
13 generalization even for this Complaint and requires much more  
14 specificity in order for the Defendant to respond.

15 Paragraph 183 states, "Nevada law specifies procedures for  
16 eviction of tenants." While this is undoubtedly true, the  
17 Paragraph goes on to state: "Those procedures were not followed."  
18 Since there are many Nevada landlord-tenant laws, without  
19 specifying the exact Nevada statutes which Plaintiffs are  
20 invoking, Defendant is unable to properly respond to the  
21 allegation.

22 Paragraph 190 through 204 generally allege that the Club's  
23 Members and Officers are have committed fraud, collusion,  
24 misfeasance, malfeasance and nonfeasance. No factual allegations  
25 accompany this as to time, place, names of those "Members" or  
26

1 "Officers" involved or the details of their alleged fraud,  
2 collusion, misfeasance, malfeasance and nonfeasance.

3 N.R.C.P. Rule 9 provides, in pertinent part:

4 . . . .  
5 **"(b) Fraud, Mistake, Condition of the Mind.** In all averments of fraud or mistake,  
6 the circumstances constituting fraud or mistake shall be stated with particularity. . . ."

7 . . . .  
8 **"(f) Time and Place.** For the purpose of testing the sufficiency of a pleading,  
9 averments of time and place are material and shall be considered like all other averments of  
10 material matter."

11 Much of the Complaint alleges activities by the Defendant and  
12 its' members and officers which would constitute fraud. In  
13 Paragraph 195, Plaintiffs even accuse the commission of fraud.

14 Such general allegations are impermissible because they lack  
15 the specificity required by N.R.C.P. Rule 9(b). In Savage v.  
16 Salzmann, 88 Nev. 193, 495 P.2d 367 (1972), the Appellant  
17 (Plaintiff below) sought to have a default judgment set aside,  
18 alleging fraud on the court. In the lower court, the complaint  
19 alleged that "prior to the entry of said default judgment the  
20 parties hereto had entered into an oral agreement which, if  
21 observed, would have obviated the judgment." It also alleged that  
22 the oral agreement had operated to lull the plaintiff into  
23 inactivity so that some unconscionable advantage would be gained.  
24 No particular facts were pleaded. Respondents then moved to  
25 dismiss the complaint. In it's ruling, the Nevada Supreme Court  
26 stated:

1 "However, appellant has failed to comply with NRCP 9(b) which  
2 provides that 'in all averments of fraud or mistake, the  
3 circumstances constituting the fraud or mistake shall be stated  
4 with particularity.' Appellant has, without evidence or  
5 affidavit, merely contended that an oral agreement existed between  
6 herself and the respondents prior to the default judgment. In the  
7 absence of a showing of the oral agreement, including its terms,  
8 and because respondents have categorically denied the existence of  
9 the agreement, such a contention is not sufficient against a  
10 motion to dismiss." (88 Nev. At 196)

11 Defendant contends that Plaintiff's allegations are  
12 remarkably similar to those treated in Savage, supra, in their  
13 lack of specificity. They lack the necessary averments as to  
14 time, place, identity of the parties involved and, most  
15 importantly, the exact nature of the fraud. See also, Morris v.  
16 Bank of America Nevada, 110 Nev. 1274, 886 P.2d 454 (1994),  
17 especially Footnote 1 at 110 Nev. 1276.

18 When fraud allegations are not set forth with sufficient  
19 particularity, recourse is provided by a Rule 12(e) motion for a  
20 more definite statement. Savage, supra; See also, Levenson v. B. &  
21 M. Furniture Co., 120 F.2d 1009 (2 Cir. 1941).

22 Likewise with all of the other allegations lacking  
23 specificity as to time and place.

24 II.

25 **CONCLUSION**

1           Because the many allegations of fraud are not set forth with  
2 sufficient particularity, and many more allegations are not set  
3 forth with particularity as to time, place and persons involved,  
4 Defendant cannot reasonably form a response thereto consistent  
5 with the obligations imposed under N.R.C.P. Rules 8(b) and 11.  
6 Plaintiffs should be required to make their claims more definite.

7           WHEREFORE, Defendant requests relief from this honorable  
8 Court as follows:

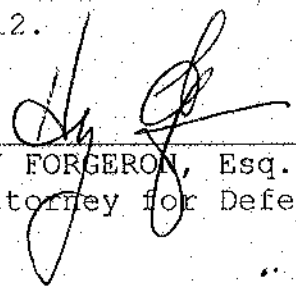
9           1. That Plaintiffs be required to amend their Complaint to  
10 comply with the requirements of N.R.C.P. Rule 9;

11           2. That Plaintiffs be required to amend their Complaint to  
12 make more definite the conduct they alleges in the Paragraphs  
13 cited in the above Motion as to time, place, persons present and  
14 actions taken or omitted;

15           3. For an award of attorney's fees and costs associated  
16 with the preparation and presentation of this Motion;

17           4. For such other and further relief as to the Court may  
18 seem just and proper in the premises.

19           Dated this 11<sup>th</sup> day of March, 2012.

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23 HY FORGERON, Esq.  
24 Attorney for Defendant  
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AFFIDAVIT OF REUBEN GALLEGOS

IN SUPPORT OF MOTION FOR MORE DEFINITE STATEMENT

STATE OF NEVADA    )  
                          ) ss.  
COUNTY OF LANDER )

Comes now, REUNEN GALLEGOS, who, being first duly sworn, on oath, deposes and says:

1. I am the President of The Austin Roping Club, Incorporated, the Defendant named in the above-captioned Court and cause. I make this Affidavit in that representative capacity.

2. I have read the foregoing Motion and am familiar with the contents thereof. The factual allegations set forth therein are true and correct of my own knowledge, except as to matters set forth on information and belief, and as to any such matters I believe them to be true.

3. Pursuant to NRS 52.045, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 11<sup>th</sup> day of March, 2012.

  
\_\_\_\_\_  
RUBEN GALLEGOS

AFFIDAVIT OF COUNSEL

STATE OF NEVADA )  
 ) ss.  
COUNTY OF LANDER )

COMES NOW, HY FORGERON, who, being first duly sworn, on oath,  
deposes and says:

1. Affiant is a member in good standing of the State Bar of Nevada, State Bar #2355.

2. Affiant is the attorney of record for the Defendant herein.

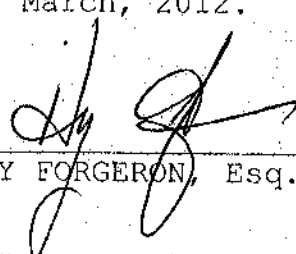
3. Any factual allegations made in the foregoing Motion are made on information and belief, after due consultation with the Defendant, and Affiant believes them to be true.

4. In Affiant's opinion, the allegations set forth in Plaintiff's Complaint and described in the foregoing Motion cannot be adequately responded to, consistent with Affiant's obligations under N.R.C.P. Rules 8(b) and 11, without a more definite statement thereof by Plaintiff.

5. That this Motion is made in good faith and not merely for the purposes of delay.

6. Pursuant to NRS 52.045, I declare under penalty of perjury that the foregoing is true and correct.

Dated this 11<sup>th</sup> day of March, 2012.

  
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HY FORGERON, Esq.

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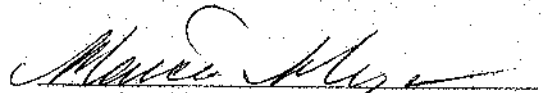
**CERTIFICATE OF SERVICE**

I hereby certify that on the 13<sup>th</sup> day of March, 2012, I deposited in the United States Post Office at Battle Mountain, Nevada 89820 a copy of the foregoing Defendant's Motion For More Definite Statement, in a sealed envelope, postage fully prepaid, addressed to:

Michael Marking  
General Delivery  
Austin, NV 89310

and to:

Elizabeth Fleming  
General Delivery  
Austin, NV 89310

  
Marcia Meyer, Assistant to  
Hy Forgeron