

## MEMORANDUM

**TO:** Board of Trustees

**FROM:** Thomas P. Beko, Esq.  
Erickson, Thorpe & Swainston, Ltd.  
POOL/PACT Counsel

**REVIEWED BY:** Indra S. Winquest  
Interim General Manager

Jason D. Guinasso, Esq.  
District General Counsel

**SUBJECT:** Receive and discuss a verbal status report from litigation counsel, Thomas P. Beko, Esq., regarding litigation involving Aaron Katz Case No. CV11 01380 under Nevada Supreme Court Appeal Nos. 70440 & 71493

Review, discuss and possibly approve the filing of a motion to recover costs accumulated between the payment of \$241,046.11 made by the Plaintiff and the time of the order, which is estimated at up to \$150,000, with the cost of filing this motion to be not exceed \$25,000

**DATE:** December 3, 2019

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### **I. PURPOSE OF THIS MEMORANDUM**

The purpose this memorandum is to provide, at a noticed, public meeting, the latest activity on this case and provide the decision of the Nevada Supreme Court (see attached).

Further, it is to allow the Board to have an open conversation about the possibility of pursuing the recovery of public monies, which is estimated to be up to \$150,000, spent accumulated between the payment by the Plaintiff and the judgment, in favor of the District, by the Nevada Supreme Court. The Board may make a motion as follows:

Authorize Erickson, Thorpe, & Swainston, Ltd. to file a motion to recover costs accumulated between the payment of \$241,046.11, made by the Plaintiff and the time of the order, which is estimated at up to \$150,000, with the cost of filing this motion to be not exceed \$25,000

### **II. BACKGROUND OF THE COURT CASE(S) AND OUTCOME(S)**

Attached is the August 17, 2018 which outlines the background of this case.

IN THE SUPREME COURT OF THE STATE OF NEVADA

AARON L. KATZ,  
Appellant,  
vs.  
INCLINE VILLAGE GENERAL  
IMPROVEMENT DISTRICT, A  
GENERAL IMPROVEMENT DISTRICT,  
Respondent.

No. 71493

**FILED**

NOV 21 2019

ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY S. Young  
DEPUTY CLERK

*ORDER OF AFFIRMANCE*

This is an appeal from a postjudgment order awarding attorney fees and costs. Second Judicial District Court, Washoe County; Patrick Flanagan, Judge.

Appellant Aaron Katz sued respondent Incline Village General Improvement District (IVGID), seeking to invalidate various actions IVGID took between 2011 and 2014 on the basis that IVGID was abusing its statutory power. The district court adjudicated all of Katz's claims in favor of IVGID, and this court affirmed the district court's orders on appeal. See *Katz v. Incline Village Gen. Improvement Dist.*, Docket No. 70440 (Order of Affirmance, Feb. 26, 2018). Katz now challenges the district court's postjudgment order awarding IVGID attorney fees and costs under NRS 18.010(2)(b). We affirm.<sup>1</sup>

<sup>1</sup>In this disposition, we have attempted to address all of Katz's arguments that are cogently presented, supported by relevant legal authority, and properly raised in district court. See *Maresca v. State*, 103 Nev. 669, 673, 748 P.2d 3, 6 (1987); *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981). To the extent that this disposition does not specifically address additional arguments that Katz raises, we have determined that those additional arguments do not warrant reversal.

*Whether First Amendment principles apply*

Katz first argues that because he sued a government entity and his lawsuit served the public, First Amendment principles apply to immunize him from liability for attorney fees. To the extent that Katz is asking this court to extend the *Noerr-Pennington* doctrine, which immunizes petitioning activity in the antitrust context, to the award of attorney fees here, we decline. See *United Mine Workers of Am. v. Pennington*, 381 U.S. 657, 664-65 (1965); *E. R.R. Presidents Conference v. Noerr Motor Freight, Inc.*, 365 U.S. 127, 144 (1961) (providing that legitimate petitioning activity intended to influence the government is immune from civil liability, even if it has anticompetitive effects, so long as it is not “a mere sham” to interfere with a competitor’s business). Liability for attorney fees to a prevailing party is not the same as civil liability for filing a lawsuit. See *Vargas v. City of Salinas*, 134 Cal. Rptr. 3d 244, 254 (Ct. App. 2011) (explaining that “fee shifting is not civil liability within the meaning of the *Noerr-Pennington* doctrine”); see also *Premier Elec. Constr. Co. v. Nat’l Elec. Contractors Ass’n, Inc.*, 814 F.2d 358, 373 (7th Cir. 1987) (characterizing “the proposition that the first amendment . . . has anything to say about fee-shifting statutes” as “too farfetched to require extended analysis”).

Further, we are not persuaded that NRS 18.010(2)(b) violates Katz’s First Amendment right to petition the government. It merely requires that Katz bear the costs incurred in exercising his rights. *Premier Elec. Constr. Co.*, 814 F.2d at 373 (reasoning that requiring the party responsible for creating the fees to pay those fees “is no more a violation of the first amendment than is a requirement that a person who wants to publish a newspaper pay for the ink, the paper, and the press”). Furthermore, Katz has failed to establish that his claims are protected

speech and thereby entitled to absolute immunity under the First Amendment. See *Bill Johnson's Rests., Inc. v. NLRB*, 461 U.S. 731, 743 (1983) (recognizing that the First Amendment protects the right to petition the government, but holding that “baseless litigation is not immunized by the First Amendment right to petition”); *Vargas*, 134 Cal. Rptr. 3d at 258 (upholding California’s fee-shifting statute and explaining that the right to petition the government does not entitle a party to clog the courts and impair everyone else’s right to justice). We therefore decline to apply First Amendment principles in the context of a postjudgment award of attorney fees under NRS 18.010(2)(b).

*Whether Nevada’s anti-SLAPP statutes apply*

Katz also argues that he is entitled to immunity under Nevada’s anti-SLAPP statutes. We disagree. Nevada’s anti-SLAPP statutes provide a procedural mechanism for parties to seek dismissal of meritless lawsuits that chill free speech “before incurring the costs of litigation.” *Coker v. Sassone*, 135 Nev., Adv. Op. 2, 432 P.3d 746, 748 (2019). IVGID’s postjudgment motion for attorney fees is not a meritless lawsuit for anti-SLAPP purposes. Even if it were, Katz did not file a special motion to dismiss IVGID’s motion for attorney fees and costs. See NRS 41.660 (requiring that a litigant file the motion within 60 days after service of the complaint and creating a two-pronged burden-shifting framework to guide district courts in determining whether dismissal is warranted). Nor did he satisfy his burden under the first prong of the anti-SLAPP analysis. See NRS 41.660(3)(a) (requiring the moving party to establish that the claim was “based upon a good faith communication in furtherance of the right to petition or the right to free speech”); NRS 41.637 (defining a “good faith communication” as one that “is truthful or is made without knowledge of its

falsehood”). Katz is therefore not entitled to immunity under Nevada’s anti-SLAPP statutes.<sup>2</sup>

*Whether the district court abused its discretion in awarding IVGID attorney fees and cost under NRS 18.010(2)(b)*

IVGID moved for attorney fees and costs under NRS 18.010(2)(b), which authorizes a court to award attorney fees to a prevailing party when it finds that a party “brought or maintained [a claim] without reasonable ground or to harass the prevailing party.” The district court granted IVGID’s request, finding that Katz’s lawsuit was baseless, unreasonable, and brought to harass IVGID. Katz now argues that the district court abused its discretion because he did not harass IVGID within the meaning of NRS 18.010(2)(b), his claims were not frivolous because they were complex issues of first impression, and at least one of his claims had merit because it survived multiple pretrial motions and proceeded to trial.<sup>3</sup>

This court reviews a district court’s decision to award attorney fees for an abuse of discretion.<sup>4</sup> *See Gunderson v. D.R. Horton, Inc.*, 130 Nev. 67, 80, 319 P.3d 606, 615 (2014). Here, we discern no abuse of discretion because the record supports the district court’s findings and the district court did not base its decision on an erroneous view of the law. *See*

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<sup>2</sup>Accordingly, we also conclude that Katz is not entitled to attorney fees under NRS 41.670, which authorizes the court to award attorney fees to a party who prevails on an anti-SLAPP special motion to dismiss.

<sup>3</sup>Katz makes various other arguments challenging the district court’s award of attorney fees, but we conclude that these arguments are either waived, nonresponsive, unsupported by relevant legal authority, or incoherent, and decline to address them individually.

<sup>4</sup>Because we conclude that neither First Amendment principles nor Nevada’s anti-SLAPP statutes apply here, we decline Katz’s invitation to apply a “baseless litigation” or de novo standard of review.

*Bergmann v. Boyce*, 109 Nev. 670, 674, 856 P.2d 560, 563 (1993) (explaining that a district court abuses its discretion when it bases its decision on an erroneous view of the law or clearly disregards guiding legal principles), *superseded by statute on other grounds as stated in In re DISH Network Derivative Litig.*, 133 Nev. 438, 451 n.6, 401 P.3d 1081, 1093 n.6 (2017).

The record supports the district court's findings that Katz's lawsuit was baseless and unreasonable. The district court dismissed all but 1 of Katz's 24 claims through a series of orders that we affirmed. Katz argues that because one of his claims survived multiple pretrial motions and proceeded to trial, his lawsuit had merit. That 1 of his claims survived summary adjudication, however, does not excuse his 23 groundless claims. *See Bergmann*, 109 Nev. at 675, 856 P.2d at 563 ("The prosecution of one colorable claim does not excuse the prosecution of five groundless claims."). Regardless, it became abundantly clear at trial that Katz's sole remaining claim was likewise frivolous, as "IVGID had made every effort to accommodate Mr. Katz's numerous requests for documents" and "the only records not turned over to Mr. Katz either did not exist, or were privileged (as IVGID had always claimed)."<sup>5</sup>

The record also supports the district court's determination that Katz brought and maintained his lawsuit to harass IVGID. Throughout the years-long proceeding, Katz filed multiple motions to amend his complaint to add more claims against IVGID. His pleadings were nonresponsive and late, exceeded the page limit, included an avalanche of exhibits that were

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<sup>5</sup>Katz argues that his claims were not frivolous because they were complex and involved issues of first impression, but these attributes are not mutually exclusive—a claim can be both complex and original, but frivolous nonetheless.

often duplicative, and sought to pursue actions that the court had expressly prohibited. His extensive public records requests continued up until the eve of trial, despite IVGID making every effort to accommodate Katz's requests.

We therefore conclude that the district court, having determined that Katz's lawsuit was frivolous, did not abuse its discretion when it awarded attorney fees and costs. See NRS 18.010(2)(b) (permitting courts to award attorney fees and requiring courts to liberally construe the statute "to punish for and deter frivolous or vexatious claims").

*Whether the amount of attorney fees and costs was reasonable*

The district court awarded IVGID \$226,466.80 in attorney fees and \$2,925.95 in costs. When awarding attorney fees, the district court must consider the factors this court provided in *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969). See *Shuette v. Beazer Homes Holdings Corp.*, 121 Nev. 837, 865, 124 P.3d 530, 549 (2005) (observing that courts must consider the *Brunzell* factors when determining the amount of fees to award, even though courts are granted a wide range of discretion in determining the amount). These factors are: (1) the quality of the advocate; (2) the character of the work, e.g., its difficulty, importance, etc.; (3) the work actually performed by the advocate; and (4) the result. *Brunzell*, 85 Nev. at 349, 455 P.2d at 33.

Katz focuses exclusively on the third factor—the work actually performed—and argues that IVGID's redactions to the billing statements made it impossible to evaluate the services rendered and that IVGID's attorney bills were not specific enough. In district court, he only challenged IVGID's redactions to Scott Brooke's (IVGID's in-house counsel)

memorandum of fees, so we limit our review to these redactions only.<sup>6</sup> See *Old Aztec Mine, Inc. v. Brown*, 97 Nev. 49, 52, 623 P.2d 981, 983 (1981) (“A point not urged in the trial court, unless it goes to the jurisdiction of that court, is deemed to have been waived and will not be considered on appeal.”).

We agree that the redactions to Brooke’s memorandum of fees make it difficult to evaluate the services he rendered and the fees IVGID incurred for his services. Nonetheless, we conclude that the district court relied on sufficient evidence to calculate a reasonable amount for Brooke’s services. See *O’Connell v. Wynn Las Vegas, LLC*, 134 Nev. 550, 557-58, 429 P.3d 664, 670 (Ct. App. 2018) (holding that billing records are not required to support an award of attorney fees so long as the court can calculate a reasonable fee); see also *Shuette*, 121 Nev. at 864, 124 P.3d at 549 (emphasizing that “in determining the amount of fees to award, the court is not limited to one specific approach”).

Specifically, the district court relied on a sworn statement from IVGID’s attorney of record, Thomas P. Beko, that “Brooke’s involvement was necessary to the defense of this matter, and the fees he charged are believed by Affiant to be reasonable and necessary in his capacity of official attorney for [IVGID].” The district court also relied on its familiarity with the lawyers involved in the litigation and the quality of their work. We have previously upheld awards of attorney fees based on similar evidence. See, e.g., *Herbst v. Humana Health Ins. of Nev., Inc.*, 105 Nev. 586, 591, 781 P.2d 762, 765 (1989) (holding that an affidavit documenting the hours of work

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<sup>6</sup>Nonetheless, it appears that the rest of IVGID’s billing statements are comprehensive and the redactions likely did not impair Katz’s ability to dispute the expenses or the district court’s ability to review them.



performed, the length of litigation, and the number of volumes of appendices on appeal was sufficient evidence to enable the court to make a reasonable determination of attorney fees, even in the absence of a detailed billing statement); *Cooke v. Gove*, 61 Nev. 55, 57, 114 P.2d 87, 88 (1941) (upholding an award of attorney fees based on, among other evidence, two depositions from attorneys testifying about the value of the services rendered). We therefore conclude that the district court did not abuse its discretion when it awarded IVGID attorney fees for Brooke's services, even though IVGID did not provide a detailed breakdown of Brooke's fees.<sup>7</sup>

Katz also argues that the district court abused its discretion in awarding costs because IVGID's verified memorandum of costs was insufficient. District courts have broad discretion to award costs. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. 114, 120, 345 P.3d 1049, 1054 (2015). Before awarding costs, however, a court must determine that the costs were reasonable, necessary, and actually incurred. *Id.* Katz's primary argument on appeal is that IVGID failed to explain that its costs were "necessarily incurred." In support of its request for costs, however, IVGID listed every cost it incurred and attached receipts and documentation (including receipts for the clerk's fees, court reporter fees, photocopies, postage, and other necessary expenses, like transcription of IVGID's utility rate meetings). Although IVGID did not explicitly state that the costs were

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<sup>7</sup>We also conclude that IVGID presented sufficient evidence to establish that Brooke worked directly on this litigation. Brooke's memorandum of fees identifies the case name (*Katz v. IVGID*) and the fees incurred (\$45,070.80). Further, IVGID provided billing statements from Beko's law firm, Erickson, Thorpe & Swainston, LTD., that document phone calls and email correspondence between firm attorneys and Brooke during the course of the Katz litigation.

"necessarily incurred" in its motion for fees and costs, it stated that it submitted its motion "pursuant to NRS Chapter 18." To the extent that this statutory reference is insufficient, we conclude that IVGID cured any defect in its opposition to Katz's motion to retax costs by thoroughly explaining how each cost was necessary. Further, we conclude that Katz, by failing to provide relevant legal authority, has failed to demonstrate that the district court abused its discretion in reviewing these explanations (which IVGID provided after it filed its verified memorandum of costs).

We therefore conclude that the district court did not abuse its discretion when it awarded IVGID \$226,466.80 in attorney fees and \$2,925.95 in costs, and therefore affirm the district court's order.

It is so ORDERED.

Pickering J.  
Pickering

Parraguirre J.  
Parraguirre

Cadish J.  
Cadish

cc: Chief Judge, Second Judicial District  
Margaret M. Crowley, Settlement Judge  
Richard F. Cornell  
Erickson Thorpe & Swainston, Ltd.  
Washoe District Court Clerk

# Reference Memorandum

## MEMORANDUM

**TO:** Board of Trustees

**FROM:** Thomas P. Beko, Esq.  
Erickson, Thorpe & Swainston, Ltd.  
POOL/PACT Counsel

**REVIEWED BY:** Steven J. Pinkerton  
General Manager

Jason D. Guinasso, Esq.  
District General Counsel

**SUBJECT:** Receive and discuss a verbal status report from litigation counsel, Tom Beko, Esq., regarding litigation involving Aaron Katz Case No. CV11 01380 under Nevada Supreme Court Appeal Nos. 70440 & 71493

Review, discuss, and possibly approve one of four options, outlined in the body of the memorandum supporting this agenda item or created at the Board meeting, regarding the continued defense of award of attorney fees subject to Mr. Katz's appeal under Nevada Supreme Court Appeal Nos. 70440 and 71493 (decision of Board of Trustees could have a financial impact on the District of more than \$400,000)

**DATE:** August 17, 2018

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### **I. PURPOSE OF THIS MEMORANDUM**

The purpose this memorandum is to provide, at a noticed, public meeting, the background on this court case and provide options to the Board of Trustees on the next steps. It is important for the Counsel to have an affirmation of this Board of Trustees direction on this case as this case began with an entirely different Board of Trustees in place.

### **II. BACKGROUND OF THE COURT CASE(S) AND OUTCOME(S)**

This is agenda item arises out of ongoing litigation with resident Aaron Katz. While legal counsel to the District has provided several comprehensive regular updates on this litigation to the Board and to the Public over the years, we now provide a brief summary of the background and report.

### **A. Five Years of Litigation Before the Washoe County District Court**

Mr. Aaron L. Katz moved from California to Incline Village in 2009. Mr. Katz is a former CA attorney. In 1983, Mr. Katz was convicted on one felony count of perjury involving a personal tax avoidance scheme and subsequently suspended from the practice of law for three years by the State Bar of California. Mr. Katz is a serial vexation litigant who has had a well-documented history of suing government entities, as well as filing administrative claims. Mr. Katz is an adversary who has initiated a multitude of frivolous attacks against IVGID in every conceivable forum, including the Nevada Attorney General's office, the Nevada Commission on Ethics, the Public Utilities Commission, the Department of Taxation, the Nevada Legislature, the Washoe County Commission, the Washoe County Sheriff and the Washoe County District Court.

Within two years of moving to Incline Village, Mr. Katz continued his litigious ways and sued the Incline Village General Improvement (IVGID) on May 4, 2011 (Case No. CV11 01380). The sitting Board of Trustees at that time consisted of Ted Fuller, Bruce Simonian, Chuck Weinberger, Bea Epstein, and Joe Wolfe. Once sued, IVGID reported this litigation to its insurer, POOL/PACT, who assigned Erickson, Thorpe, & Swainston, Ltd. to be the counsel of record. Mr. Katz's case against IVGID initially stemmed from his objection to paying IVGID's annual \$830.00 recreation fee, and eventually developed into a five-years of litigation against the District. Mr. Katz represented himself.

During the litigation, Mr. Katz filed 28 separate causes of action against IVGID with 250 charging paragraphs in a Complaint that was over 80 pages in length. Mr. Katz alleged causes of action primarily sought to invalidate the recreation fee, and also included a single cause of action alleging the failure to respond to certain requests for production of public records according to Chapter 239. Eventually, all of Mr. Katz's claims were dismissed by the Court because they did not have any legal or factual support; however, because there were disputes over facts concerning his public records claims, the Court heard testimony on the public records claims during a bench trial before Judge Patrick Flanagan on March 21, and 22, 2016.

IVGID takes the requirements of Nevada's Public Records Act very seriously, and has appointed a Public Records Officer to ensure compliance with the law and respond to records requests from the public. IVGID does not conceal public records and the evidence presented to Judge Flanagan at Trial proved that IVGID had fully complied with the law. At the bench trial, the District's evidence proved that IVGID fully complies with the Nevada public records law. The evidence also revealed that Mr. Katz' requests were not legitimate attempts to obtain documents but were utilized as a weapon to harass and distract the employees of IVGID from

their mission to serve the community at large. After carefully considering this evidence, Judge Flanagan ruled decisively that IVGID and its appointed Public Records Officer had fully complied with Nevada's public records law and acted in good faith and with due diligence in responding to Mr. Katz' numerous requests for records. Written judgment was rendered in favor of IVGID. In his Order, Judge Flanagan gave great deference to the right of the public to inspect public records and documents. However, the Court also emphasized that the government must retain the ability to function without undue harassment and unreasonable interference. In reviewing the evidence regarding the specific public records requests at issue, the Court concluded IVGID's responses were appropriate.

Following the final judgment on the merits, IVGID pursued a motion for attorney's fees and costs against Mr. Katz under NRS 18.010(2)(b), which allows a District Court to award attorney's fees to a prevailing party where the opposing party brought or maintained a claim without reasonable ground or for the purposes of harassment. In addition to Mr. Katz's litigation tactics, with which the Court was intimately familiar after overseeing the case for five years, IVGID also presented evidence of Mr. Katz's actions in pursuing meritless actions before the Nevada Commission on Ethics, complaints under the Open Meeting Law and relentless requests for voluminous public records – including a harassing request made during the bench trial – as part of Mr. Katz's campaign against IVGID.

The Court agreed with IVGID. Judge Flanagan issued a well-reasoned written decision on July 15, 2016, awarding IVGID \$229,372.75 in attorney's fees and costs against Mr. Katz (*which along with the required interest were deposited into a trust account pending the appeal process; those monies remain in that trust account as of the date of this memorandum*). Judge Flanagan's order reveals the award was appropriately based upon Mr. Katz's vexatious and harassing conduct. In awarding fees, Judge Flanagan saw through the arguments presented by Mr. Katz, ruling that his "entire suit was a pretext for Mr. Katz to obstruct and impede IVGID's operation to the detriment of thousands of other residents." (Order, p. 4, ll. 1-3).

Regarding the public records claim, Judge Flanagan explained that:

*"[a]t trial, it became abundantly clear that IVGID had made every effort to accommodate Mr. Katz's numerous request[s] for documents."*

(Order, p. 4, ll. 18-19). Continuing on, the Court found that:

*"Mr. Katz [was] under the dubious impression that simply having the ability to make a public records request entitles him to treat the employees of IVGID as his own . . . [displaying] an unfounded sense of entitlement that goes far*

*beyond the bounds of what the Nevada public records laws allow for, and further illustrat[ing] Mr. Katz's contempt for both this court and the orderly operation of IVGID."*

(Order, p. 6, ll. 6-16). The Court continued on as follows

*While Mr. Katz may fancy himself a community watchdog, his actions, taken as a whole, lead this court to one undeniable conclusion: this was a frivolous lawsuit. NRS 18.010(2)(b) was designed precisely for these matters "because such claims . . . overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public." NRS 18.010(2)(b).*

*What began as a quest by Mr. Katz to invalidate the \$800 recreation fee he was required to pay as a resident of Incline Village, morphed into an obsession with obstructing the staff of IVGID with burdensome records requests and contentious litigation. Neither courts nor the laws of Nevada exist so that those who detest their local governments can bully them into submission. At some point, these actions must come to an end. That point has now been reached.*

(Order, pp. 6-7, ll. 17-6).

#### **B. Post-judgment Appeals to the Nevada Supreme Court and Efforts to Collect Attorney Fees and Costs.**

Mr. Katz appealed the decisions of the Washoe County District Court to the Nevada Supreme Court. The appeal was for the dismissal of his substantive causes of action under Appeal No. 70440, as well as the award of attorney's fees and costs in favor of the District under Appeal No. 71493. It was at this time that Mr. Katz engaged the services of Richard F. Cornell, Esq. As detailed below, the first appeal (of the underlying substantive issues) was fully briefed and submitted to the Nevada Supreme Court for decision. On February 26, 2018, the Nevada Supreme Court affirmed each of the Washoe County District Court's decisions in favor of IVGID. In April of 2018, Mr. Katz filed a petition for rehearing asking the deciding panel of the Nevada Supreme Court to reconsider the decision affirming the Washoe County District Court. The Nevada Supreme Court denied that petition. Thereafter, on May 23, 2018, Mr. Katz filed another petition, this time

asking the entire Nevada Supreme Court (all seven justices) to rehear the case. On July 26, 2018, the Nevada Supreme Court unanimously denied that petition as well. Thus, short of an appeal to the United States Supreme Court, this portion of the litigation is now final.

Appeal No. 70440, on February 26, 2018, the Nevada Supreme Court issued an Order of Affirmance finding no reversible error by the District Court; **see attached Exhibit 1.**

Mr. Katz filed a motion for reconsideration, which was summarily denied; **see attached Exhibit 2.**

Thereafter, Mr. Katz requested en banc reconsideration, which was also denied; **see attached Exhibit 3.**

The second appeal, regarding the award of attorney's fees to the District (Appeal No. 71493), was put on hold by the Court's order entered March 1, 2017. Mr. Katz' attorney filed a Motion to Stay proceedings in the second appeal pending disposition of the first appeal. He argued that if the underlying judgment was not affirmed then the District would not have a basis for an award of attorney's fees because it would validate that some or all of Katz' claims were not frivolous or not brought for the purpose of harassment. IVGID opposed that motion and argued that proceeding in a piecemeal fashion would not be efficient. Nonetheless, the Nevada Supreme Court ordered that the briefing schedule and other deadlines in Case No. 71493 be suspended until a decision was entered in the first appeal. However, the Nevada Supreme Court did not stay the enforcement of the judgment entered against Mr. Katz. Therefore, IVGID was permitted to take the necessary steps to collect the judgement.

Regarding IVGID's efforts to enforce the judgment, this was a very complex process because of the award of fees against Mr. Katz personally and the vast majority of his assets are held in various trusts. IVGID attorneys proceeded with post-judgment discovery to gain information about Mr. Katz's assets so that IVGID could collect the money it was owed under the judgment. Post-judgment discovery included the scheduling of a Judgment Debtors Examination. Mr. Katz refused to answer several discovery requests and opposed being examined under oath by filing a motion to stay discovery and execution proceedings with the Washoe County District Court. On August 24, 2017, a hearing was held on Mr. Katz' motions. After hearing the arguments, the Court denied all of Mr. Katz's motions.

After the ruling, Mr. Katz' debtor's exam was scheduled for August 31, 2017. At the Judgment Debtors Examination, negotiations ensued and resulted in an agreement between Mr. Katz and the District. In this regard, Mr. Katz agreed to



tender the entire amount currently due (through September 13, 2017) pursuant to the Judgment previously rendered against him by the District Court (\$241,646.11). After the check cleared, IVGID filed and recorded a full satisfaction of the judgment.

**Exhibit 4 attached** to this memorandum are the excerpts of the agendas, minutes, and presentations given to the Board of Trustees, in noticed, public meetings, since May 18, 2016 regarding this case. The dates of these attachments are as follows:

- ✓ May 18, 2016
- ✓ July 27, 2016
- ✓ September 28, 2016
- ✓ April 25, 2017
- ✓ June 12, 2017
- ✓ August 22, 2017
- ✓ September 13, 2017
- ✓ January 24, 2018
- ✓ March 13, 2018

### III. NEXT STEPS

This Board of Trustees consisting of Tim Callicrate, Matthew Dent, Phil Horan, Peter Morris, and Kendra Wong now are in the position to decide what the future of this litigation will be for the Incline Village General Improvement District.

The District has, in a trust account, \$241,646.11 which is being held in trust until Appeal No. 71493 (dealing with the award of attorney's fees and costs) has been decided by the Nevada Supreme Court. The Court has not established a briefing schedule to date; however, we anticipate one to be set in the near future. It is also possible that the Nevada Supreme Court might refer this appeal into the Supreme Court mediation program.

The estimated cost to file briefing in defense of Appeal No. 71493 will be approximately \$40,000. IVGID's retained counsel has indicated that the actual cost of defending the award of IVGID's litigation costs could be significantly less than this estimate if Mr. Katz properly limits his briefing to the issues raised in this second appeal. However, counsel cautions that given Mr. Katz' previous history, they expect that rather than limit his arguments to the issues raised in the appeal of the attorney fee award, Mr. Katz will seek to once again reargue all the issues he lost in the underlying appeal. Should he do so, that will dramatically increase the costs of defending that award to IVGID.

In summary, the District has spent a total of approximately \$399,160.11 (\$241,646.11 for proceedings at the Washoe County District Court and \$157,514 on appeal before the Nevada Supreme Court under Appeal No. 70440) over the past seven years to successfully defend against Mr. Katz's civil action. Legal counsel expects that the fees and cost to defend the Washoe County District Court's award of attorney fees and costs under Appeal No. 71493 will be an additional \$40,000. Additionally, the cost to recover attorney fees and costs incurred as a result of Mr. Katz's appeals will be an additional \$30,000. Therefore, the total fees and costs of Mr. Katz's lawsuit against the District is estimated to reach approximately \$469,160.11.

#### **IV. OPTIONS**

**Recommended Action #1:** Reaffirm and approve the continued legal efforts of retained litigation counsel, Tom Beko, Esq., to defend the attorney fees awarded by the Washoe County District Court (\$241,646.11) held in trust by the District. These legal services will continue under Appeal No. 71493 and are estimated to cost the District approximately \$40,000.

**Recommended Action #2:** Reaffirm and approve the legal services of retained litigation counsel, Tom Beko, Esq., to recover attorney fees and costs associated with Mr. Katz's appeals under Supreme Court Case Nos. 70440 & 71493. The anticipated cost to recover all the attorney fees and costs incurred will be approximately \$30,000. To date, approximately \$157,514.00 has been spent to defend against Mr. Katz's appeals. However, counsel recommends that IVGID wait to attempt to recover the fees and costs spent on appeal until Appeal No. 71493 has been briefed and decided by the Supreme Court.

**Alternative Action #1:** Do not approve continued defense of award of attorney fees subject to Mr. Katz' appeal under Supreme Court Appeal No. 71493 and direct staff to refund the \$241,646.11 paid by Mr. Katz to the District in exchange for Mr. Katz withdrawing his appeal.

**Alternative Action #2:** Do not authorize litigation counsel, Tom Beko, Esq., to pursue attorney fees and costs associated with Mr. Katz' appeals under Nevada Supreme Court Appeal Nos. 70440 & 71493 and direct staff to return to the Board for authorization after Appeal No. 71493 is briefed and decided. To date, approximately \$157,514.00 has been spent to defend against Mr. Katz's appeals.

**Other Action Proposed By Board:** Board of Trustees can consider alternative proposed action within scope of this agenda item at the August 27, 2018 Board of Trustees meeting.

**V. CONCLUDING COMMENT**

This General Business item is being brought forth before this current Board of Trustees as it is imperative that counsel understands how this current Board of Trustees feels about this matter and that counsel gets this decision so it is prepared to pursue whatever option this Board of Trustees votes to pursue. The District has been successful, to date, in this case because all parties on the District team understood the plan of action. At this critical time in this case, it is the time to affirm the plan of action for this litigation.

# Reference Minutes

Mr. Katz was causing trouble so we researched his background and he has a history of suing governments; he would urge the Board to continue with this effort.

**D. APPROVAL OF AGENDA (for possible action)**

Chairwoman Wong asked for changes to the agenda; none were requested therefore the agenda is approved as submitted.

**E. DISTRICT STAFF UPDATES\***

**E.1. Verbal Update – Solid Waste Services Report – Director of Public Works Joe Pomroy**

Director of Public Works Joe Pomroy gave a verbal update of the submitted materials.

Trustee Horan said that the statistics bear out the fact that we had a horrific winter that we weren't prepared for. IVGID has been working with Waste Management for over eighteen months and we have made a lot of progress. Waste Management has become problem solvers instead of problem creators. IVGID wasn't interested in collecting lot of fines rather interested in getting compliance. There is a Washoe County ordinance and we think we are in compliance. The community has rallied, made a lot of progress, and are moving forward with this program and he appreciates it.

**F. GENERAL BUSINESS (for possible action)**

- F.1. Receive and discuss a verbal status report from litigation counsel, Tom Beko, Esq., regarding litigation involving Aaron Katz Case No. CV11 01380 under Nevada Supreme Court Appeal Numbers 70440 & 71493**

**AND**

**Review, discuss, and possibly approve one of four options, outlined in the body of the memorandum supporting this agenda item or created at the Board meeting, regarding the continued defense of award of attorney fees subject to Mr. Katz's appeal under Nevada Supreme Court Appeal Nos. 70440 and 71493 (decision of Board of Trustees could have a financial impact on the District of more than \$400,000) (Presenter: Tom Beko, Erickson, Thorpe & Swainston, Ltd. – POOL/PACT Attorney for the District)**

Tom Beko, Esq. went over the submitted materials and distributed an "Order Regarding Costs" on Appeal No. 70440, from the Nevada Supreme Court, dated August 23, 2018.

Trustee Callicrate said it has been loudly and clearly stated by the community that we want the full amount to put that to rest once and for all. This has gone on way too long and it has to stop as it has created a toxic environment in the community that is not going to stop until this ends. It sounds like the first one is most prudent or do both to get as much as we can and get it done as quick as we can as this has gone way past the time. Mr. Beko said that the idea is good and that he is not sure if we win that Mr. Katz is going to stop as he is not motivated by good sense or money. Trustee Callicrate said to get back as much money as we can, that is what he is looking at, \$241,000 and attorney's fees is what he would like to see happen and that he understands that Mr. Katz is going to continue to go on until leaves or expires. Get back all that we have spent and not sit back and get walked over. Mr. Beko said to say that IVGID has gone out aggressively is not the case at all rather we have just defended what he has done and that we did file a motion to recover attorney's fees. IVGID has been fending off repeatedly arguments by Mr. Katz which, to quote Judge Flanagan, is a Manatar's maze. When we first started the process, he and his team spent several weeks laying all those out and that was a nightmare. Mr. Beko said he wanted to be very clear that IVGID hasn't pursued Mr. Katz other than one motion for costs.

Chairwoman Wong asked how we go about this – if the Board makes a motion on recommended action 1 and you are successful with this action do we then pursue recommended action 2. Mr. Beko said if the Board votes against this then it effectively cancels what we got on appeal and throws in the towel today thus we never reach action 2. Chairwoman Wong followed up by asking how much we have budgeted. District General Manager Pinkerton said ten to fifteen thousand dollars and we will access the General Fund for the rest.

Trustee Morris said, to check his understanding, Mr. Katz is appealing not paying \$241,000. Mr. Beko responded that Mr. Katz paid it to stop the accrual of interest. Trustee Morris said so the first action is to decide if we want to fight his appeal and get that money. Mr. Beko said we are going to try and get a decision to keep that money for forever even though he doesn't think there was a provision as such to set it aside but that IVGID was just being cautious by doing so. Trustee Morris said so IVGID has that money in a trust fund and now the Supreme Court has just awarded IVGID another \$500 by the order presented tonight. Mr. Beko said that the Supreme Court rules says the winner gets its fees and those fees are very

limited and they are for the ability to cover attorney's fees and other costs that would be a part of our second request as it is far in excess. Trustee Morris said that whilst this can be far from a given, is it your professional position, that we should go after it because the outcome may be favorable. Mr. Beko said that the Nevada Supreme Court has everything that was said by Judge Flanagan and that the underlying statement is that it was frivolous and so should the appeal. Trustee Morris asked if this was a sequential process; Mr. Beko answered yes. Trustee Morris said it is his desire to go get that \$241,000 and to give the authority to go to the next phase. Mr. Beko cautioned that we can't rule out that the Nevada Supreme Court will say something that we might want to reconsider. Trustee Morris said he appreciates that and that if it all turns out as expected or hoped for, he would like you to go for it and if it is not great, then come back to us. Mr. Beko said absolutely and that it was District General Manger's Pinkerton's decision to delay this and he was right; it was a good decision. Trustee Morris said the \$40,000 estimate is to get back the \$241,000 which could be a lot less however knowing Mr. Katz' history. Mr. Beko said it is a narrow issue and it should not take us hours upon hours to deal with this. Mr. Katz is not very good at being told he is not right and every time he gets one of these decision, although we won in District Court, it didn't come by one order rather it was six or seven orders over the life of this litigation and each time we try and make some sense of this Manatar's maze; each time we were successful. We are fearful that when the time cost to deal with this issue that Mr. Katz will argue the original then and when we are asked for reconsideration and when that was denied he put in even more thus this is another opportunity to talk which means that we have to respond to it all. We could be lucky as the issues are pretty narrow but he is not very optimistic about that. Trustee Morris said he wants to go after every single penny.

Trustee Dent said that Mr. Beko's presentation answered most of his questions. Mr. Beko said it is very unusual to have this discussion and that he is not waiving any attorney/client privilege. It is an important topic and there are so many accusations that he is trying to be transparent. Trustee Dent said, building on Trustee Morris' questions, up to \$40,000 that we could spend thus is that \$40,000 something we can recoup. Mr. Beko said yes as it is one more thing that goes on the pile when we go back for the last bite of the apple with what we have paid and incurred and get IVGID back what it paid.

Trustee Morris made a motion to reaffirm and approve the continued legal efforts of retained litigation counsel, Tom Beko, Esq., to defend the attorney fees awarded by the Washoe County District Court (\$241,646.11) held in trust by the District. These legal services will continue under Appeal No. 71493 and are estimated to cost the



District approximately \$40,000. Trustee Horan seconded the motion. Chairwoman Wong asked for any further comments.

Chairwoman Wong said this action is for every current and former employee and for every Board member who has listened and taken his abuse, this is for you.

Hearing no further comments, Chairwoman Wong called the question, the motion was passed unanimously.

Trustee Morris made a motion to reaffirm and approve the legal services of retained litigation counsel, Tom Beko, Esq., to recover attorney fees and costs associated with Mr. Katz's appeals under Supreme Court Case Nos. 70440 & 71493. The anticipated cost to recover all the attorney fees and costs incurred will be approximately \$30,000. To date, approximately \$157,514.00 has been spent to defend against Mr. Katz's appeals. However, counsel recommends that IVGID wait to attempt to recover the fees and costs spent on appeal until Appeal No. 71493 has been briefed and decided by the Supreme Court. Trustee Callicrate seconded the motion. Chairwoman Wong asked for any further comments. Hearing no further comments, Chairwoman Wong called the question, the motion was passed unanimously.

Chairwoman Wong called for a break at 7:30 p.m.; the Board reconvened at 7:40 p.m.

**F.2. Review, discuss, and possibly take action on District General Manager Steven J. Pinkerton annual performance evaluation (Requesting Staff Member: Director of Human Resources Dee Carey)**

Director of Human Resources Dee Carey went over the submitted materials.

Chairwoman Wong thanked all the Trustees for completing their evaluation and noted that on agenda packet page 96 there is a summary and then detailed comments follow the memorandum. Thank you to her fellow Board members as, for the most part, they were thoughtful, constructive, and highlighted where the District General Manager does really well. As she was reading through the individual evaluations, the Trustees have been talking with or working with the District General Manager on areas of improvements. Thank you also to District General Manager Pinkerton for his response to Trustee Dent's evaluation.