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Recording Requested By:

Name: J. D. Sullivan

Address: 1625 SR 88, Suite 401

City/State/Zip Minden, NV 89423

Real Property Transfer Tax:

DOUGLAS COUNTY, NV **2015-857222**  
Rec:\$19.00  
Total:\$19.00 **02/20/2015 09:13 AM**  
J D SULLIVAN Pgs=6



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KAREN ELLISON, RECORDER

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**JUDGMENT IN FAVOR OF: RETIREMEN, LLC**

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(Title of Document)

This page added to provide additional information required by NRS 111.312 Sections 1-2. (Additional recording fee applies)

*This cover page must be typed or legibly hand printed.*

1 Case No. 08-TRT-00067-1B

2 Dept. No. 2

REC'D & FILED

2015 FEB 19 PM 3:12

SUSAN MERRIWETHER  
CLERK

BY  DEPUTY

6 IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR CARSON CITY

8 \*\*\*\*\*

9  
10 JACK WHITE, an individual;  
11 DAYTON VALLEY ESTATES LLC, a  
12 Nevada limited liability  
13 company; and RETIREMEN, LLC,  
14 a Nevada limited liability  
15 company,

JUDGMENT IN FAVOR OF:  
RETIREMEN, LLC

16 Plaintiffs,

17 vs.

18 TIM EUGENE BERTAGNOLLI, an  
19 individual; and T.E.  
20 BERTAGNOLLI & ASSOCIATES INC.  
21 dba Bertagnolli Aggregates, a  
22 Nevada corporation,

23 Defendants.

24  
25 /  
26 Based upon the Memorandum of Decision with Findings of Fact  
27 and Conclusion of Law, ("Decision") entered in this case on  
28 December 9, 2014, and the matters argued and evidence adduced at  
the Post-Trial Hearing on February 18, 2015, judgment be and  
hereby is entered in favor of plaintiff, RETIREMEN, LLC,  
(hereinafter, "Retiremen"), and against defendants, Tim Eugene  
Bertagnolli aka Tim E. Bertagnolli fka T.E. Bertagnolli aka Tim  
Bertagnolli, an individual, and T.E. Bertagnolli & Associates  
Inc. dba Bertagnolli Aggregates, a Nevada corporation

1 (collectively hereinafter, "Bertagnolli"), jointly and  
2 severally, in the amount of \$150,000, by way of equitable  
3 rescission. This amount represents the purchase price for 10  
4 acre feet of water rights that Retiremen bought and paid for in  
5 2004. In that the Court is ordering the return of the purchase  
6 price from Bertagnolli, Retiremen must effect return to  
7 Bertagnolli of the 10 acre feet of water rights he conveyed to  
8 Retiremen.

9 Retiremen and the other plaintiffs settled earlier with  
10 Western. The court finds that the settlement consideration paid  
11 to Retiremen by Western was compensation for damages caused by  
12 Western for which recovery could not be obtained from  
13 Bertagnolli. That is, significant damages suffered by Retiremen  
14 were not foreseeable by Bertagnolli and therefore not  
15 recoverable from him.

16 Bertagnolli contends that in addition to return to him of  
17 the 10 acre feet of water rights, he should also be given an  
18 offset for the value of the other consideration paid to  
19 Retiremen by Western as a result of the Western settlement.

20 However, Western worked on zone changing for Retiremen's  
21 Dayton property, helped Retiremen perfect the transfer of the 10  
22 acre feet, owed different duties to Retiremen, and likely would  
23 have been found liable for additional and different damages than  
24 those which have been awarded against Bertagnolli. Provided  
25 that Bertagnolli's 10 acre feet of water rights are returned, no  
26 offset for the value of the Western settlement will be given to  
27 Bertagnolli.

28 ///

1 ///

2 Bertagnolli claims that under *Elyousef v. O'Reilly &*  
3 *Ferrario, LLC*, 126 Nev. Adv. Op. 43, 245 P.3d 547 (2010), he is  
4 entitled to an offset, contending that otherwise Retiremen will  
5 be receiving a double recovery. But the *Elyousef* case does not  
6 apply where the damages recovered from the settling party do not  
7 fully compensate the plaintiff. Western's settlement did not  
8 fully compensate Retiremen in this case and Retiremen was  
9 entitled to pursue Bertagnolli for recovery of the purchase  
10 price of the water rights. It would be inequitable to force  
11 Western to bear all liability, as Bertagnolli received \$150,000  
12 for these water rights, which were not useable by Retiremen and  
13 did not satisfy the essential terms of the contract between  
14 Retiremen and Bertagnolli.

15 Bertagnolli also contends that he is entitled to an offset  
16 under *Western Tech. v. All-Am. Golf Ctr.*, 122 Nev. 869 (2006).  
17 However, that case held that, "[a]n obligor is entitled to an  
18 offset by the amount of the obligee's settlement with a  
19 co-obligor in contract actions, to the extent that the judgment  
20 and settlement are duplicative." *Id.*, 122 Nev. 869 at 876.

21 In the case at bar, Western was not a co-obligor on the  
22 contract. Instead, it had liability arising from its  
23 professional relationship with Retiremen. And the judgment  
24 against Bertagnolli is therefore not duplicative of the value  
25 received in the settlement with Western. Western was likely  
26 liable for significant additional and different damages than  
27 those awarded against Bertagnolli.

28 Thus, the court finds that the Western settlement did not

1 fully compensate Retiremen for its losses. Further, in that  
2 Bertagnolli received value in the amount of the purchase price  
3 of \$150,000, it would be an unfair windfall to Bertagnolli to  
4 retain the value he received in the transaction.

5 Therefore, Bertagnolli is ordered to pay Retiremen  
6 \$150,000, and Retiremen is ordered to convey the 10 acre feet to  
7 Bertagnolli.

8 IT IS SO ORDERED.

9 Dated: February 19, 2015 James E. Miller  
10 Judge District Court

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COPY

**CERTIFIED COPY**

The document to which this certificate is attached is a full, true and correct copy of the original on file and of record in my office.

Date February 19, 2015

Susan Merriwether, City Clerk and Clerk of the First Judicial District Court of the State of Nevada, in and for Carson City.

By [Signature] Deputy

Per NRS 239 Sec. 6 the SSN may be redacted, but in no way affects the legality of the document.