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DISTRICT COURT

CLARK COUNTY, NEVADA

GREATER LAS VEGAS SHORT TERM)
RENTAL ASSOCIATION, a non-profit)
Nevada corporation; JACQUELINE)
FLORES, President and Director,)
Petitioners,)
vs.)
CLARK COUNTY and the BOARD OF)
CLARK COUNTY COMMISSIONERS, a)
political subdivision of the State of Nevada;)
and the STATE OF NEVADA,)
Respondents,)

Case No: A-22-856311-P
Dept No: 8

**CLARK COUNTY'S MOTION FOR A
MORE DEFINITE STATEMENT**

HEARING REQUESTED

Clark County, by its attorney STEVEN B. WOLFSON, District Attorney, through Jeffrey S. Rogan, Deputy District Attorney, and Timothy Allen, Deputy District Attorney, hereby files this Motion for a More Definite Statement brought pursuant to NRCP 12(e). Clark County seeks an order from this Court requiring Petitioners to file a civil complaint which conforms with the Nevada Rules of Civil Procedure.

This Motion is based upon the attached Memorandum of Points and Authorities and the paper and pleadings on record herein.

1 DATED this 21st day of September, 2022.

2 STEVEN B. WOLFSON
3 DISTRICT ATTORNEY

4 By: /s/ Jeffrey S. Rogan
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11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **PROCEDURAL HISTORY**

13 On June 21, 2022, the Clark County Board of County Commissioners passed County
14 Ordinance No. 4959, which adopted regulations governing short-term rental units.

15 On August 2, 2022, Petitioners filed a document entitled *Petition for Preliminary Injunction*
16 *(sic) and Declaratory Relief*. On August 3, 2022, Petitioners filed another document entitled an
17 *Amended Petition for Preliminary Injunction and Declaratory Relief*, which is identical to the original
18 Petition, except for fixing the spelling mistake in the title. On August 28, 2022, Petitioners filed yet
19 another document, this time entitled a *First Amended Petition for Preliminary Injunction and*
20 *Declaratory Relief* and a *Motion to file Petition in Excess of Thirty Pages*. All documents filed with
21 the Court seek “preliminary injunctive and declaratory relief from newly enacted ordinances
22 governing short-term rentals,” generally claiming that Ordinance 4959 violates the Nevada and federal
23 Constitutions.

24 On September 19, 2022, Petitioners and Respondent entered a stipulation governing briefing
25 deadlines and setting a hearing before the Court on October 20, 2022. Additionally, Respondent Clark
26 County waived any objection to the Petitioner’s motion exceeding the page limitations set by EJDRC
27 2.20 (limiting the number of pages “papers submitted in support of pretrial... briefs... to 30 pages,
28 excluding exhibits.”)

This Motion now follows.

1 **ARGUMENT**

2 **FOR CLARK COUNTY TO RESPOND TO THE MERITS OF ANY ALLEGATIONS**
3 **RAISED BY PETITIONERS, PETITIONERS MUST ASSERT THEIR CLAIMS IN A CIVIL**
4 **COMPLAINT THAT CONFORMS TO THE NEVADA RULES OF CIVIL PROCEDURE**

5 The Greater Las Vegas Short Term Rental Association and its president, Jacqueline Flores
6 (hereinafter, “Petitioners”) have filed a three-paragraph petition which incorporates by reference a
7 lengthy motion asking this Court to grant their petition for declaratory and injunctive relief on the
8 basis that Clark County’s recently adopted Short Term Rental Ordinance is unconstitutional. For the
9 reasons set forth below, the petition is procedurally infirm insofar as an action for declaratory and
10 injunctive relief must be brought by a civil complaint conforming to the Nevada Rules of Civil
11 Procedure. Nonetheless, Petitioners should be permitted an opportunity to amend their pleading to
12 properly assert their claims and demands for relief.

13 **A. Legal Standard**

14 Rule 12(e) of the Nevada Rules of Civil Procedure allows a party to move for a more definite
15 statement where a pleading is “so vague or ambiguous that the [answering] party cannot reasonably
16 prepare a response.” NRCP 12(e); *see also N. Nevada Ass'n of Injured Workers v. Nevada State Indus.*
17 *Ins. Sys.*, 107 Nev. 108, 116, 807 P.2d 728, 733 (1991) (a party that is “truly perplexed by any aspect
18 of [a] complaint... may obtain further specificity by filing a motion for a more definite statement...”)
19 The moving party must “point out the defects complained of and the details desired.” *Id.* In response,
20 the Court may strike the pleading or issue any other appropriate order. *Id.*; *see also* EJDRCR 8.03(c)
21 (providing that a “[o]n motion or on its own order to show cause, the court may strike any
22 nonconforming document”). Courts generally look to whether a complaint gives a defendant sufficient
23 notice of the nature of the claims and relief sought. *Northern Nevada Ass’n of Injured Workers v.*
Nevada State Indus. Ins. System, 107 Nev. 108, 116, 807 P.2d 728, 733 (1991).

24 **B. An action seeking a declaratory judgment and injunctive relief requires the filing of a**
25 **civil complaint in accordance with the Nevada Rules of Civil Procedure**

26 The operative petition filed in this matter ostensibly requests declaratory relief from this Court
27 pursuant to NRS §§ 30.010-30.160 (the Uniform Declaratory Judgments Act (“UDJA”)) and a
28

1 preliminary injunction pursuant to NRS § 33.010. These remedies, however, are only available upon
2 the filing of a complaint stating a claim for relief in accordance with the Nevada Rules of Civil
3 Procedure.

4
5 *1. Actions and proceedings for declaratory relief are governed by the Nevada Rules of Civil
Procedure*

6 “[A] proceeding for declaratory relief... is a *civil action*.” *State Off. Of the Att’y Gen. v. Just.*
7 *Ct. of Las Vegas Twp.*, 133 Nev. 78, 82, 392 P.3d 170, 173 (2017) (emphasis added); *see Builders*
8 *Ass’n of N. Nevada v. City of Reno*, 105 Nev. 368, 369, 776 P.2d 1234, 1234 (1989) (holding that
9 declaratory relief is a remedy, not a cause of action, and the UJDA “does not establish a new cause of
10 action or grant jurisdiction to the court when it would not otherwise exist.”) As with other civil matters,
11 issues of fact that are in dispute in proceedings for declaratory relief may require a jury trial held “in
12 the same manner as issues of fact are tried and determined in other civil actions in the court.” NRS
13 30.110. Thus, because the Nevada Rules of Civil Procedure “govern the procedure in all *civil actions*
14 *and proceedings* in the district courts, except as stated in Rule 81[.]” and an action or proceeding for
15 declaratory relief is to be “tried and determined” in the same manner as all other civil actions, the
16 pleadings and proceedings for declaratory relief in this matter must clearly conform to the Rules of
17 Civil Procedure to the same extent as all other civil actions filed with this Court. NRCP 1.

18 Civil actions are exempted from compliance with the Nevada Rules of Civil Procedure only if
19 the civil action is a “special statutory proceeding” and “the procedure and practice provided by the
20 applicable statute” is “inconsistent or in conflict with” the Rules of Civil Procedure. NRCP 81(a). In
21 other words, the Rules of Civil Procedure have been deemed inapplicable insofar as civil actions
22 created by statute also provide specific procedural rules that directly conflict with the Nevada Rules
23 of Civil Procedure. *See e.g., Whitfield v. Nevada State Pers. Comm’n*, 137 Nev. Adv. Op. 34, 492 P.3d
24 571, 576 (2021) (claims brought pursuant to Nevada’s Administrative Procedures Act, NRS §§
25 233B.121-.150); *Joanna T. v. Eighth Jud. Dist. Ct.*, 131 Nev. 766, 770 n.1, 357 P.3d 932, 934 n.1
26 (2015) (petition alleging that a child is in need of protection brought pursuant to NRS Chapter 432B).

1 In contrast with special statutory proceedings containing specific procedural rules such as those
2 referenced above, the UDJA contains no specific procedural rules which conflict with the Nevada
3 Rules of Civil Procedure. *See* NRS §§ 30.010 - 30.160. Indeed, there are no procedural rules provided
4 in the UDJA at all. *Id.* As such, the Nevada Rules of Civil Procedure apply to all actions and
5 proceedings seeking declaratory relief, including this proceeding. *See* NRCP 1.

6
7 *2. Actions and proceedings seeking injunctive relief also require the filing of a complaint*

8 A preliminary injunction is a form of temporary relief afforded to litigants in certain
9 circumstances. NRS § 33.010 (providing in pertinent part that “[a]n injunction may be granted...
10 [w]hen it shall appear by the complaint that the plaintiff is entitled to the relief demanded...(emphasis
11 added)).

12 An injunction is not available as a remedy in all civil actions. *See id.* The Nevada Court of
13 Appeals recently made clear in *Polk v. Department of Corrections* that the filing of a complaint
14 containing claims for relief is a necessary condition precedent to obtain injunctive relief. 479 P.3d
15 1006 (Nev. Ct. App. 2021) (unpublished). In that case, Polk filed a motion for preliminary injunction
16 without first commencing a cause of action by filing a complaint. Citing to the plain language of NRS
17 § 33.010, the Court held “[f]ailure to file a complaint is fatal to a request for injunctive relief.” *Id.* at
18 1006; *see also Pac. Radiation Oncology, LLC v. Queen’s Med. Ctr.*, 810 F.3d 631, 633 (9th Cir. 2015)
19 (“When a plaintiff seeks injunctive relief based on claims not pled in the complaint, the court does not
20 have the authority to issue an injunction”); 42 Am. Jur. 2d Injunctions 235 (2020) (“In the absence of
21 a complaint requesting particular relief, and setting out the basis for jurisdiction, a court lacks the
22 jurisdiction to grant... a preliminary injunction.”). Further, the Court held the Polk’s request for
23 injunctive relief was also properly denied because, in the absence of a complaint setting forth a claim,
24 the party seeking injunctive relief inevitably cannot prove the likelihood of success on the merits as
25 required by NRS § 33.010. *Id.*, *citing Shores v. Glob Experience Specialists, Inc.*, 134 Nev. 503, 505,
26 422 P.3d 1238, 1241 (2018) (“A party seeking preliminary injunction must show a likelihood of
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1 success on the merits of their case and that they will suffer irreparable harm without preliminary
2 relief.”)).

3
4 **C. Petitioners’ filing of a petition and incorporated motion, rather than a civil complaint,**
5 **makes the nature of this action “vague or ambiguous” to such an extent that Clark**
6 **County “cannot reasonably prepare a response.”**

7 Rule 8(a) provides that a complaint must contain:

8 a short and plain statement of the claim showing that the pleader is entitled to relief
9 [and] a demand for the relief sought, which may include relief in the alternative or
10 different types of relief...

11 The allegations and claims in this “short and plain statement” must, in addition, “be simple, concise,
12 and direct.” NRCP 8(d).

13 Despite these requirements, the substance of Petitioners’ allegations here are contained in a
14 motion setting forth arguments rather than the requisite “simple, concise and direct allegations...”
15 NRCP 8(d)(1). This lack of “simple, concise and direct allegations” make it difficult for Clark County
16 to parse out Petitioners’ specific claims and allegations and, further, make it difficult to state its
17 “defenses to each claim asserted against it” and “admit or deny the allegations asserted against it...”
18 as required by Rule 8(b)(1). NRCP 8(b)(1).

19 Moreover, by bringing a petition rather than a complaint, it is not clear whether Clark County
20 may assert compulsory or permissive counterclaims pursuant to Rule 13 as would normally be allowed
21 in an action for declaratory relief. *See* NRCP 13.

22 **D. Petitioners’ filings must be corrected to conform with the Nevada Rules of Civil**
23 **Procedure**

24 Given that civil actions for declaratory and injunctive relief must be brought in accordance
25 with the Nevada Rules of Civil Procedure, Petitioners should have commenced this action by the filing
26 of a complaint containing “a short and plain statement of the claim showing that the pleader is entitled
27 to relief [and] a demand for the relief sought...” NRCP 3; NRCP 8(a). Having instead brought the
28 action in such a vague and ambiguous manner as indicated above, the petition must be remediated in

1 two ways. *See* NRCP 12(e) (moving party must identify the defects in the pleading and the details
2 desired).

3 *First, Petitioners must file a civil complaint, not a petition.* Rule 3 requires that a civil action
4 be “commenced by filing a *complaint* with the court.” NRCP 3. As aforementioned, Petitioners instead
5 filed a short petition containing three brief paragraphs accompanied by a longer motion “incorporated
6 by reference” into the petition. (First Am. Pet. at 2). Under Rule 7, the only pleading allowed to
7 commence a civil action is a complaint unless, under Rule 81(a), a special statutory provision provides
8 for the commencement of an action by a different mechanism such as a petition, motion, or application.
9 *See* NRCP 7(a)(1); 81(a). The UDJA does not specifically provide for commencement of an action or
10 proceeding for declaratory relief by petition. *See* NRS ch. 30. Petitioners label their pleading a petition,
11 but Petitioners cite no legal authority to bring the petition as required by Rule 81(a). *See* NRCP 81(a).

12 In further support of Clark County’s position that Petitioners must remediate their filing by
13 filing a civil complaint, it is notable that all the cases cited by Petitioners were actions for declaratory
14 relief *initiated by the filing of a complaint*. *See Clark County v. Upchurch*, 114 Nev. 749, 961 P.2d
15 754 (2004) (Plaintiffs filed a complaint and the district court granted declaratory relief); *Schwartz v.*
16 *Lopez*, 132 Nev. 732, 382 P.3d 886 (2016) (citizens filed a complaint seeking injunctive relief and
17 declaratory relief); *Doe v. Bryan*, 102 Nev. 523, 526, 728 P.2d 443, 445 (1986) (court affirmed
18 dismissal of complaint because appellants lacked standing to seek declaratory relief); *Blanding v. City*
19 *of Las Vegas*, 52 Nev. 52, 280 P. 644, 648 (1929) (sustaining dismissal of the complaint including
20 injunctive relief because property owners did not show any special injury different from the general
21 public). The same is true for the cases cited by Petitioners in support of their request for a preliminary
22 injunction; in the cases cited by Petitioners, courts have only granted injunctions after *complaints* were
23 filed. *See Citizens for a Public Train Trench Vote v. City of Reno*, 118 Nev. 574, 580, 53 P.3d 387,
24 391 (2002) (Citizens filed a “complaint for declaratory and injunctive relief” and the city was granted
25 an injunction against the citizens after a bench trial); *Kuban v. McGimsey*, 96 Nev. 105, 605 P.2d 623
26 (1980) (Court upheld the dismissal of brothel owners’ complaint for declaratory and injunctive relief
27 when the city limited the number of brothels that were allowed in the County); *Edgar v. MITE, Corp.*,

1 457 U.S. 624, 628 (1982) (“The complaint asked for a declaratory judgement... In addition, MITE
2 sought a preliminary and permanent injunctions.”)

3 *The second defect that must be remediated by Petitioners is the manner in which the factual*
4 *allegations and claims are asserted.* The operative petition currently does not comply with the
5 requirements of Rule 8(a) to contain only “a short and plain statement of the claim showing that the
6 pleader is entitled to relief...” NRCPC 8(a). Here, rather than set forth a “short and plain statement” of
7 claims demonstrating entitled to relief, Petitioners simply attached a nearly forty-page *motion* for
8 declaratory relief and a preliminary injunction to its brief *petition*. The petition itself merely asserts in
9 a conclusory fashion that “[m]ultiple sections of the Clark County Ordinance violate bedrock Articles
10 of the Nevada Constitution and Amendments to the United States Constitution.” (First Am. Pet. at 2).
11 Such an assertion, without more, fails to state a claim.

12 The incorporation by reference of an attached *motion* into the *petition* does not transform the
13 petition into a civil complaint that conforms with Rule 8. As mentioned above, each allegation
14 contained within the “short and plain statement” must also “be simple, concise, and direct.” NRCPC
15 8(a)(1); 8(d)(1). The contents of Petitioners’ lengthy motion, in other words, must be directly
16 incorporated into a civil complaint such that the factual assertions and legal claims made by Petitioners
17 are obvious, and Clark County may respond with an appropriate Answer.

18 19 **CONCLUSION**

20 Civil actions for declaratory and injunctive relief are required to be brought by the filing of a
21 civil complaint which conforms with the Nevada Rules of Civil Procedure. Petitioners instead drafted
22 a motion that they incorporated by reference into a so-called petition. Petitioners have no right to forgo
23 a complaint and skip directly to a motion for preliminary injunction and declaratory relief. This
24 unusual manner of commencing an action for declaratory and injunctive relief rendered their
25 allegations and claims vague and ambiguous such that Clark County cannot reasonably respond. Clark
26 County has a right to be clearly apprised of the causes of action against it in order to promote judicial
27 efficiency and so the County can properly defend the action in a manner anticipated by the Nevada
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1 Rules of Procedure. Notably, the filing of a petition make it uncertain whether Clark County must
2 assert defenses and include counterclaims as it previously has in prior actions for declaratory relief.

3 Petitioners can easily remedy the above-mentioned defects by filing a civil complaint in
4 accordance with the Rules of Civil Procedure. The complaint must contain, as with all other civil
5 complaints seeking declaratory and injunctive relief, a “short and plain statement” of the legal claims
6 and remedies they seek in a “simple, concise, and direct” fashion. At the same time, Petitioners can
7 bring a motion for a preliminary injunction that complies with NRS § 33.010.

8 Once such a complaint is filed, Clark County may respond with an Answer consisting of its
9 defenses, admissions, denials, and counterclaims, as applicable, or an appropriate responsive motion.

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11 DATED this 21st day of September, 2022.

12 STEVEN B. WOLFSON
13 DISTRICT ATTORNEY

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