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8 **IN THE SIXTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
9 **IN AND FOR THE COUNTY OF HUMBOLDT**

10 RUSSELL GREER, an individual, Case No. CV0023235
11 Plaintiff, Dept. No. II
12 vs.

13
14 LANCE GILMAN, an individual; and
15 GILMAN DEVELOPMENT, LLC, a Nevada
limited liability company.

16 Defendants.

17 _____ /
18 **REQUEST FOR SUBMISSION**

19 It is requested that Defendants LANCE GILMAN, an individual; and GILMAN
20 DEVELOPMENT, LLC's ("GILMAN") Motion to Dismiss Complaint, which was filed on
21 November 30, 2022, in the above-entitled matter be submitted to the Court for decision. Plaintiff
22 RUSSELL GREER's Opposition to Motion to Dismiss Complaint was to be filed no later than
23 December 15, 2022, as of December 19, 2022, no Opposition has been filed.

24 GILMAN submits a proposed order with this Request for Submission. The Proposed Order is
25 attached as Exhibit "1."

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AFFIRMATION

The undersigned does hereby affirm that the preceding document, **REQUEST FOR SUBMISSION**, filed in the Sixth Judicial District Court of the State of Nevada, County of Humboldt, does not contain the social security number of any person.

DATED this 19 day of December, 2022.

GUNDERSON LAW FIRM


By: 
Courtney G. Sweet, Esq.
Nevada State Bar No. 10775
Attorney for Lance Gilman & Gilman Development, LLC

EXHIBIT LIST

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Exhibit #	Description	Pages
Exhibit "1"	Proposed Order to Dismiss	7

Exhibit “1”

Exhibit “1”

1 A complaint may be dismissed if it fails to state a claim upon which relief can be granted.
2 NRCP 12(b)(5). However, in considering an NRCP 12(b)(5) motion, the Court must “determine
3 whether or not the challenged pleading sets forth allegations sufficient to make out the elements of
4 a right to relief.” Bemis v. Estate of Bemis, 114 Nev. 1021, 1021, 967 P.2d 437, 439 (1998) (citing
5 Edgar v. Wagner, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985)). In making that determination, the
6 Court is required to accept all **factual allegations** in the complaint as true, and to draw all inferences
7 in favor of the non-moving party. Buzz Stew, LLC v. City of North Las Vegas, 124 Nev. 224, 228–
8 29, 181 P.3d 670, 672 (2008) (emphasis added). Courts should not dismiss a complaint unless it
9 appears, to a certainty, that the plaintiff could prove no set of facts that would entitle him or her to
10 relief. Cohen v. Mirage Resorts, Inc., 119 Nev. 1, 22, 62 P.3d 720, 734 (2003). “Dismissal is proper
11 where there is either a ‘lack of cognizable legal theory’ or ‘the absence of sufficient facts alleged
12 under a cognizable legal theory.’” Marksman Partners, L.P. v. Chantal Pharm. Corp., 927 F.Supp.
13 1297, 1304 (C.D. Cal. 1996) (quoting Balistreri v. Pacifica Police Dep’t., 901 F.2d 696, 699 (9th
14 Cir. 1988)). The Nevada Supreme Court has reiterated that dismissal is appropriate where the
15 complaint does not contain a set of facts that would entitle the plaintiff to relief. Kahn v. Dodds (In
16 re AMERCO Derivative Litig.), 127 Nev. Adv. Rep. 17, 252 P.3d 681, 692 (2011) (citations
17 omitted).

18 Russell Greer (“Greer”)’s Complaint states two causes action, both for violation of NRS
19 598A Unfair Trade Practices. Greer seeks monetary damages and injunctive relief. As stated in the
20 Complaint, Greer is a sole proprietor and paralegal. (Complaint at ¶ 2-3) Greer alleges that his sole
21 proprietorship seeks to build luxury brothels and run them and his startup LLC, Intimate Dealings
22 seeks to build brothels Id. at ¶ 3. As a startup, Greer alleges that he is still convincing investors to
23 invest in his planned brothels and that he currently has no existing business operations. Id. at ¶ 3.
24 Defendants do not wish to partner with Greer, and they do not wish to sell their land to Greer, so he
25 is attempting to force them to sell him their land through this lawsuit. Complaint at ¶ 6. Greer could
26 operate his desired business in any number of other locations but claims that he likes Defendants’
27 land better. Complaint at ¶56-58. He believes that he can gain investors only if he can own this
28 specific piece of land. Complaint at ¶ 11.

1 Greer's first and second claims for relief are for violation of NRS 598A.060(1)(e). NRS
2 598A.060(1)(e) states,

3 1. Every activity enumerated in this subsection constitutes a
4 contract, combination or conspiracy in restraint of trade, and it is
unlawful to conduct any part of any such activity in this State:

5 (e) Monopolization of trade or commerce in this State,
6 including, without limitation, attempting to monopolize or
7 otherwise combining or conspiring to monopolize trade or
commerce in this State.

8 To prevail on this monopolization of trade claim, Plaintiff must prove (1) the defendant has
9 monopoly power in relevant market and (2) acquired power through exclusionary conduct and not
10 superior product or business acumen. United States v. Grinnell Corp. 384 U.S. 563, 570 (1966). "It
11 is generally required that to demonstrate attempted monopolization a plaintiff must prove (1) that
12 the defendant has engaged in predatory or anticompetitive conduct with (2) a specific intent to
13 monopolize and (3) a dangerous probability of achieving monopoly power. Spectrum Sports, Inc. v.
14 McQuillan, 506 U.S. 447, 456, 113 S. Ct. 884, 890-91, 122 L. Ed. 2d 247 (1993) *citing* 3 P. Areeda
15 & D. Turner, *Antitrust Law*, ¶ 820 page 312 (1978). In order to determine whether there is a
16 dangerous probability of monopolization, courts have found it necessary to consider the relevant
17 market and the defendant's ability to lessen or destroy competition in that market. Id. at 456, 890-
18 91.
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21 Greer's Complaint does not make any factual allegations that would show that Defendant
22 has a monopoly in the market gained through exclusionary conduct and not superior product or
23 business acumen. Greer wants to open a brothel. He is looking for investors to fund his business.
24 He wants to purchase land that Defendants own in Winnemucca, which is zoned to allow brothels.
25 Greer wants to buy Defendants' specific lots and is suing Defendants because they would not agree
26 to partner with him or sell to him at a specific price. There are no facts alleged in the Complaint that
27 Defendants engaged in exclusionary conduct, predatory conduct, or anticompetitive conduct, rather
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1 than simply having superior business acumen.

2 Further, there are no facts in the Complaint supporting any claim that Defendants have
3 specific intent to monopolize or a dangerous probability of achieving monopoly power. To support
4 his cause of action, Greer complains that because Defendants owns one other brothel in Storey
5 County and because Lance Gilman is involved in local politics in that county, Defendants' ownership
6 of this land in Winnemucca is a monopoly. This argument is not persuasive. The property in question
7 in Greer's Complaint is in Humboldt County, not Storey County, and the ownership of this land plus
8 another brothel in a different county in and of itself does not demonstrate any violation or intent to
9 monopolize. Greer does not include any facts in his Complaint regarding the many available
10 properties throughout Humboldt, Storey, or any of the other counties in Nevada which are zoned to
11 allow brothels. Greer even admits in his Complaint that there are other available properties in
12 Humboldt County to open his desired (and, at this time, entirely hypothetical) business, but that he
13 would prefer to have Defendant's land. Complaint at ¶ 10-11. Greer cannot demonstrate Defendants'
14 alleged dangerous probability of monopolization where there are other options for opening his
15 business the relevant market and he offers no facts showing defendant's ability to lessen or destroy
16 competition in that market.

17 Defendants also argue that Greer does not have standing to sue and failed to state a claim
18 under NRS 598A.210.

19 NRS 598A.210 determines who has standing to sue under this Chapter and provides:

20 1. Any person threatened with injury or damage to his or her
21 business or property by reason of a violation of any provision of
22 this chapter may institute a civil action or proceeding for
23 injunctive or other equitable relief, including, without limitation,
24 a temporary restraining order, a preliminary or permanent
injunction, restitution or disgorgement. If the court issues a
25 permanent injunction, the plaintiff shall recover reasonable
26 attorney fees, together with costs, as determined by the court.

25 2. Any person injured or damaged directly or indirectly in his or
26 her business or property by reason of a violation of the provisions
of this chapter may institute a civil action and shall recover treble
27 damages, together with reasonable attorney fees and costs.

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1 3. Any person commencing an action for any violation of the
2 provisions of this chapter shall, simultaneously with the filing of
3 the complaint with the court, mail a copy of the complaint to the
4 Attorney General.

5 In determining UPTA antitrust standing, the Nevada Supreme Court in Nev. Recycling & Salvage,
6 Ltd. v. Reno Disposal Co., Inc. applied the reasoning and factors enumerated in Associated General
7 Contractors of Cal. State Council of Carpenters, 459 U.S. 519, 521, 103 S.Ct. 897, 74 L.Ed. 2d 723
8 (1983), which addressed standing under the federal antitrust counterpart, the Clayton Act and stated
9 “antitrust standing requires courts to evaluate the plaintiffs harm, the alleged wrongdoing by the
10 defendants, and the relationship between them”. 134 Nev. 463, 466, 423 P.3d 605, 607 (2018), *citing*
11 Associated General Contractors of Cal. 459 U.S. at 535, 103 S.Ct. 897.

12 Specifically, the Nevada Supreme Court found “certain factors are used to determine antitrust
13 standing: (1) that plaintiff’s injury was the type the antitrust statute intended to forestall (2) the
14 directness of the injury (3) the speculative measure of the harm (4) the risk of duplicate recovery and
15 (5) damage complexity.” *Id.* at 466, 607 (*citing Associated General*, 459 U.S. at 535, 103 S.Ct. 897).
16 The Nevada Supreme Court found “generally, no single factor is decisive,” and “thus a court need
17 not find in favor of the plaintiff on each factor. Instead, the factors should be weighed and balanced.”
18 *Id.* at 466, 607 (*citing Am. Ad Mgmt., Inc. v. Gen. Tel. Cal.*, 190 F.3d 1051, 1055 (9th Cir. 1999).

19 This case is like Nev. Recycling, where the Court found the appellant lacked UPTA standing
20 where he was a non-competitor who could not show alleged injury. *Id.* at 467, 608.

21 First, Greer cannot show that his purported injury is the type that the antitrust statute was
22 intended to forestall. Greer does not even have a brothel business. Complaint at ¶4 and ¶6. He has
23 alleged that he wants to open said business but does not have funding. Complaint at ¶6. He claims
24 he will only gain the investors and funding for his hypothetical business if he can purchase
25 Defendants’ specific piece of property for the specific price of under \$100,000; he further claims
26 that, as an alternative, Defendants should be forced to go into business with Greer as a partnership.
27 Complaint at ¶23; ¶39-40. None of these allegations show any actual injury suffered by Greer, much
28 less the type of injury intended to be prevented by the antitrust statute.

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1 Second, Greer has not alleged that he has suffered any direct injury. Again, any purported
2 injury suffered by Greer is entirely hypothetical. Even if Greer’s current business – an LLC and a
3 website – is deemed a viable business for purposes of this statute, Greer failed to set forth any facts
4 showing that this business is “threatened or directly injured.” Instead, Greer states Defendants’
5 property is where he would most like to build a brothel and that, because Defendants have refused
6 to sell him their property and have refused to go into business with him, they have somehow harmed
7 him. Complaint at ¶56-58; ¶32. Greer claims the injury is inability to open a competing business,
8 but by his own admissions in the Complaint, he doesn’t have funding to open a competing business
9 in any location, and the real goal of this lawsuit is not to open a competing business, but to force
10 Defendants to sell Greer their land in Winnemucca or to force them to go into business with him.
11 This simply does not demonstrate an actual threat or injury.

12 Next, any purported harm is entirely speculative. “[A] party seeking damages has the burden
13 of providing the court with an evidentiary basis upon which it may properly determine the amount
14 of damages.” Frantz v. Johnson, 116 Nev. 455, 469, 999 P.2d 351, 360 (2000). Greer does not own
15 a brothel and, by his own allegations, does not have the funding to open a brothel. Complaint at ¶4,
16 ¶6, ¶10. He has not alleged any evidentiary basis upon which damages could be calculated. As such,
17 any purported harm is entirely speculative.

18 The final two factors, the risk of duplicate recovery and damage complexity, do not apply
19 here. Again, Greer has failed to allege any facts that would support any measure of damages. There
20 is no risk of duplicate recovery and there is no complexity to these purported damages because,
21 simply put, damages do not exist.

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1 Greer has not alleged any fact that demonstrates Defendants committed any act prohibited
2 by the NUPT or that Defendants are in violation of NRS 598A. Because Greer has failed to state a
3 claim against LANCE GILMAN and GILMAN DEVELOPMENT, LLC and because the allegations
4 make it plain that no such claims could be asserted against these Defendants, the Motion to Dismiss
5 must be granted.

6 Therefore, the Motion to Dismiss is GRANTED in accordance with this Order.

7 **IT IS SO ORDERED.**

8 Dated this ____ of _____, 2022.

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10 _____
11 DISTRICT COURT JUDGE
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13 Submitted by:

14 GUNDERSON LAW FIRM

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16 _____
17 Courtney G. Sweet, Esq.
18 Nevada State Bar No. 10775
19 *Attorney for Lance Gilman &*
Gilman Development, LLC

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