

COMP

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DISTRICT COURT
CLARK COUNTY, NEVADA

NEVADA CANCER INSTITUTE, a Nevada
non-profit corporation,

Plaintiff,

v.

JAMES RHODES, an individual; GLYNDA
RHODES, an individual; DOES I through X,
inclusive; ROE Corporations XI through XX,
inclusive,

Defendants.

Case No.:

Dept. No.:

COMPLAINT

ARBITRATION EXEMPT
(Amount in controversy exceeds \$50,000)

Plaintiff Nevada Cancer Institute alleges as follows:

PARTIES

1. Nevada Cancer Institute is, and at all relevant times was, a Nevada non-profit corporation whose mission is to reduce the burden of cancer for Nevada, the nation, and the world through innovative and collaborative research, education, and patient care.

2. Upon information and belief, Defendant James ("Jim") Rhodes is a Nevada resident who has developed and continues to develop substantial land holdings in the Southwestern United States, including Nevada and Arizona.

3. Upon information and belief, Defendant Glynda Rhodes is a Nevada resident and is married to Jim Rhodes.

...

5. This action arises from Jim and Glynda Rhodes' (collectively, the "Rhodes") failure to honor two binding commitments to Nevada Cancer Institute in the amounts of \$1,000,000 and \$10,000,000 (collectively, the "Binding Commitments," or individually, the "\$1M Commitment" and the "\$10M Commitment").

7. In exchange for the Binding Commitments, among other consideration, Nevada Cancer Institute provided the Rhodes with positive publicity, including press releases, numerous news articles, prominent name displays at Nevada Cancer Institute, and recognition at Nevada Cancer Institute's annual gala, Rock for the Cure.

8. The Rhodes' refusal to honor the Binding Commitments has a direct, negative effect on Nevada Cancer Institute's ability to perform research and treat patients diagnosed with cancer. This effect is felt not only by Nevada Cancer Institute and its present and future patients, but by the community, country, and world as a whole.

9. The harmful media exposure regarding the Rhodes was extremely detailed and damaging to their reputations, requiring the Rhodes to seek creative solutions to repair their tarnished reputations. Those solutions included making charitable commitments in an effort to obtain favorable publicity to combat the abundance of disparaging media coverage.

1 10. The following public assertions, regardless of their veracity, were made by numerous
2 media outlets and had a significant, detrimental effect on the Rhodes' public image.

3 **A. Rhodes employs Erin Kenny**

4 11. Since at least 2003, Jim Rhodes has received negative publicity regarding dealings
5 with the Clark County Commission and a proposed development that would build a dense
6 community of homes near Red Rock National Conservation Area.

7 12. As an example of the negative publicity, Jim Rhodes was accused of bribing Clark
8 County Commissioner Erin Kenny. Specifically, Jim Rhodes allegedly paid Erin Kenny large sums
9 in exchange for favorable treatment for Rhodes' projects while Erin Kenny was on the Clark County
10 Commission.

11 13. On July 24, 2003 Erin Kenny pleaded guilty to conspiracy to commit wire fraud and
12 wire fraud for the purpose of depriving the citizens of Nevada of her honest services as a Clark
13 County Commissioner.

14 14. As part of her plea, Erin Kenny admitted to receiving bribes to abuse her position as
15 a Clark County Commissioner, and agreed to testify against other Clark County Commissioners in
16 exchange for a lesser sentence.

17 15. On July 18, 2007, Erin Kenny was sentenced to serve 30 months in federal prison
18 and to pay more than \$100,000 in fines for taking bribes.

19 16. After Erin Kenny left the Clark County Commission, and before she pleaded guilty,
20 Jim Rhodes hired Erin Kenny as a lobbyist. Erin Kenny's purported "job" was to influence elected
21 officials at Jim Rhodes' direction. In return, Jim Rhodes paid Erin Kenny approximately \$16,000
22 per month.

23 17. On Jim Rhodes behalf, Erin Kenny lobbied her successor, Clark County
24 Commissioner Mark James, to allow Jim Rhodes to build a dense residential development near Red
25 Rock National Conservation Area on land Jim Rhodes, or one or more entities he controls,
26 purchased for approximately \$54,000,000.

27 ...

28 ...

1 18. Erin Kenny fought proposed state and county ordinances that would limit the
2 development of the land near Red Rock National Conservation Area to approximately 1,200 homes
3 instead of Rhodes' planned 5,500 homes.

4 19. Both the state and county ordinances eventually passed and limited the ability to
5 develop the area, although Jim Rhodes is still trying to obtain zoning changes, entitlements, and
6 other land use rights to create the development.

7 **B. Illegal Campaign Contributions to Nevada Elected Officials**

8 20. As another example of negative publicity, Jim Rhodes was accused of funneling
9 illegal campaign contributions to United States Senator Harry Reid and Clark County Commissioner
10 Dario Herrera in 2002. Jim Rhodes is alleged to have verified this misconduct in signed admissions
11 to the Federal Election Commission in order to strike a plea deal.

12 21. On May 5, 2006, Dario Herrera was convicted "of conspiracy and multiple counts of
13 wire fraud and extortion under color of official right for depriving the Clark County Commission
14 and the citizens of Clark County of their right to the honest services of public officials." August 21,
15 2006 Department of Justice News Release.

16 22. Dario Herrera was sentenced to serve 50 months in prison, pay a \$15,000 fine, and
17 forfeit \$60,000 in assets. *Id.*

18 **C. Jim Rhodes Begins Developing in Arizona**

19 23. When elected officials in Nevada began to shun Jim Rhodes because of his alleged
20 indiscretions, he began acquiring land to develop in Arizona, where state authorities were unaware
21 of his past.

22 24. In or about December 2006, Jim Rhodes purchased more than 1,000 acres in the East
23 Valley of Phoenix, with the right to develop 6,700 more acres, for approximately \$58,600,000. In
24 addition, Jim Rhodes assembled 25,000 acres between Kingman and the Nevada state line to
25 develop 130,000 homes (collectively, the "Arizona Land").

26 25. In order to develop the Arizona Land, Jim Rhodes, individually or through entities he
27 controlled, attempted to obtain various zoning changes, entitlements, water rights, and other land
28 use rights in early 2007.

28. By April 2007, numerous newspaper articles, columns, and editorials had been published in Nevada, Arizona, and elsewhere detailing the allegations of Jim Rhodes' improper dealings with Clark County Commissioners, his proposed development near Red Rock National Conservation Area, and various lawsuits with business partners.

30. Specific examples of such scrutiny appeared in Arizona's East Valley Tribune on April 22 and April 23, 2007, calling Jim Rhodes a "land baron" and stating that he "has admitted to illegally using his money to aid powerful politicians in Nevada; that he has repeatedly and successfully been sued over allegations of fraud, theft and self-dealing by his investment partners and others; and that he has a long history of complaints for shoddy workmanship." *See Land Baron has checkered past*, East Valley Tribune (Apr. 22, 2007); *Baron's aim was 5,500 homes on 1,200 site*, East Valley Tribune (Apr. 23, 2007).

21 31. The media frenzy surrounding the Rhodes and their alleged misconduct over the past
22 several years jeopardized not only their business interests, but their livelihood. As a result, the
23 Rhodes were eager to change their public image.

32. One possible solution to repair the Rhodes' public image was to make well-publicized and prominent charitable donations. While the Rhodes had previously committed \$1,000,000 in 2005 to Nevada Cancer Institute (though never fully funded), they were interested in making a larger donation that would garner significant media attention.

5

1 33. On or about February 24, 2007, the Rhodes met with representatives of Nevada
2 Cancer Institute, including Shelley Gitomer and Heather Murren, to discuss the Rhodes making a
3 large commitment.

4 34. At this meeting, the Rhodes presented a scrapbook they compiled that detailed the
5 philanthropic reputations of others, including Michael Bloomberg.

6 35. The Rhodes stated that they would like to obtain a public reputation for philanthropy
7 like the individuals detailed in their scrapbook.

8 36. The Rhodes also discussed making the \$10M Commitment to Nevada Cancer
9 Institute.

10 37. Over approximately the next eight months, the Rhodes continued discussions with
11 Nevada Cancer Institute regarding the \$10M Commitment.

12 38. In each of those communications, the Rhodes told Shelley Gitomer, Heather Murren,
13 or both of them that the Rhodes would fund the \$10M Commitment. In return, the Rhodes required
14 publicity related to the binding commitment and the prominent display at Nevada Cancer Institute of
15 the names of Jim and Glynda Rhodes, and Jim Rhodes' father, Leonard Rhodes.

16 39. As November 2007, approached, the Rhodes began discussing possible media
17 approaches to publicize the \$10M Commitment. One possible scenario was for the Rhodes to
18 become the honorees for the annual Rock for the Cure event on November 15, 2007. Rock for the
19 Cure was Nevada Cancer Institute's annual gala that attracted more than 1,000 attendees, including
20 local celebrities, businesspeople, politicians, and media, as well as national figures Rod Stewart,
21 Larry King, and others.

22 40. Nevada Cancer Institute had never previously recognized a primary honoree at the
23 event, but considered honoring the Rhodes because of the size of the \$10M Commitment.

24 41. After further negotiation, the Rhodes and Nevada Cancer Institute agreed that the
25 Rhodes would be the honorees for Rock for the Cure, and that Jim Rhodes' mother would be
26 featured in a video of breast cancer survivors shown at the event – all in furtherance of the Rhodes'
27 demand for publicity of the \$10M Commitment.

28 ...

THE RHODES' WRITTEN COMMITMENT

42. As a prerequisite to any public announcement at Rock for the Cure, Nevada Cancer Institute required that the Rhodes provide written confirmation of the \$10M Commitment.

43. To this end, the Rhodes and their counsel, David Lyon, met with Shelley Gitomer, Heather Murren, and others during the week of Rock for the Cure, and confirmed the details of the \$10M Commitment.

44. On November 15, 2007, the day of Rock for the Cure, David Lyon, counsel for the Rhodes, sent a letter detailing the parties' agreement. A true and correct copy of David Lyon's letter is attached hereto as Exhibit 1.

45. Specifically, David Lyon confirmed that the Rhodes committed "at least Ten Million Dollars," and described the mechanism through which the Rhodes would fund the \$10M Commitment.

46. David Lyon also confirmed that the \$10M Commitment was made by "Jim and Glynda," and was "absolute and unconditional."

47. Jim and Glynda Rhodes both personally signed David Lyon's letter, stating that its terms were "Approved and Confirmed."

48. That same night, at Rock for the Cure, the Rhodes publicly announced the \$10M Commitment to a crowd of high profile attendees. Both Jim and Glynda Rhodes gave prepared speeches discussing the \$10M Commitment.

49. After Rock for the Cure, Nevada Cancer Institute issued a press release announcing the \$10M Commitment, in furtherance of the Rhodes' demand for publicity.

50. Nevada Cancer Institute also arranged for the \$10M Commitment to be included in multiple print publications and otherwise assured that the \$10M Commitment was well publicized, including news coverage on local and regional television stations.

51. The Rhodes' names were also prominently displayed in the Nevada Cancer Institute lobby to further demonstrate the Rhodes' philanthropy.

52. By all accounts, the Rhodes were thrilled with the exposure and publicity they received in correlation with the \$10M Commitment.

1 53. By late 2007, the Rhodes had still not funded the \$10M Commitment. Fearful of
2 more damaging publicity while still attempting to obtain land use approvals and other favorable
3 rulings from public officials, the Rhodes executed a second written confirmation of the \$10M
4 Commitment on December 28, 2007 to induce Nevada Cancer Institute to book the \$10M
5 Commitment in its 2007 financial statements. Both Jim Rhodes and Glynda Rhodes signed the
6 written confirmation, which was faxed to Nevada Cancer Institute by the Rhodes' counsel, David
7 Lyon, on December 31, 2007. A true and correct copy of the second written commitment is
8 attached hereto as Exhibit 2.

9 54. In reliance on the Rhodes' oral and written commitments, Nevada Cancer Institute
10 recorded a receivable of \$10,000,000 from the Rhodes in Nevada Cancer Institute's public financial
11 statements and renegotiated financing covenants to allow for payment of the \$10M Commitment.

12 **THE RHODES' FAILURE TO FUND THEIR BINDING COMMITMENTS**

13 55. Over the course of 2008, it became increasingly clear that the Rhodes never intended
14 to fund the \$10M Commitment.

15 56. After the second written commitment was made, the Rhodes' attorney began
16 suggesting funding structures that materially deviated from the structure agreed to between the
17 Rhodes and Nevada Cancer Institute. These included structures that would place liability with the
18 Rhodes' companies, instead of personally with Jim or Glynda Rhodes as required in the \$10M
19 Commitment.

20 57. The motive for the Rhodes' push to remove their personal liability recently became
21 clear when many of their related entities filed for bankruptcy.

22 58. Another of the new funding structures presented by the Rhodes would have tied the
23 \$10M Commitment to the receipt of land use entitlements for the Rhodes' development near Red
24 Rock National Conservation Area.

25 59. In other words, the Rhodes were attempting to give Nevada Cancer Institute a
26 financial interest in making sure the subject land received the entitlements the Rhodes previously
27 had been unable to obtain.

28 . . .

61. After nearly a year of discussion regarding funding alternatives, the Rhodes have refused to communicate with any Nevada Cancer Institute representatives, let alone fund their obligations.

62. This lack of communication includes defaulting on the \$1M Commitment made in 2005, under which the Rhodes still owe \$400,000.

63. Instead of intending to actually follow through with their Binding Commitments, the Rhodes were simply using Nevada Cancer Institute to obtain positive media attention and curry favor with public officials.

64. The Rhodes never intended to make payments under the \$10M Commitment, despite signing an agreement to do so.

65. The Rhodes have never a made a payment under the \$10M Commitment.

66. In fact, since obtaining vast publicity and recognition for the \$10M Commitment, the Rhodes have not given any funds to Nevada Cancer Institute on either Binding Commitment.

67. The Rhodes' disappearing act has directly interfered with Nevada Cancer Institute's ability to operate as both a research and patient care facility.

68. Nevada Cancer Institute is now required to bring this action to force the Rhodes to honor their Binding Commitments.

(Breach of Contract - \$1M Commitment)

69. Nevada Cancer Institute incorporates the allegations in Paragraphs 1 through 68 as though fully set forth herein.

70. The Rhodes entered into a valid and binding agreement to make the \$1M Commitment in 2005.

71. The \$1M Commitment required that the Rhodes make five annual payments of \$200,000.

1 84. As set forth above, the Rhodes represented to Nevada Cancer Institute, orally and in
2 writing, that they would make the \$10M Commitment.

3 85. The Rhodes knew at the time they made their representations that those
4 representations were false and that the Rhodes never intended to make any payments under the
5 \$10M Commitment.

6 86. Instead, the Rhodes intended to use the public nature of Rock for the Cure and
7 Nevada Cancer Institute's public and well-known reputation to obtain free publicity, which has now
8 caused damage to Nevada Cancer Institute.

9 87. Nevada Cancer Institute reasonably relied on the Rhodes' misrepresentations,
10 including, but not limited to, booking a receivable in Nevada Cancer Institute's public financial
11 statements, issuing press releases and disseminating information to the general public, planning and
12 budgeting for Nevada Cancer Institute's future, and running Nevada Cancer Institute's day-to-day
13 operations.

14 88. Nevada Cancer Institute was justified in its reliance on the Rhodes'
15 misrepresentations.

16 89. The Rhodes' conduct constitutes oppression, fraud, and malice pursuant to NRS
17 42.001 *et seq.* such that Nevada Cancer Institute is entitled to punitive damages in an amount to be
18 determined at trial.

19 90. Nevada Cancer Institute sustained damages in excess of \$10,000 as a result of the
20 Rhodes' fraud.

21 91. Nevada Cancer Institute has been required to retain the services of an attorney to
22 commence this action and is entitled to its attorney's fees and costs.

23 **FOURTH CLAIM FOR RELIEF**

24 **(Negligent Misrepresentation)**

25 92. Nevada Cancer Institute incorporates the allegations in Paragraphs 1 through 91 as
26 though fully set forth herein.

27 93. As set forth above, the Rhodes represented to Nevada Cancer Institute, orally and in
28 writing, that they would make the \$10M Commitment.

1 94. The Rhodes failed to exercise reasonable care or competence in communicating
2 information to Nevada Cancer Institute.

3 95. Nevada Cancer Institute reasonably relied on the Rhodes' misrepresentations,
4 including, but not limited to, booking a receivable in Nevada Cancer Institute's public financial
5 statements, issuing press releases and disseminating information to the general public, planning and
6 budgeting for Nevada Cancer Institute's future, and running Nevada Cancer Institute's day-to-day
7 operations.

8 96. Nevada Cancer Institute was justified in its reliance on the Rhodes'
9 misrepresentations.

10 97. The Rhodes' conduct constitutes oppression, fraud, and malice pursuant to NRS
11 42.001 *et seq.* such that Nevada Cancer Institute is entitled to punitive damages in an amount to be
12 determined at trial.

13 98. Nevada Cancer Institute sustained damages in excess of \$10,000 as a result of the
14 Rhodes' negligent misrepresentations.

15 99. Nevada Cancer Institute has been required to retain the services of an attorney to
16 commence this action and is entitled to its attorney's fees and costs.

17 WHEREFORE, Nevada Cancer Institute prays for relief as follows:

- 18 1. For compensatory damages in excess of \$10,000 on all claims;
19 2. For punitive damages in an amount to be determined by the Court;
20 3. For prejudgment interest on all amounts received herein;

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- 1 4. For reasonable attorney's fees and costs incurred in pursuing this action; and
2 5. For such other and further relief as the Court deems just and necessary.

3 GLASER, WEIL, FINK, JACOBS HOWARD &
4 SHAPIRO, LLP

5 By: 

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8 Adam Smith, Esq.
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15 Attorneys for Nevada Cancer Institute
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EXHIBIT 1

EXHIBIT 1

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&
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November 15, 2007

Nevada Cancer Institute
10000 West Charleston Boulevard, Suite 260
Las Vegas, Nevada 89135
Attention: Heather H. Murren, CFA, Chief Executive Officer

Dear Ms. Murren:

This letter is to confirm in writing the pledge that is being made by James M. Rhodes ("Jim") and Glynda Rhodes ("Glynda") with respect to a gift to the Nevada Cancer Institute (the "Institute") and reflects the discussions held on Monday with Jim, Glynda, Owen Nitz and myself regarding this gift. The Rhodes' pledge is that they will grant and contribute to the Institute interests in property having an aggregate value sufficient to permit the Institute to realize at least Ten Million Dollars (\$10,000,000) in total cash proceeds as a result of the pledge.

As we discussed, the Rhodes pledge is to be satisfied by Jim and Glynda causing a contribution to be made to the Institute of a non-voting preferred member interest (the "Preferred Interest") in a limited liability company ("Newco LLC") to be formed under Nevada law. Newco LLC itself will be capitalized with, and will own, investment real property having a fair market value in excess of liabilities in the range of \$12,000,000 to \$15,000,000. The terms of the Preferred Interest in Newco LLC will be structured and established to have a fair market value sufficient ultimately to generate at least \$10,000,000 of cash proceeds for the Institute. There will be provisions in the Operating Agreement to protect and preserve the value of the Preferred Interest in Newco LLC to be owned by the Institute.

The gift of the Preferred Interest to the Institute will be absolute and unconditional, subject only to the agreed terms and conditions of the

November 15, 2007

Page 2

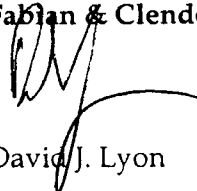
Operating Agreement of Newco LLC and the provisions of the following paragraph relating to the honoring of Leonard Rhodes, Jim's father. The Institute will have the right to sell all or any portion of the Preferred Interest at any time to any persons or parties.

This gift is to be in honor of Jim's father, Leonard Rhodes. We discussed when we met possible means of honoring Jim's father. In subsequent discussions with Shelley Gitomer it was proposed that the lobby of the main Institute building be named after Leonard Rhodes because of its visibility. In light of the several possible opportunities available (including the naming of the lobby), Jim and Glynda are prepared to commit to the pledge subject to the understanding that the Institute will work with Jim and Glynda in good faith to determine an appropriate means of the Institute honoring Jim's father in light of the nature, timing and size of the gift being made, and taking into account, if and as appropriate, future gifts which may be made to the Institute by Jim and Glynda.

Please let me know if you have any questions.

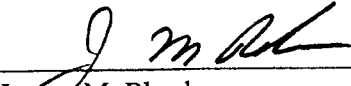
Very truly yours,

Fabian & Clendenin, P.C.




David J. Lyon

Approved and Confirmed:



James M. Rhodes



Glynda Rhodes

cc: Shelley Gitomer
W. Owen Nitz

EXHIBIT 2

EXHIBIT 2

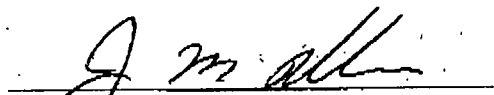
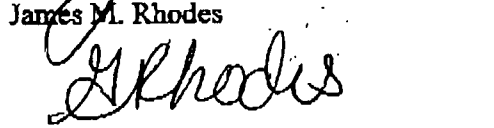
James M. & Glynda Rhodes
4730 South Fort Apache Road, Suite 300
Las Vegas, NV 89147

December 28, 2007

Nevada Cancer Institute
10000 West Charleston Boulevard, Suite 260
Las Vegas, Nevada 89135
Attention: Heather H. Murren, CFA, Chief Executive Officer

Dear Ms. Murren:

This letter is confirm in writing the \$10,000,000 (Ten Million Dollar) pledge that is being made by James M. Rhodes ("Jim") and Glynda Rhodes ("Glynda") as a gift to the Nevada Cancer Institute (the "Institute") and reflects the announcement of the \$10,000,000 (Ten Million Dollar) gift publicly made at the Institute's annual gala event on November 15, 2007.


James M. Rhodes

Glynda Rhodes