DISTRICT COURT, PITKIN COUNTY, COLORADO 506 E. Main Street, Suite 300 Aspen, Colorado 81611	
Plaintiff: **BASE VILLAGE METROPOLITAN DISTRICT NO. 2** **vs.** Defendants: **THE RELATED COMPANIES, LP, *et al*.**	**COURT USE ONLY** **_____** **Case Number: 2017 CV 30137** **Division: 5**
Attorneys for Plaintiff: Michael J. Reiser, Esq. **Reiser Law, p.c.** 1475 N. Broadway, Suite 300 Walnut Creek, California 94596 Telephone: (925) 256-0400 Facsimile: (925) 476-0304 michael@reiserlaw.com Matthew C. Ferguson, Esq. **The Matthew C. Ferguson Law Firm, P.C.** 119 South Spring, Suite 201 Aspen, Colorado 81611 Telephone: (970) 925-6288 Facsimile: (970) 925-2273 matt@matthewfergusonlaw.com Tyler Meade, Esq. Sam Ferguson, Esq. **The Meade Firm, p.c.** 12 Funston Ave., Suite A San Francisco, CA 94129 New York Office: 111 Broadway, Suite 2002 New York, NY 10006 Telephone: (415) 724-9600 Facsimile: (415) 510-2544 tyler@meadefirm.com sam@meadefirm.com	**This case is NOT subject to the simplified procedures for court action under Rule 16.1 because:** **The claims in the action exceed $100,000.00**

Michael L. Schrag, Esq.
Gibbs Law Group LLP
One Kaiser Plaza, Ste. 1125
Oakland, CA 94612
Telephone: (510) 350-9701
Facsimile: (510) 350-9701
mls@classlawgroup.com
lpl@classlawgroup.com

PLAINTIFF'S RESPONSE IN OPPOSITION TO WBA's MOTION TO COMPEL ARBITRATION

I. INTRODUCTION

White, Bear & Ankele ("WBA") played a central role in the fraudulent scheme at the heart of Plaintiff Base Village Metropolitan No. 2's ("District 2" or "Plaintiff") First Amended Complaint ("FAC"). The thin facade of normalcy covering Defendants' actions must not frustrate Plaintiff's claims to remedy the systematic abuse of a Special District and its constituents. Defendants unlawfully channeled millions of dollars from District 2 and its taxpayers to Related and other members of the COCCA enterprise. As general counsel, WBA helped the developer form and establish Districts 1 and 2 and along the way made critical misstatements and omissions about the level of risk heaped upon District 2. WBA now seeks to extricate itself from being tried alongside its co-defendants and arbitrate in two separate forums.

For at least four reasons, WBA's motion to compel arbitration ("Motion to Compel")[1] should be denied. First, the arbitration provision inserted by WBA eight years into its engagement with District 2 is unenforceable under Colorado law. The persons who signed retention letters on behalf of District 2 had fatal conflicts of interest (as did WBA) which invalidate the agreement.

[1] Plaintiff addresses WBA's motion to dismiss the action in its omnibus opposition to defendants' motions to dismiss.

District 2 could not provide informed consent to the insertion of the arbitration provision in 2013 because Related adversely dominated its board at the time. Second, WBA was acting outside the scope of its engagement with District 2 by servicing Related, not District 2. Third, no arbitration provision covers WBA's misconduct before November 2013 or from November 2016 onward. Finally, compelling arbitration would unduly complicate this case, undermining its main benefit.

WBA's motion to compel should be denied. Alternatively, District 2 should be permitted to conduct discovery focused on WBA's mid-representation insertion of an arbitration provision, which would include ordering that WBA relinquish more of District 2's files and holding an evidentiary hearing to resolve the disputed issues. *E-21 Eng'g, Inc. v. Steve Stock & Assocs., Inc.*, 252 P.3d 36, 38–39 (Colo. App. 2010).

II. RELEVANT BACKGROUND FACTS

WBA has been a key participant in the Snowmass Base Village development project ("Project") since its inception. In 2004, WBA submitted a memorandum to the Town of Snowmass Village describing the proposed dual-district structure for the two districts, asserting that the structure would operate to benefit eventual property owners by placing development risks with the developer. FAC at ¶¶ 94, 101-02. In the years that followed, WBA conspired with the Related and other Defendants to extract millions of dollars from District 2. WBA's culpable conduct included:

- Making false statements to the Town of Snowmass Village to set up the multiple district structure in the first place. FAC at ¶¶ 105, 193.
- Stating in its submission for the Districts' 2009 annual report that "no material changes in the Districts' financial status are expected to be reported," despite a default on the construction loan, and failing to disclose that the District had issued a note for $2.2 million to Base Village Owner. FAC at ¶¶ 133, 231, 232.
- Making similarly misleading statements in the annual reports between 2010 and 2016 that failed to report the lack of revenue from property taxes owing to the project stalling

and asserting that no material changes to the Districts' financial position were expected, even in the face of such material changes. FAC at ¶¶ 228, 231, 234-241.

- Assisting Related in restructuring District 2's debt and manufacturing refinancing transactions that benefitted Related over District 2. FAC at ¶¶ 169, 204, 229.
- Facilitating the transfer of taxable property from District 2 to District 1. FAC at ¶¶ 39, 106, 228.

The attorney-client relationship between WBA and District 2 began in 2005, after the Districts were organized, with an engagement letter that had no arbitration clause. Ferguson Decl., ¶ 9; *see also id*., Ex. 2. An arbitration provision did not appear until November 2013 and was included in engagement letters the next two years. *See* Motion to Compel at p.2; Ferguson Dec., Ex. 1; Exhibits A, B and C submitted in support of the Motion to Compel. Dwayne Romero signed the 2013 and 2014 agreements on behalf of District 2, and John Varghese signed the 2015 agreement. *Id.* Both Romero and Varghese served on the Districts' boards on behalf of Related. Varghese was the Director of Finance for Related subsidiary Snowmass Acquisition Company and Romero was President of Romeo Whiskey, LLC, d/b/a/ Related Colorado. FAC at ¶¶ 74, 76; Ferguson Decl., Exs. 8, 9 and 10 (conflict of interest forms filed by Romero and Varghese around the time they signed the engagement letters on behalf of the boards).

District 2 filed this action without full possession of its own records, which WBA kept, maintained and to some extent still apparently withholds. The first Board President who was not conflicted requested District 2's files from WBA in December 2017. District 2 has been trying to get its complete file (both its client file as well as all records for which WBA acted as public-records custodian) ever since to help determine, for example, if WBA understood that the District's past leadership was working for the benefit of developers, rather than the District. In July 2018, under pressure, counsel for WBA emailed Plaintiff's counsel the two sealed November 2013 and

November 2014 engagement letters,[2] along with a 2005 engagement letter, while claiming it could not locate *any* intervening engagement letters. Ferguson Decl., Ex. 1. WBA's counsel also wrote: "We will provide to you in due course all relevant documents WBA prepared for or delivered to D2 or D1 and D2 jointly." *Id.*

It was not until November 19, 2018, that WBA provided what it says are District 2's client file, although the file still seems incomplete to District 2. *See* Ferguson Decl., Ex. 5 (email exchange with Law of the Rockies); Ex. 6 (letter attached to email exchange). That was nearly a year after the formal request and the day before District 2's deadline to respond to the motions to dismiss the FAC.[3] Ferguson Decl., Exs. 3, 4. The client files do not include any additional engagement letters between District 2 and WBA or any indication why the agreement changed in 2013. The entry in the minutes from the board meeting approving the engagement of WBA in November 2013 is boilerplate. Ferguson Decl., Ex. 7. Plaintiff has found no evidence in these files that WBA disclosed to District 2 in 2013 that it was introducing an arbitration provision. Plaintiff also has no evidence that District 2 obtained outside counsel to help ensure informed consent to the new terms in 2013, or that WBA advised it to do so.[4]

III. RELEVANT LEGAL STANDARDS

Because "arbitration is a matter of contract" under Colorado law, "a party cannot be required to submit to arbitration any dispute which he has not agreed so to submit." *United*

[2] These are the sealed Exhibits A and B to WBA's motion to compel arbitration; the 2015 engagement letter is the unsealed Exhibit C.
[3] District 2 subsequently requested more time to file its opposition.
[4] *Cf.* Larry E. Ribstein, *Changing Statutory Forms*, 1 J. SMALL & EMERGING BUS. L. 11, 44-45 (1997) (flagging, when the form of a law firm changes mid-representation, the need for clear notice and informed consent because of ethical obligations and fiduciary duties and noting that "it is unclear whether the client's consent can be informed if the client is not advised by another lawyer").

Steelworkers of America v. Warrior & Gulf Navigation Co., 363 U.S. 574, 582 (1960) (quoted in *Eychner v. Van Vleet*, 870 P.2d 486, 490 (Colo. App. 1993)). Contract principles govern, so "[i]n resolving a motion to compel arbitration, the court must inquire whether there exists a valid agreement to arbitrate between the parties to the action, and whether the issues being disputed are within the scope of that agreement." *Id.* at 489 (citations omitted). *See also* C.R.S. § 13-22-206(2) ("The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate"). Moreover, the court decides whether arbitration provisions are enforceable and decides disputes about contract formation. *Estate of Grimm v. Evans*, 251 P.3d 574, 576-77 (Colo. App. 2010); *see also* C.R.S. § 13-22-207(1)(b) ("If the refusing party opposes the motion [to arbitrate], the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is *no enforceable agreement to arbitrate*.") (emphasis added).[5]

Both the existence and scope of the agreement are determined as a matter of state law. *Radil v. Nat'l Union Fire Ins. Co. of Pittsburg, PA*, 233 P.3d 688, 692 (Colo. 2010). Motions to compel arbitration may be decided on the record where the relevant facts are undisputed, but courts must "hold an evidentiary hearing to resolve challenges involving disputed material facts." *E-21 Eng'g, Inc.*, 252 P.3d at 38-39. While arbitration need not pause for all uncertainties to be resolved, "If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate," the court may intervene. C.R.S. § 13-22-206(4).

[5] If this Court does conclude that the arbitration provision is enforceable, it "may not refuse to order arbitration because the claim subject to arbitration lacks merit or because one or more grounds for the claim have not been established." C.R.S. § 13-22-207(4).

IV. ARGUMENT

Defendant WBA is relying on unenforceable arbitration provisions. If this Court nonetheless finds the provisions to be valid, they would apply to a limited temporal scope — just three years out of over eleven years of WBA's involvement in the conspiracy — and their enforcement would undermine both efficiency and equity.

A. Available Information Indicates That the Arbitration Agreements Are Invalid and Unenforceable

The arbitration provisions that WBA seeks to impose on District 2 are unenforceable. The question of whether an arbitration agreement "exists" can arise where a complete agreement appears to exist on paper, but circumstances indicate that the document does not embody a true agreement. As the Colorado Supreme Court held in *Estate of Grimm*, 251 P.3d at 577, issues such as capacity to enter into a contract go to the question of "'whether any agreement . . . was ever concluded.'" *Id.* at 576-77 (quoting *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444 n.1 (2006)). Whether a contract is thereby void or voidable does not matter: "It matters only that [a party] challenges the existence of an agreement to arbitrate. Without that agreement, the arbitrator cannot act[.]" *Estate of Grimm*, 251 P.3d at 577.

Determining whether a signatory to an agreement entered into by a government entity was authorized to enter into an agreement includes determining whether the signatory had a conflict of interest that could have interfered with her ability to act in the public interest. Colorado enacted C.R.S. § 24-18-201(1), which directs that "local government officials," such as the Districts' board members, *id.* § 24-18-102(5)-(6), "shall not be interested in any contract made by them in their official capacity." The General Assembly specified that all contracts violating this provision "shall

be voidable at the instance of any party to the contract except the officer interested therein." *Id.* § 24-18-203.[6]

1. District 2's Signatories Had Potentially Fatal Undisclosed Conflicts

A key allegation in this suit is that individuals affiliated with Related — including Dwayne Romero and John Varghese, who signed the three agreements to arbitrate — were beholden to and therefore motivated by a desire to benefit Related, rather than District 2, in collusion with other Defendants such as WBA. Such collusion makes the agreements with WBA voidable by the current District 2 board under C.R.S. § 24-18-203. *See, e.g.*, FAC at ¶¶ 4-6; Ferguson Decl., Exs. 5, 6, and 7. The District 2 board did not serve the District and its taxpayers until, facing a recall, the board resigned *en masse* in 2017 and was replaced by its first "independent" board member. FAC at ¶¶ 7, 245-51.

2. WBA Had Undisclosed Conflicts of Interest with District 2

Additionally, WBA had conflicts with its client that would independently constitute a violation of Section 24-18-203 and grounds for voiding the arbitration clause.[7] WBA's failure to turn over substantial portions of District 2's files for months clearly violated the rules of professional conduct. *See* Colorado Rule of Professional Conduct 1.16(d) ("Upon termination of

[6] Colorado's comprehensive Special District Act also notes that "any director shall disqualify himself or herself from voting on any issue in which the director has a conflict of interest unless the director has disclosed such conflict of interest in compliance with section 18-8-308, C.R.S." C.R.S. § 32-1-902(3)(b).

[7] In 2017, the new District 2 board decided not to re-engage WBA as its general counsel, finally obtaining an attorney who was not also representing District 1.

Other Colorado attorney conflicts rules are implicated here. *See, e.g.*, *People v. Heupel*, No. 15PDJ032, 2016 WL 281092, at *1 (Colo. O.P.D.J. Jan. 14, 2016) (holding that the attorney "violated Colo. RPC 1.7(a) (a lawyer shall not represent a client if the representation involves a concurrent conflict of interest); Colo. RPC 3.4(c) (a lawyer shall not knowingly disobey the rules of a tribunal); Colo. RPC 8.4(c) (a lawyer shall not engage in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Colo. RPC 8.4(d) (a lawyer shall not engage in conduct prejudicial to the administration of justice).").

representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled[.]"); *see also, e.g.*, *People v. Blase*, 106 P.3d 1057 (Colo. O.P.D.J. 2005) (attorney disbarred for, among many other abuses, violating this provision). This recent conduct supports District 2's fundamental assertion that WBA has never acted in District 2's interests. Rather, the law firm acts in service of those who sought to abuse District 2 for their own benefit. With discovery, District 2 will prove that WBA and other Defendants colluded to benefit the Defendants at District 2's expense, showing in turn that the arbitration provisions are unenforceable against the now independent district.

3. District 2 Could Not Provide Informed Consent to the Arbitration Provisions

WBA seeks to bind District 2 to an arbitration clause inserted years after WBA's representation began. WBA was fully aware that Related dominated and operated District 2 for its benefit at the time. Indeed, the FAC alleges and the evidence will establish that WBA knew that the purpose of the multiple district structure was to perpetuate a massive developer's control over special districts. District 2 has finally been wrested from developer control. WBA seeks to force Plaintiff into arbitration based on an arbitration clause inserted in a series of letters to its co-conspirators who controlled and compromised the independence of District 2's former board.

Just as adverse domination tolls the statute of limitations because one cannot reasonably expect an adversely dominated entity to bring suit, that same entity cannot be deemed to have given informed consent to arbitration. This is particularly true where, as here, WBA has brought forth no evidence of District 2's informed consent for the new arbitration provisions (there is none) or of independent counsel advising District 2 about agreeing to this new restriction on its rights.

Cf. Prudential Ins. Co. of America v. Lai, 42 F.3d 1299 (9th Cir. 1994), *cert. denied*, 516 U.S. 812 (1995), *and Renteria v. Prudential Ins. Co. of America*, 113 F.3d 1104 (9th Cir. 1997) (finding no knowing waiver of employees' right to litigate statutory claims, despite the forms including arbitration clauses). Even where courts do not apply a "knowing" standard, they will find arbitration provisions void where there is fraud. "Whether an arbitration provision in a contract is void due to the fraudulent conduct of a party is a question for a trial court." *PFW, Inc. v. Residences at Little Nell Dev., LLC*, 292 P.3d 1094, 1100 (Colo. App. 2012). Here, Plaintiff is not arguing that the agreement as a whole was fraudulently entered into — which would be a matter for an arbitrator, *Ingold v. AIMCO/Bluffs, L.L.C. Apartments*, 159 P.3d 116, 120 (Colo. 2007) — but that instead the arbitration provision was fraudulently obtained midway into the conspiracy as part of the fraudulent scheme favoring the Defendants in this case, including WBA.

The equities also support denying WBA's effort to fragment parties and claims based on a clause inserted without informed consent by an adversely dominated board in the context of fraud. *Cf.* C.R.S. § 13-22-206(1) (recognizing that that arbitration agreements are subject to grounds "at law or in equity for the revocation of a contract").

B. WBA Was Acting Outside the Scope of Its Engagement Letter by Essentially Working on Behalf of the Developers

The FAC alleges that a key component of WBA's complicity in the illegal schemes at issue was using its position as general counsel to the dominated District 2 to benefit other defendants. Such unlawful acts cannot constitute WBA's "services" to which a valid arbitration provision would apply.

For example, on at least one occasion, Snowmass Acquisition Company, a Related subsidiary, guaranteed payment to WBA on behalf of District 2. Snowmass Acquisition Company

signed its own signature block on a Bond Fee Agreement entered into by WBA and District 2 in October 2016, directly before the 2016 refinancing that further compromised District 2. Ferguson Decl., Ex. 11. The standard engagement letter presumably did not cover the full scope of WBA's work on the refinancing. That Bond Fee Agreement gives lip service to WBA's service on behalf of District 2 and then notes that Snowmass Acquisition Company "agrees to pay the fees and expenses of WBA as described above." What the bond fee agreement describes "above" is that Snowmass Acquisition Company guarantees WBA's fees to the tune of $95,000 if certain conditions were met; in other words, if District 2 did not pay, Snowmass Acquisition Company would. Acts such as this, demonstrate how WBA's and the developer's interests intertwined, and that WBA was acting outside the scope of the November 18, 2015, agreement and its arbitration provision.

C. Pre-Existing Claims Are Outside the Scope of the Arbitration Clauses in the 2013, 2014, and 2015 Engagement Letters

WBA's arbitration clauses do not apply retroactively to the misconduct alleged against that firm stretching back several years.

WBA argues that: "Each claim against WBA rests upon the services provided by WBA, including services [from] 2013 through 2016. Accordingly, the claims arose from services rendered pursuant to fee agreements subject to arbitration clauses, which WBA requests that the Court compel." Motion to Compel at p.2; *see also* Ferguson Decl., Ex. 1 (Email, July 3, 2018, WBA counsel to Plaintiff's counsel, stating ambitiously that "I believe all of the claims District 2 has asserted against WBA are subject to arbitration"). But this position conflicts with the

provisions themselves, which apply only "with respect to services rendered *pursuant to this engagement agreement*" (emphasis added).

This Court, not an arbitrator, must determine whether the dispute falls within the scope of the relevant arbitration clause. To do so, "a court must examine the wording of the clause and the terms of the contract in which the clause is included. The court must strive to ascertain and give effect to the mutual intent of the parties and must consider the subject matter and purposes to be accomplished by the agreement." *Eychner*, 870 P.2d at 490 (internal citations omitted). By doing so, the court ensures that the "reasonable expectations" of the parties would have encompassed the claim in question. *See City & Cty. of Denver v. District Court*, 939 P.2d 1353, 1363 (Colo. 1997) (citation and quotations omitted).

While the motion seeks to compel arbitration of all claims against it, WBA concedes that it began representing District 2 in 2005. The arbitration provision was not inserted until November 2013, long after the firm had performed many of the acts giving rise to its liability. The 2013 engagement letter, for example, was entered into shortly before the 2013 refinancings, but much of the groundwork for the 2013 refinancing was laid before the engagement letter was signed by Related's board members. Moreover, WBA has not provided a letter after the November 2015 version, so acts arising from the services provided after that agreement expired simply cannot be subject to arbitration.

An arbitration agreement introduced into an ongoing relationship only covers prior events if the text and circumstances of the agreement make clear that the parties intended the agreement to apply retroactively. *See, e.g., Sec. Watch, Inc. v. Sentinel Sys., Inc.*, 176 F.3d 369, 372 (6th Cir. 1999) (refusing to apply arbitration clause to dispute based on conduct occurring under prior

agreements absent language indicating the parties intended retroactive application); *Bolsa Res., Inc. v. AGC Res., Inc.*, 2011 WL 6370409, at *9 (D. Colo. Dec. 20, 2011) ("[T]here is no indication that the parties intended the arbitration agreement to apply retroactively."); *Kenworth of Dothan, Inc. v. Bruner-Wells Trucking, Inc.*, 745 So. 2d 271, 276 (Ala. 1999) (arbitration clause contained no language indicating retroactive intent, in contrast to a situation where, for example, the clause says "this agreement applies to all transactions occurring before or after this agreement" or to "all business with us"). Indeed, in a case involving a similarly-drafted arbitration agreement, the Mississippi Supreme Court found that a clause requiring arbitration of "disputes or controversies *arising under this agreement*" could not be read to cover pre-existing claims. *B.C. Rogers Poultry, Inc. v. Wedgeworth*, 911 So. 2d 483, 488 (Miss. 2005) (emphasis in *B.C. Rogers*). Because the arbitration provisions in each of WBA's engagement letters are clearly limited to disputes arising from services rendered "pursuant to this fee agreement," none applies to WBA's actions before November 13, 2013, or potentially, depending on discovery, after 2015. Indeed, given the ethical standards that govern the attorney client relationship, WBA is on shaky ground in suggesting the retroactive arbitrability of its bad acts.

WBA's only other argument relating to conduct pre-dating the agreements is its assertion that any such claims are time-barred. Motion to Compel at pp. 7-8. That argument is not an appropriate basis for a motion to compel arbitration. WBA and its co-defendants can litigate that question on the merits with the benefit of discovery in this Court. As a result, the only claims WBA could sever and arbitrate (if the Court does not ultimately find the provisions unenforceable) are those based entirely on WBA's conduct after November 13, 2013.

D. Arbitration Would Unduly Complicate the Case, Burdening WBA's "Client" and Undermining the Main Benefits of Arbitration

While Colorado supports arbitration where appropriate as "a convenient, speedy, and efficient alternative to litigation," if arbitration "unreasonably interferes with court access" and causes "increases in costs and delay," the underlying goals of arbitration are foiled. *Huizar v. Allstate Ins. Co.*, 952 P.2d 342, 348-49 (Colo. 1998).

Here, Plaintiff alleges unlawful conduct by WBA and several other defendants dating to the mid-2000s and continuing for more than a decade into 2016. In such a case, dividing up claims that begin before November 2013 and after November 2016 and sending some parts to the court and some parts to arbitration would thwart the convenience, speed, and efficiency of arbitration. It would also waste WBA's, Plaintiff's, and the court's time and resources. It will duplicate discovery, which will still need to be conducted in this Court for the other defendants while WBA goes to arbitration on a fraction of the claims against it. WBA and non-party witnesses would have to appear in both the arbitration and this action.

Moreover, WBA seeks to categorize unjust enrichment and accounting claims as "fee disputes" subject to the Colorado Bar Association Legal Fee Arbitration Committee and others as claims related to legal services to be sent to the Judicial Arbiter Group. Motion to Compel at p.8. These are not the types of fee disputes handled by a bar association — voluntarily.[8] Resolving a single action in three forums is not speedy, convenient or efficient. WBA cites no precedent for so categorizing these claims (in brief, neither claim disputes the amount of the fees WBA charged).

[8] https://www.cobar.org/For-Members/Committees/Legal-Fee-Arbitration-Committee

The equities here resemble courts' considerations splitting up cases pursuant to forum selection clauses. *See, e.g., In re LMI Legacy Holdings, Inc.*, 553 B.R. 235, 255 (Bankr. D. Del. 2016) (denying motion to sever single claim subject to forum selection clause from other claims asserted against that defendant and others because severance would be contrary to private interests of non-contracting defendants and would result in "substantial harm to judicial economy").

The claims in this case should not be illogically and inefficiently divided solely to serve WBA's desire to impede this litigation. Claims would be split both horizontally — separating claims against WBA from those against the other Defendants, despite a predominance of shared common facts and violations alleged — and vertically, unnaturally isolating three years of violations from the rest. Colorado could not have intended such a result when it enacted the Uniform Arbitration Act.

IV. CONCLUSION

WBA's motion flies in the face of ethics, law, and equity and should be denied.

DATED this 30th day of November 2018.

REISER LAW, P.C.

/s/ Michael J. Reiser
Michael J. Reiser, # 16161
1475 N. Broadway, Suite 300
Walnut Creek, CA 94596
Telephone: (925) 256-0400
E-mail: michael@reiserlaw.com

THE MATTHEW C. FERGUSON LAW FIRM, P.C.

/s/ Matthew C. Ferguson
Matthew C. Ferguson, #25687
119 South Spring, Suite 201
Aspen, Colorado 81611
Telephone: (970) 925-6288
E-mail: matt@matthewfergusonlaw.com

GIBBS LAW GROUP, LLP

/s/ Michael Schrag
Michael Schrag (CA State Bar # 185832)
Linda Lam (CA State Bar # 301461)
505 14th Street, Suite 1110
Oakland, CA 94612

THE MEADE FIRM, P.C.

/s/ Tyler Meade
Tyler Meade (CA State Bar # 160838)
12 Funston Ave., Suite A
San Francisco, CA 94129
Telephone: (415) 724-9600

Telephone: (510) 350-9718
E-mail: mls@classlawgroup.com
E-mail: lpl@classlawgroup.com

E-mail: tyler@meadefirm.com
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on November 30, 2018, a true and correct copy of the foregoing **PLAINTIFF'S RESPONSE IN OPPOSITION TO WBA's MOTION TO COMPEL ARBITRATION** was filed and served *via* COLORADO COURTS E-FILING upon the following:

DORSEY & WHITNEY LLP
Andrea Ahn Wechter
Eric R. Sherman, Esq.
Vernle C. ("Skip") Durocher, Esq.
1400 Wewatta Street, Suite 400
Denver, CO 80202
Telephone: (303) 629-3400
wechter.andrea@dorsey.com
Sherman.eric@dorsey.com
Durocher.skip@dorsey.com
Attorneys for US Bank National Association

HOLLAND & HART LLP
Christopher James Heaphey
Tarn Udall
600 East Main Street, Suite 104
Aspen, CO 81611
Telephone: (970) 925-3476
CJHeaphey@hollandhart.com
CTUdall@hollandhart.com
Attorneys for The Related Companies, LP; Related WestPac Realty Sales LLC; Base Village 13 Owner LLC; Snowmass Acquisition Company, LLC; Snowmass Related Holdco, LLC; Snowmass Holdco BV, LLC; Related Colorado Real Estate

FAEGRE BAKER DANIELS LLP
Brandee L. Caswell
Katharine M. Gray
Rachel L. Burkhart
1700 Lincoln Street, Suite 3200
Denver, CO 80203
Telephone: (303) 607-3500
Brandee.Caswell@FaegreBD.com
Katie.Gray@FaegreBD.com
Rachel.Burkhart@FaegreBD.com
Attorneys for D.A. Davidson & Co.

LAW OF THE ROCKIES
Marcus J. Lock
Jacob A. With
Austin J. Chambers
525 N. Main Street
Gunnison, CO 81230
Ph: 970-641-1903
Fax: 970-641-1943
mlock@lawoftherockies.com
jwith@lawoftherockies.com
achambers@lawofherockies.com
Attorneys for White Bear Ankele Tanaka & Waldron Professional Corporation

DAVIS GRAHAM & STUBBS, LLP
Michael J. Gallagher
Benjamin B. Strawn
1550 17th Street, Suite 500
Denver, CO 80202
Phone: (303) 892-9400
Fax: (303) 893-1379
mike.gallagher@dgslaw.com
ben.strawn@dgslaw.com
Attorneys for Snowmass Ventures, LLC

MOSS & BARNETT, P.A.
Thomas J. Shroyer
Stuart V. Campbell
150 South Fifth Street, Suite 1200
Minneapolis, MN 55402
Telephone: (612) 877-5000
Facsimile: (612) 877-5999
Email: Tom.shroyer@lawmoss.com
Email: Stuart.Campbell@lawmoss.com
Attorneys for Clifton Larson Allen, LLP

OATES, KNEZEVICH, GARDENSWARTZ, KELLY & MORROW, P.C.
David B Kelly
533 E. Hopkins Avenue, Suite 201
Aspen, Colorado 81611
Telephone: (970) 920-1700
Facsimile: (970) 920-1121
Email: dbk@okglaw.com

HALL & EVANS LLC
Josh Berry, Esq
John Bolmar, Esq
1001 17th Street2
Suite 300
Denver, CO 80202
Telephone: (303) 628-3363
Facsimile: (303) 628-3368
E-mail:berryj@hallevans.com
E-Mail: bolmerj@hallevans.com
Attorneys for North Slope Capital Advisors

WHEELER TRIGG O'DONNELL LLP
Kathryn A. Reilly
Brett M. Mull
370 Seventeenth Street, Suite 4500
Denver, CO 80202
Telephone: (303) 244-1800
Facsimile: (303) 244-1879
E-mail: mull@wtotrial.com
E-mail: reilly@wtotrial.com
Attorneys for Lowe Enterprises Real Estate Services, Inc.; Destination Snowmass Services, Inc.

/s/ Ryan J. Dougherty
Ryan J. Dougherty