Tyler S. LaMarr (13784)
Julie Ladle (11223)
MILLER HARRISON, LLC
5292 S College Drive, Ste 304
Murray, Utah 84123
Telephone: (801)692-0793
tlamarr@millerharrisonlaw.com
julie@millerharrisonlaw.com
Attorneys for Defendants

IN THE FOURTH JUDICIAL DISTRICT COURT
IN AND FOR UTAH COUNTY, STATE OF UTAH

PIONEER ADDITION NEIGHBORHOOD ASSOCIATION, INC., a Utah non-profit corporation, AUTUMN RIDGE HOMEOWNERS ASSOCIATION, INC., a Utah non-profit corporation, Plaintiffs, v. EAGLE MOUNTAIN PROPERTIES COMMUNITIES MASTER ASSOCIATION, INC. D/B/A EAGLE MOUNTAIN MASTER ASSOCIATION, a Utah non-profit corporation, MONTE VISTA RANCH, L.C., a Utah limited liability company, Defendants.	**MOTION TO DISMISS COMPLAINT** Judge: Kasey L. Wright Civil No. 250405926

Defendants Eagle Mountain Properties Communities Master Association, Inc. d/b/a Eagle Mountain Master Association and Monte Vista Ranch, L.C., by and through counsel and pursuant to Utah R. Civ. P. 12(b), hereby file this Motion to Dismiss Plaintiff's Complaint.

INTRODUCTION AND RELIEF REQUESTED

Eagle Mountain Properties is a master planned community ("Master Community") located in Eagle Mountain, Utah. The development of the Master Community began in the early 2000s (nearly 25 years ago) and the Master Community is still being developed.

In March 2023, the Plaintiffs, Pioneer Addition Neighborhood Association, Inc. ("Pioneer Addition") and Autumn Ridge Homeowners Association, Inc. ("Autumn Ridge"), and a third association (Colonial Park Subdivision Neighborhood Association Inc. ("Colonial Park") filed a lawsuit against the Defendants ("Prior Lawsuit"). That Prior Lawsuit contained claims for quiet title and declaratory judgment related to the allegations that the Master Declaration was improperly recorded. Defendants filed a Motion to Dismiss which was granted by Judge Kraig Powell in September 2024. The basis of the dismissal was lack of subject matter jurisdiction because Pioneer Addition, Autumn Ridge, and Colonial Park had not obtained approval of 75% of their respective members to file the Prior Lawsuit, which requirement is contained in their respective community declarations.

After the dismissal, Pioneer Addition, Autumn Ridge, and Colonial Park held a vote of their respective members. Pioneer Addition and Autumn Ridge allegedly obtained the necessary 75% approval; Colonial Park did not. Afterwards, Pioneer Addition and Autumn Ridge filed the instant Complaint. The Complaint contains the same causes of action as the Prior Lawsuit for quiet title (First Cause of Action) and declaratory judgment (Second Cause of Action). The Complaint also contains two (2)

new causes of action – breach of contract (Third Cause of Action) and breach of Utah Code §57-8a-502 (Fourth Cause of Action).

The Plaintiffs allege to have obtained a 75% owner vote in an effort to correct the standing issues relating to the Prior Lawsuit. However, the refiled Complaint is also improperly brought and should therefore be dismissed. Defendants respectfully request this Court grant the Motion to Dismiss for the following reasons:

1. The Third and Fourth Causes of Action are derivative in nature and the requirements of a derivative action have not been pled or met by Plaintiffs;
2. The allegations in the Third and Fourth Causes of Action are without merit;
3. The Plaintiffs have failed to obtain 75% owner approval for the Third and Fourth Causes of Action;
4. The Plaintiffs have failed to abide by ADR requirements as to the Third and Fourth Causes of Action;
5. Plaintiffs have failed to show a prima facie quiet title case (First Cause of Action);
6. Plaintiffs have failed to follow statutory requirements for a declaratory judgment (Second Cause of Action);
7. Plaintiffs have failed to join necessary parties for their First and Second Causes of Action; and,
8. Plaintiffs are seeking amounts barred by the statute of limitations.

Each of these arguments is addressed in the Argument section, below.

LEGAL STANDARD

Utah R. Civ. P. 12(b) states that the following defenses may be made by motion: "(1) lack of jurisdiction over the subject matter" and "(6) failure to state a claim upon which relief can be granted, and (7) failure to join an indispensable party." In a motion to dismiss for failure to state a claim upon which relief can be granted, courts must look at the sufficiency of the facts pled in the complaint and not the conclusions stated. *Bennett v. Jones, Waldo, Holbrook & McDonough*, 2003 UT 9, ¶ 60. Courts must review the complaint in the light most favorable to the plaintiff and indulge all reasonable inferences in the plaintiff's favor. *Mounteer v. Utah Power & Light Co.,* 823 P.2d 1055, 1058 (Utah 1991).

However, the allegations in the Complaint are not deemed to be true for a factual challenge to subject matter jurisdiction. *Granite Sch. Dist. v. Young*, 537 P.3d 225, 232 (Utah 2023). Additionally, "[a] district court can consider evidence outside the pleadings on a rule 12(b)(1) motion [lack of subject matter jurisdiction] without converting it to a motion for summary judgment." *Nevares v. Adoptive Couple*, 2016 UT 39, ¶ 25, 384 P.3d 213, 220.

ARGUMENT

Point I

Plaintiffs' Third Cause of Action (Breach of Contract, in the Alternative) and Fourth Cause of Action (Breach of Utah Code Ann. §57-8a-502, in the Alternative – Against Developer) Should be Dismissed

A. The Third and Fourth Causes of Action are Derivative in Nature and are Improperly Brought

"A shareholder must bring an action to enforce a right of the corporation as a derivative action." *Dansie v. City of Herriman* 2006 UT 23, ¶ 9, 134 P.3d; *see also* Utah R. Civ. P. 23A. Derivative actions attempt to enforce the rights belonging to a corporation. *Warner v. DMG Color Inc.*, 2000 UT 102, ¶ 12, 20 P.3d 868. Because the causes of action belong to the corporation, shareholders may only sue on the corporation's behalf. *Id.*

The Utah Supreme Court has held that "[c]laims of mismanagement, breach of fiduciary duties, and appropriation or waste of corporate opportunities are claims that the corporation has been injured," making them derivative claims. *Id.* The Utah Supreme Court has also affirmed dismissal of breach of fiduciary duty, declaratory relief, and self-dealing claims on the grounds that the claims were derivative and arose from corporate injuries. *Dansie,* 2006 UT at ¶ 9.

Plaintiffs' allege in their Third and Fourth Causes Action that assessments related to the clubhouse and to payment of Board members were wrongfully assessed. Based on those allegations, Plaintiffs claim breach of fiduciary duties, self-dealing, misuse of funds, and bad faith. *See generally,* Complaint ¶¶133-151. Based on *Warner* and *Dansie*, these claims are derivative claims. The claims relate to harm to the corporation itself, not to any individual member.

A shareholder may sue in his individual capacity in a direct action only when "he can show that he . . . was injured in a manner distinct from the corporation." *Dansie,* 2006 UT at ¶ 10. "A shareholder does not sustain an individual injury because a corporate act results in disparate treatment among shareholders. Rather, the

shareholder must examine his injury in relation to the corporation and demonstrate that the injury was visited upon him and not the corporation." *Id.* at ¶ 13 (internal citations omitted).

In this case, Plaintiffs allege no individual injury, harm, or damages whatsoever. Instead, the Third and Fourth Causes of Action simply allege that costs related to the clubhouse and payments to Board members were improperly assessed to the members of the Master Association. Such assessments were levied against every member, including the members of Autumn Ridge and Pioneer Additional plus all members in other sub-associations not included as parties to the Complaint. Because any claims of damage are in no way distinct from alleged harm to the corporation, the claims are derivative in nature.

Derivative claims must meet statutory prerequisites before filing. Utah Code §16-6a-612(3)(a) requires that a complainant make a written demand on the nonprofit corporation to take action and generally wait ninety (90) days after the demand before filing a derivative proceeding. The Plaintiffs made no demand on the Defendants related to the claims contained in the Third and Fourth Causes of Action before filing their Complaint. As such, these causes of action must be dismissed for failure to comply with Utah Code §16-6a-612(3)(a).

Still further, Utah Code §16-6a-612(3)(b) requires that the derivative complaint be verified and allege with particularity the demand to obtain action by the nonprofit corporation. Plaintiffs' Complaint is neither verified nor contains statements related to a prior demand. And because there was no prior demand made, the Complaint cannot

contain such statements. As such, the Third and Fourth Causes of Action must be dismissed for failure to comply with Utah Code §16-6a-612(3)(b).

Even further, Utah Code §16-6a-612(3)(c) requires the derivative complaint comply with Utah R. Civ. P. 23A. Such rule requires that the complaint contain statements as to (1) what right the corporation could have enforced and did not; (2) that the plaintiff was a shareholder or member of the corporation; (3) that the action is not collusive to confer improper jurisdiction; (4) the plaintiff's efforts, if any, to obtain the desired action; and (5) the reasons for failure to obtain the action or for not making the effort. *See* Utah R. Civ. P. 23A(a). Plaintiffs' Complaint does not, and cannot, contain such statements. As such, the Third and Fourth Causes of Action must be dismissed for failure to comply with Utah R. Civ. P. 23A.

B. The Allegations in the Third and Fourth Causes of Action are Without Merit.

The allegations in the Third and Fourth Causes of Action relate to the claims that the Master Association cannot assess for costs related to the clubhouse and that Board members cannot be compensated for their service. However, a plain reading of the Master Declaration shows that such allegations are untrue and should be dismissed.

1. Expenses Related to the Clubhouse are "Common Expenses"

Subsection 12.1(a) of the Master Declaration (attached as Exhibit H to the Complaint) states as follows:

> 12.1 **Association Expenses**
> (a) **Common Expenses.** Except as the Governing Documents otherwise specifically provide, "Common Expenses" as used in this Master Declaration shall mean and refer to all of the expenses that the Master Association incurs, or expects to incur, in connection with (i) all Telecommunications Services which the Master Association has

> contracted to uniformly provide to all Units; (ii) the ownership, maintenance, and operation for the Area of Common Responsibility, and otherwise for the general benefit of the Owners. Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate. In addition, Board members may receive a reasonable stipend for costs incurred to attend and participate in Board meetings. Such costs shall be deemed a Common Expense.

Emphasis added.

The Master Declaration defines the "Area of Common Responsibility" as "all of the properties and facilities for which the Master Association has responsibility under the Governing Documents or for which the Master Association otherwise agrees to assume responsibility." Section 3.1 of the Master Declaration. The "Area of Common Responsibility" is also defined as "(a) the Common Area…and (e) any property and facilities that the Founder or any Founder Affiliate owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Master Association and its Members." Section 9.2 of the Master Declaration.

"Common Area" is defined in the Master Declaration as "any property and facility that the Master Association owns of in which is otherwise holds possessory or use rights for the common use or benefit of more than one Unit." Section 3.1 of the Master Declaration. This definition coincides with Utah Code §57-8a-102(5) which defines "common areas" as property that an association owns, maintains, repairs, or administers.

The clubhouse and the land on which it is built is owned by the Master Association. *See* Utah County Recorder's Office ownership information for Parcel 59:044:0152, attached hereto as Exhibit 1. The clubhouse is available for use by all

owners. Further, the offices contained in the clubhouse are available for use by owners and sub-association Boards. *See generally,* Complaint ¶64-73. Based on these facts and circumstances, the clubhouse is common area pursuant to Section 3.1 of the Master Declaration and Utah Code §57-8a-102(5). The clubhouse is also part of the "Area of Common Responsibility" pursuant to Section 3.1 and 9.2 of the Master Declaration. Pursuant to Section 21.1(a) of the Master Declaration, expenses incurred in the ownership, maintenance, and operation of the "Area of Common Responsibility" are common expenses. And common expenses are to be included in the yearly budget and become part of the yearly assessments. Section 12.2 of the Master Declaration.

Because the expenses related to the clubhouse are clearly common expenses, any claim to the contrary by the Plaintiffs should be rejected.

2. The Master Declaration Specifically Authorizes Payments to Board Members

The second allegation the Plaintiffs make in their Third and Fourth Causes of Action is that payments to Board Members are impermissible. However, the Master Declaration specifically authorizes such payments.

Subsection 12.1(a) of the Master Declaration states as follows:

> 12.1 **Association Expenses**
> (a) **Common Expenses.** Except as the Governing Documents otherwise specifically provide, "Common Expenses" as used in this Master Declaration shall mean and refer to all of the expenses that the Master Association incurs, or expects to incur, in connection with (i) all Telecommunications Services which the Master Association has contracted to uniformly provide to all Units; (ii) the ownership, maintenance, and operation for the Area of Common Responsibility, and otherwise for the general benefit of the Owners. Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board

> finds necessary or appropriate. In addition, Board members may receive a reasonable stipend for costs incurred to attend and participate in Board meetings. Such costs shall be deemed a Common Expense.

Emphasis added.

This section in the Master Declaration clearly allows for payments to Board members, and clearly categorizes them as common expenses. Because such costs are common expenses, it is completely proper for them to be included in the annual budget and become part of the annual assessments assessed to owners.

Under Utah Code §57-8a-228(5) (outlining the hierarchy of governing documents), the Master Declaration trumps any conflicts with the bylaws. As such, because the Master Declaration clearly allows for payments to Board members, any claim to the contrary by the Plaintiffs is untenable as a matter of law.

In sum, because the costs related to the clubhouse are common expenses and because the Master Declaration permits payments to Board members, the Third and Fourth Causes of Action (which contain claims to the contrary) should be dismissed.

C. The Plaintiffs Have Failed to Obtain 75% Owner Approval for the Third and Fourth Causes of Action

Both the Pioneer Addition Declaration and the Autumn Ridge Declaration contain a section entitled "Litigation" that requires the respective Plaintiff to obtain approval of 75% of the owners before filing a lawsuit. *See* Section 8.7 of the Pioneer Addition Declaration; Section 9.7 of the Autumn Ridge Declaration. The obtaining of such approval is a condition precedent to the Plaintiffs' ability to sue and meeting subject matter jurisdiction requirements.

In the Prior Lawsuit, Plaintiffs failed to obtain this requisite 75% approval. This failure was the basis of the Court's dismissal of the Prior Lawsuit. In its dismissal, the Court stated:

> Plaintiffs have not invoked any valid exception to the requirement that they each obtain a vote approving this lawsuit by 75 percent of their members. For this reason, the Court lacks subject matter jurisdiction based on the current facts of this case, and Defendants are entitled to dismissal of the Amended Complaint, without prejudice.

See Ruling and Order on Motion to Dismiss Amended Complaint, September 10, 2024, p. 9, attached hereto as Exhibit 2.

After the dismissal, the Plaintiffs do allege to have sought approval of their respective owners. An email from Plaintiffs' counsel to Defendants' counsel supports this allegation. *See* email from Monica Gonzalez to Tyler LaMarr, dated April 11, 2025, attached hereto as Exhibit 3. Plaintiff's counsel stated that proper approval was obtained by Pioneer Addition and Autumn Ridge.

Along with the email, Plaintiffs' counsel attached a copy of the complaint "Pioneer Additional and Autumn Ridge are prepared to file." *See* Exhibit 3. However, that complaint only contained the same two (2) causes of action as the Prior Lawsuit – quiet title and declaratory judgment. *Id.* The current Complaint contains four (4) causes of action. Those two (2) additional causes of action – the Third and Fourth Causes of Action – were added after the vote of the owners was alleged to have been taken, and were therefore not voted on. Without that required vote, the Third and Fourth Causes of Action must be dismissed for lack of subject matter jurisdiction, just as in the Prior Lawsuit.

D. The Plaintiffs Have Failed to Abide by ADR Requirements as to the Third and Fourth Causes of Action.

The respective declarations for the Plaintiffs contain provisions requiring "Dispute Resolution and Limitation on Litigation." *See* Section 9.5 of the Autumn Ridge Declaration; Section 9.5 of the Pioneer Addition Declaration for Phases VI, VII-A and VII-B.[1]

Such sections obligate the Plaintiffs to participate in a dispute resolution process before filing a lawsuit against the Defendants. Specifically, Section 9.5.1 of each of the respective declarations states as follows:

> Each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection 9.5.1.1[sic] above, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 9.5.2.1 in a good faith effort to resolve such Claim. Compliance with this Article is fundamental, material, jurisdictional and an express condition precedent to the initiation and continuation of any litigation or administrative action.

(Emphasis added).

The dispute resolution procedures include sending a notice to the other party, negotiating in good faith, and participating in mediation. *Id.* at Section 9.5.2.

Still further, the Master Declaration contains a similar dispute resolution requirement. Section 18.1 of the Master Declaration states as follows:

> Each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b) of this Section, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

[1] Pioneer Addition CCRs for Phase VI, Utah County Recorder Entry 130260:2006, October 2, 2006; Pioneer Addition Phase VII-A, Entry 24757:2007, February 16, 2006; Phase VII-B, Entry 3286.4:2008, March 20, 2006.

(Emphasis added).

Section 18.2 requires the same three (3) conditions precedent before filing a lawsuit as do the Autumn Ridge Declaration and the Pioneer Addition Declaration – provide notice, negotiate in good faith, and mediate.

While Plaintiffs have mediated with the Defendants, the allegations contained in the Third and Fourth Causes of Action have never been mediated and notice of such allegations have never been provided to the Defendants. In fact, the first time the Defendants became aware of allegations regarding improper assessments related to the clubhouse and of improper payments to Board members was when the Defendants received the Complaint. Again, the allegations were not contained in the complaint provided to the Defendants in April 2024, which the Plaintiffs stated they were "prepared to file." *See* Exhibit 3. As a mandatory pre-requisite to include the Third and Fourth Causes of Action in their re-filed complaint, Plaintiffs needed to first mediate the claims and obtain 75% owner approval. Because the Plaintiffs have not followed the pre-requisites, the Third and Fourth Causes of action should be dismissed. This Court has no subject matter jurisdiction over those causes of action.

Point II

Plaintiffs' First Cause of Action (Quiet Title) Should Be Dismissed for Failure to Show a Prima Facie Quiet Title Case

Plaintiffs' First Cause of Action is for quiet title. A quiet title claim is one to quiet an existing title against an adverse or hostile claim of another. *WDIS, LLC v. Hi-Country Ests. Homeowners Ass'n*, 2019 UT 45, ¶ 42. "A quiet title claim fails if the plaintiff cannot establish valid title or some other valid and existing property right." *Id.* Courts

must analyze a quiet title claim in two (2) steps. First the court must determine whether the plaintiff has established a prima facie quiet title case. “A prima facie quiet title case has two elements: (1) title or other valid interest to the property at issue and (2) a claim of an adverse estate or interest in the property.” *Id.* Second, if a prima facie quiet title case exists, the court must determine whether the plaintiff’s interests are superior to the interests of the other named claimants. *Id.* at ¶43.

Plaintiffs have failed to establish a prima facie quiet title case. Plaintiffs are seeking an order “quieting title to the lots, units, and parcels in Pioneer Addition and Autumn Ridge in favor of the Plaintiffs and the respective property owners.” *See* Complaint, ¶113(a), emphasis added. Plaintiffs do not hold title to the “lots, units, and parcels” to which they are seeking to quiet title. They admit as such their Complaint – the lots, units, and parcels are owned by the "respective property owners." *Id.* Those property owners are not parties to the Complaint.[2] As such, the Plaintiffs do not meet the first element of a prima facie quiet title case and their claim for quiet title should be dismissed. *WDIS,* 2019 UT at ¶42.

Plaintiffs also seek an order "quieting title to any common area within Pioneer Addition and Autumn Ridge in favor of the Plaintiffs.” *Id.* at ¶113(a). However, the Plaintiffs do not allege anywhere in their Complaint that they own common area within their respective communities. By failing to allege "title or other valid interest to the

[2] While Plaintiffs state in passing in their Complaint that they have received assignments of claims from 576 homeowners (Complaint, ¶104), Plaintiffs make no clear claim they are bringing the lawsuit directly on behalf of those owners. And even if Plaintiffs claim to be doing so, there are still 189 lot owners (= 649 lot owners in Pioneer Addition (*Id.* at ¶6) plus 116 lot owners in Autumn Ridge (*Id.* at ¶16) minus 576 assignments) that Plaintiffs do not have assignments for but for whose lots Plaintiffs are still seeking to quiet title.

property at issue" the Plaintiffs also fail to meet the first element of a prima facie case. *WDIS,* 2019 UT at ¶43.

Furthermore, Utah Code Ann. §10-9a-606(4) establishes that:

> (4) When a plat contains a common area or common area and facility:
> (a) for purposes of assessment, each parcel that the plat creates has an equal ownership interest in the common area or common area and facility within the plat, unless the plat or an accompanying recorded document indicates a different division of interest for assessment purposes; and
> (b) each instrument describing a parcel on the plat by the parcel's identifying plat number implicitly includes the ownership interest in the common area or common area and facility, even if that ownership interest is not explicitly stated in the instrument.

Thus, it is the titled parcel owners who are the proper parties to the Complaint as to the common areas, and not the Plaintiffs.

Further, Plaintiffs have also failed to name all persons with an interest in the properties for which quiet title is sought, including owners and mortgagees.[3] Utah R. Civ. P. 9(b)(2) implicitly requires that a quiet title action include all known persons, as the Rule expressly indicates a way to describe unknown persons “claiming any right, title, estate or interest” in the property at issue. It can only be reasonably inferred that *known* persons "claiming any right, title, estate, or interest" to a property should also be included as parties to a quiet title action. This topic will also be further discussed below as it also applies to declaratory judgment.

Because the Plaintiffs have failed to show a prima facie quiet title case, the First Cause of Action should be dismissed.

[3] For purposes of this Motion, the term “mortgagees” includes those with an interest in any subject lot.

POINT III

Plaintiffs' Second Cause of Action (Declaratory Judgment) Should be Dismissed For Failure to Follow Statutory Requirements

A. Failure to Follow Utah Declaratory Judgment Act

Plaintiffs' Second cause of action is for declaratory judgment. Declaratory judgments are governed by the Utah Declaratory Judgment Act (Utah Code §78B-6-401, et seq). "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and a declaration may not prejudice the rights of persons not parties to the proceeding." Utah Code §78B-6-403 (emphasis added).

Plaintiffs have failed to meet this requirement by omitting the individual owners in Pioneer Addition and Autumn Ridge.[4] Such owners clearly have a right and interest in whether they are members of the Master Association and whether their properties are subject to the Master Declaration. Yet the owners are not parties to this matter.

Plaintiffs have also failed to meet this requirement by omitting the respective mortgagees in Pioneer Addition and Autumn Ridge. Mortgagees clearly have an interest in the properties that pertain to the declaratory action. Specifically, the Master Declaration states as follows:

> If a Unit or property is made subject to a mortgage, deed of trust, or other form of security instrument affecting title to a Unit ("Mortgage"), then the holder, Trustee or beneficiary of that Mortgage or Deed of Trust (the "Mortgagee") also has an interest in the administration of the Community.

[4] As stated in Footnote No. 4, Plaintiffs make no clear claim they are bringing the lawsuit directly on behalf of those owners from whom they have assignments. And even if Plaintiffs claim to be doing so, there are still 189 lot owners for whom Plaintiffs do not have assignments for.

> The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 15.

Section 2.6 of the Master Declaration (emphasis added). If mortgagees are given explicit rights in the Master Declaration, they are certainly interested parties as those rights will be affected if the Master Declaration is deemed to be invalid.

Furthermore, Utah Code Ann. § 78B-6-404 provides that "[t]he court may refuse to render or enter a declaratory judgment or decree where a judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." Without inclusion of all persons claiming an interest in the properties, any declaratory judgment would not terminate the uncertainty or controversy alleged in the Complaint. Thus, Plaintiffs' declaratory judgment claim should be dismissed.

B. Failure to Follow Derivative Action Requirements.

In addition to failure to follow the declaratory action requirements, Plaintiffs' Second Cause of Action should be dismissed for failure to follow derivative action requirements. Plaintiff's Second Cause of Action contains the same arguments as to improperly assessing for clubhouse expenses and the payment of Board members as are contained in their Third and Fourth Causes of Action. As outlined in Point I, Section A, above, these claims are claims belonging to the corporation and are derivative claims. The court in *Dansie* specifically held that declaratory actions related to such claims were derivative in nature. *Dansie,* 2006 UT at ¶ 9. Because Plaintiffs have failed to comply with Utah Code §16-6a-612 and Utah R. Civ. P. 23A, Plaintiffs Second Cause of Action should be dismissed.

POINT IV

Plaintiffs' First and Second Causes of Action Should be Dismissed for Failure to Join Necessary parties

Related to the arguments made in Point II and Point III, above, regarding failure to name the owners and mortgagees in the Complaint is the argument that Plaintiffs have failed to join necessary parties.

The mandatory joinder of parties is governed by Utah R. Civ. P. 19. *Mower v. Simpson*, 2012 UT App 149, ¶ 27. Rule 19 requires that courts engage in a two-part inquiry. First, the court must ascertain whether a party is a necessary party. *Id.* If a party is a necessary party and if joinder is feasible, joinder is mandatory. *See* Utah R. Civ. P. 19(a); *LePet, Inc. v. Mower*, 872 P.2d 470, 474 (Utah Ct. App. 1994). Second, if the court determines that the party is necessary, but joinder is unfeasible, the court must then determine whether the party is indispensable. *Mower,* 2012 UT App 149, ¶ 27. The issue of indispensability does not need to be addressed unless the court finds that a party is necessary, but that joinder is not feasible. *Werner-Jacobsen v. Bednarik*, 946 P.2d 744, 747 (Utah Ct. App. 1997).

A party is necessary to an action if:

> (1) in his absence complete relief cannot be accorded among those already parties, or (2) he claims an interest relating to the subject of the action and is so situated that the disposition of the action in his absence may (i) as a practical matter impair or impede his ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of his claimed interest.

Utah R. Civ. P. 19(a); *see also Werner-Jacobsen,* 946 P.2d at 747.

A. All Owners Within the Master Association are Necessary Parties

The individual lot owners and mortgagees in the Master Association are necessary parties in this matter and Plaintiffs are statutorily obligated to name all such persons in this action. It is the rights of those owners, not the rights of the Plaintiffs, that truly are at issue in this matter. As an obvious matter, the rights of the owners in Autumn Ridge and Pioneer Addition will be affected because the Plaintiffs are attempting to withdraw them from the Master Association.

However, it is not just the owners in Autumn Ridge and Pioneer Addition that are necessary parties. All owners within the Master Association are necessary parties. If this Court awarded the relief sought by the Plaintiffs, every owner in each community within the Master Association would be affected, not just owners in Autumn Ridge and Pioneer Addition. This is because if the Court determined that Autumn Ridge and Pioneer Addition were not subject to the Master Declaration, the common expenses of the Master Association would be reapportioned among the remaining owners, assuredly raising the assessments for those owners. If these owners were not made parties to the Complaint they could be straddled with higher assessments without warning, notice, or a chance to protect their rights.

"A plaintiff may not obtain relief adverse to the property rights of others who are not adverse parties to the case without bringing them before the court . . . . [A] court cannot dispose of or adjudicate the property rights of others who are not made parties to the action and are total strangers to the record." See *Bonneville Tower Condo. Mgt. Comm. v. Thompson Michie Associates, Inc.*, 728 P.2d 1017, 1019 (Utah 1986).

The relief sought by the Plaintiffs cannot and will not exist in a vacuum. It will affect all owners in the Master Association. As such, the owners should be parties to the Complaint.

B. All Mortgagees of the Owners Within the Master Association are Necessary Parties.

The Master Declaration provides certain rights and protections to the mortgagees of the lots. As stated previously, the Master Declaration states as follows:

> If a Unit or property is made subject to a mortgage, deed of trust, or other form of security instrument affecting title to a Unit ("Mortgage"), then the holder, Trustee or beneficiary of that Mortgage or Deed of Trust (the "Mortgagee") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 15.

Section 2.6 of the Master Declaration (emphasis added).

If the Master Declaration is declared void, any contractual rights and protections granted to the mortgagees would necessarily be voided. Section 2.6 acknowledges that the mortgagees have “an interest in the administration of the Community.” Consequently, the mortgagees are also necessary parties to the Complaint.

C. Joinder of the Owners and Mortgagees is Feasible and Serves the Interests of Judicial Economy.

Joinder of a party is feasible if the party is subject to service of process and joinder will not deprive the court of jurisdiction. *LePet,* 872 P.2d 470 at 475, Fn. 8. The owners and mortgagees in the Master Community are subject to service of process and their joinder will not deprive this Court of jurisdiction. Further, the identities of the parties are readily available in the records of the Utah County Recorder. Such parties are not unknown.

Still further, without the joinder of the individual owners, the Defendants could be subject to litigating this issue over and over again with each owner. Such a scenario is unfair to the Defendants and goes against the purpose of Utah R. Civ. P. 19 which is 'to protect the interests of absent persons as well as those already before the court from multiple litigation or inconsistent judicial determinations." *Smith v. Osguthorpe*, 2002 UT App 361, ¶ 47 (internal citations omitted).

This position is consistent with the reasoning of *State Farm Mut. Auto. Ins. Co. v. Mid-Continent Cas. Co.*, 518 F.2d 292, 296 (10th Cir. 1975):

> We recognize that all interested parties should be joined in a declaratory judgment action whenever possible and that a declaratory judgment should not be entered unless it disposes of a controversy and serves a useful purpose.

In sum, because the owners and mortgagees are necessary parties and joinder is feasible, joinder is mandatory. No inquiry as to indispensable parties is required. Utah R. Civ. P. 19(a). And because such parties have not been joined, the First and Second Causes of Action should be dismissed.

POINT V

The Plaintiffs Do Not Have Associational Standing

The Plaintiffs may attempt to argue that they can take the collective place of the owners in Pioneer Addition and Autumn Ridge as to the claims made in the Complaint because the Plaintiffs have associational standing. However, Plaintiffs do not have associational standing and therefore are not saved from the arguments made by the Defendants that each cause of action should be dismissed.

To demonstrate associational standing, Plaintiffs must show that (1) the individual members of the association have standing to sue and (2) "the nature of the claim and of the relief sought does not make the individual participation of each injured party indispensable to proper resolution of the cause." *Utah Rest. Ass'n v. Davis Cnty. Bd. of Health,* 709 P.2d 1159, 1163 (Utah 1985). Plaintiffs' Complaint does not allege associational standing and lacks any claims that Plaintiffs meet the two (2) requirements for associational standing. For this reason alone, this Court can determine that associational standing does not exist.

Additionally, a quiet title action requires that the party seeking to quiet title has "title or other valid interest to the property at issue." *WDIS,* 2019 UT at ¶43. The Plaintiffs admit they do not have title or other interest in the lots, units, and parcels to which they are seeking to quiet title. They allege they are asserting the rights of the respective owners. However, a quiet title action requires a direct interest in the property, not simply an *assertion of the rights* of someone with a direct interest. *Id.* Because of this, the second prong of the associational standing test cannot be met and no associational standing can be had as to the quiet title action. Essentially, the nature of the claim and of the relief sought does require the individual participation of each injured party. *See Utah Rest. Ass'n,* 709 P.2d at 1163.[5]

Further, [i]f conflicts of interest exist within an organization, individual participation is necessary and thus, the association generally cannot have standing." *W. Valley City Fraternal Ord. of Police Lodge No. 4 v. Nordfelt*, 869 P.2d 948, 952 (Utah

[5] The same arguments addressed Footnotes 4 and 6 relating to the owner assignments apply here as well.

App. 1993). As an indisputable factual matter, conflicts of interest abound in this matter. The Utah County Recorder's Office shows that nearly 80% of owners in Pioneer Addition and nearly 90% of owners in Autumn Ridge bought their homes after October 2009, the time the Master Declaration was recorded. As such, these owners bought with actual and recorded notice of the Master Declaration. These owners are in a significantly different factual and legal position than owners who purchased their homes before the Master Declaration was recorded. Because of these conflicts, associational standing cannot exist.

Still further, not all owners would be benefitted by the relief sought in this matter. *See id.* Were the Plaintiffs to be successful in this matter, all owners would be stripped of their rights as a member of the Master Association, including, but not limited to, their rights to use the clubhouse and to have a Master Association that coordinates between the various sub-associations. Plaintiffs have not and cannot allege that all owners want this right taken away.

Plaintiffs allege in the Complaint they have assignments from 75% of owners. However, they make no mention of the other 25% of the owners. It is reasonable to conclude that some, if not all, of those 25% do not want to be removed from the Master Association—that Plaintiffs' Complaint is being pursued without their permission or agreement. Such fact is particularly troubling when the Plaintiffs are seeking to quiet title to the lots owned by these owners. These owners cannot not be stripped of their rights and privileges against their will under the guise of associational standing.

Additionally, Utah Courts have ruled that associational standing is not met when claimed damages “are not common to the entire membership, nor shared by all in equal degree.” *Schultz v. Utah County*, 966 F. Supp. 2d 1246, 1256 (D. Utah 2013). Associational standing is improper when “whatever injury may have been suffered is peculiar to the individual member concerned, and both the fact and extent of injury would require individualized proof.” *Id.* These requirements remove any associational standing related to the Plaintiffs' claims for reimbursement for improper assessments. Each owner has paid different amounts and, therefore, has a different claimed injury. These claims need to be brought by the owners, not collectively by the Plaintiffs.

POINT VI

Plaintiffs are Seeking Amounts Barred by the Statute of Limitations

In the Complaint, Plaintiffs seek restitution of assessments and funds wrongfully levied, misused, or improperly allocated. *See* Complaint, Prayer for Relief ¶¶2-4. The Complaint also alleges that members of Pioneer Addition and Autumn have been subject to improper reinvestment fees and assessments for over ten (10) years. *Id.* at ¶56.

The Plaintiffs do not specify a time period for which they are seeking reimbursement of such assessments or funds. However, even despite all claims to the contrary contained herein, Plaintiffs were entitled to reimbursement, any claims are based on contractual obligations and are therefore subject to a six (6) years statute of limitations. Utah Code §78B-2-309(1)(b). As such, any claims related to assessments or funds collected over six (6) years ago are time barred and should be dismissed.

CONCLUSION

In sum, the Defendants request that Plaintiffs' Complaint be dismissed. For the Third and Fourth Causes of Action, the statutory requirements for a derivative action have not been followed, the claims have no merit, owner voting requirements have not been met, and ADR requirements have not been met. For the First and Second Causes of Action, the requirements of a quiet title action have not been met, the requirements of a declaratory action have not been met, and necessary parties have not been joined. In addition, the Complaint seeks amounts barred by the statute of limitations.

DATED this 12th day of January, 2026.

MILLER HARRISON, LLC

/s/ Julie Ladle
Julie Ladle
Attorney for Defendants

Certificate of Service

I hereby certify that on the 12th day of January, 2026, I caused a true and correct copy of the foregoing **MOTION TO DISMISS COMPLAINT** to be filed electronically via the Court's electronic filing system, which served all counsel of record.

/s/ Julie Ladle
Julie Ladle
Attorney for Defendants