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| DISTRICT COURT, GRAND COUNTY, COLORADO<br>Court Address:<br>307 Moffat Ave., Hot Sulphur Springs, CO 80451 | |
| **Plaintiff:** GRANBY RANCH METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado<br><br>v.<br><br>**Defendants:** HEADWATERS METROPOLITAN DISTRICT, a quasi-municipal corporation and political subdivision of the State of Colorado; GRAY JAY VENTURES, LLC.; REDWOOD CAPITAL FINANCE CO., LLC, GRANBY PRENTICE, LLC; AND GR TERRA LLC | ▲COURT USE ONLY▲ |
| *Attorneys for Plaintiff:*<br>David K. TeSelle, Reg. No. 29648<br>Lisa R. Marks, Reg. No. 31683<br>D. Dean Batchelder, Reg. No. 38425<br>Patrick M. Sweet, Reg. No. 51130<br>Burg Simpson Eldredge Hersh & Jardine, P.C.<br>40 Inverness Drive East<br>Englewood, CO 80112<br>Phone No.: (303) 792-5595<br>Email: dteselle@burgsimpson.com<br>lmarks@burgsimpson.com<br>dbatchelder@burgsimpson.com<br>psweet@burgsimpson.com | Case Number: 2021CV30008<br><br>Div.: 1 |

**GRMD'S REPLY IN SUPPORT OF ITS MOTION FOR ENTRY OF FINAL JUDGMENT**

Plaintiff, Granby Ranch Metropolitan District ("GRMD"), by and through its attorneys, Burg Simpson Eldredge Hersh & Jardine, P.C., respectfully submits this Reply in Support of Its Motion for Entry of Final Judgment, and states, as follows:

## I. INTRODUCTION

GRMD respectfully requests the Court grant its motion for entry of final judgment. However, GRMD's request to the Court is also a request for direction: how would the Court like to proceed now that there is no dispute that the majority of the claims at issue have been expressly resolved, that the remaining issues have been functionally resolved, and that—if there is a dispute—any remaining issues can be efficiently resolved through briefing to the Court. GRMD submits that the case is fully resolved, the claims expressly or functionally resolved, and the litigation is at a close. Final judgment may enter. If the Court disagrees, GRMD submits that the most efficient way forward is to resolve whatever disputes there may be on motion. This will need to be done, whether on motion or at trial, and since any remaining dispute can be resolved on motion, there is no need to waste the Court's, or the parties', time and resources.

This is hardly an improper request. How should the parties most efficiently proceed? GRMD respectfully requests that its motion be granted and final judgment enter; alternatively, GRMD respectfully requests that a briefing schedule be set to resolve any remaining disputes between the parties.

## II. DEFENDANTS' COMBINED MOTION / RESPONSE IS PROCEDURALLY IMPROPER AND IS SUBSTANTIVELY UNHELPFUL

*Defendants' motion to strike improperly combines a motion and a response.* Per C.R.C.P. 121(c) § 1-15(1)(d) states: "A motion shall not be included in a response or reply to the original motion." While Defendants here have done the converse (a response in a motion), it remains improper: a combined filing is a combined filing. Colorado courts have stricken or not considered such combined filings. *See, e.g., Rewild Group v. Carrera*, Broomfield Dist. Court Case No. 2019CV30178, 2019 Colo. Dist. LEXIS 3383, *15 (May 12, 2019) (declining to consider motion

for leave contained within response) (attached as **Exhibit 1**); *Lewis v. TMAC Enters., LLC*, Larimer Dist. Court Case No. 2017CV31460, 2018 Colo. Dist. LEXIS 3035, *7-8 (Jan. 16, 2018) (striking motion for leave to amend embedded in response to motion to dismiss) (attached as **Exhibit 2**).

To be clear, GRMD here offers its reply in support of its motion for entry of final judgment. In the event Defendants' motion to strike is not itself stricken or disregarded, GRMD reserves its right to respond to that motion, as permitted by C.R.C.P. 121(c) § 1-15(1)(b) (response is due within 21 days of motion responded to).

*Substantively, Defendants' motion to strike is unhelpful.* As clearly stated in its motion, GRMD is simply trying to move the case toward final resolution, hardly a "redundant, immaterial, impertinent, or scandalous" request. C.R.C.P. 12(f). Is there a final judgment? If so, judgment should enter; if not, the Court should set a briefing schedule to resolve any remaining claims. GRMD's motion is not some stalking horse—it clearly set out its suggestions to the Court. And Defendants' firm insistence on the schedule based on the prior trial date is misplaced. First, of course this Court has the authority to order briefing and is not needlessly tied to a prior briefing schedule premised on an earlier (and now long-vacated) trial date. It makes no sense to proceed to trial where, if a dispute remains, it is narrow and may be addressed through briefing to the Court. Second, contrary to Defendants' argument, the Rules expressly contemplate motions practice at any time in an action. C.R.C.P. 12(c) (motion for judgment may be filed after the pleadings "but within such time as not to delay the trial"); 56(h) ("At any time" after the last required pleading).

## III. FINAL JUDGMENT SHOULD ENTER OR A BRIEFING SCHEDULE SHOULD BE SET

GRMD maintains that the July 30 Orders entered by this Court expressly or functionally resolved the disputes between the parties. This is clarified now that Defendants have effectively conceded that they never had a cognizable claim for attorney's fees, their sole claim for damages, on the majority of their counterclaims.[1] Thus, the only claims even potentially at issue now are Headwaters' Counterclaim Nos. 1 (breach of the Exclusion Agreement) and 4 (injunctive relief under GRMD's Service Plan) and GR Terra's Counterclaim No. 4 (identical to Headwaters' No. 4).

It remains that these claims were either resolved by the July 30 Orders (there is no breach, there is no need for declarative or injunctive relief) or are moot (there is no basis for attorney's fees under the Exclusion Agreement). Headwaters' first counterclaim is without basis. The apparent dispute at hand relates to Headwaters' allegation that GRMD breached the agreement by bringing claims in this case—claims that are now dismissed. Headwaters' myriad claims of breach boil down to the same allegation: GRMD breached the agreement by exercising its legal rights and bringing suit pertaining to the Lease Purchase Agreement, an action that has now been resolved. And the fact that the Exclusion Agreement mentions attorney's fees does not transform it into a fee shifting provision. Read in its entirety, as it must be, the provision is a reservation of rights, not a fee shifting provision. A fee shifting agreement must clearly and unambiguously provide for

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[1] Defendants are correct that they have provided disclosures, up to a certain point, regarding their claimed attorney's fees. Motion at 9 n.3. However, GRMD's point was that Defendants never provided a C.R.C.P. 26(a)(1)(C) calculation of their claimed damages. Invoices are not a calculation of damages, unless *all* attorney's fees are claimed—untethered to a specific alleged breach and without any consideration of the reasonableness of those claimed fees.

an award of fees. *Bunnett v. Smallwood*, 793 P.2d 157, 162-63 (Colo. 1990) (agreement must be plain, unambiguous, and expressly provide for a fee award); *Morris v. Belfor USA Grp.*, 201 P.3d 1253, 1260 (Colo. App. 2008) (agreement must clearly inform parties to risk of fee award); *Sotelo v. Hutchens Trucking Co.*, 166 P.3d 285, 287 (Colo. App. 2007) (exceptions to American Rule are narrowly construed). This provision fails: there is no clear agreement to shift fees and the caselaw cited by Defendants is inapposite and relies on language not present here. *Butler v. Lembeck*, 182 P.3d 1185, 1189 (Colo. App. 2007) (interpreting agreement where the tenant "*will* reimburse" the owner for reasonable attorney's fees (emphasis added)).

Again, GRMD's request to the Court is one for direction. If, as GRMD submits, nothing remains to be decided between the parties (because the claims were expressly or functionally resolved by the July 30 Orders), that should be confirmed. If that is not the case and additional briefing is required, then a schedule for briefing should be set and the remaining issues between the parties should be addressed in that manner.

## IV. CONCLUSION

For the reasons stated in its initial motion and its reply here, GRMD respectfully requests that final judgment enter or, in the alternative, a briefing schedule be set to address whatever outstanding claims the Court determines remain.

Respectfully submitted November 29, 2023.

**BURG SIMPSON**
**ELDREDGE HERSH & JARDINE, P.C.**

*Duly signed original is on file in this office and available for inspection and/or copying upon request.*

*/s/ D. Dean Batchelder*
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**CERTIFICATE OF SERVICE**

I certify that on November 29, 2023, a true and correct copy of this **GRMD'S REPLY IN SUPPORT OF ITS MOTION FOR ENTRY OF FINAL JUDGMENT** was filed and served upon all counsel of record via CCE.

*Duly signed original is on file in this office and available for inspection and/or copying upon request.*

*/s/ D. Dean Batchelder*
D. Dean Batchelder