

MEMORANDUM

TO: Board of Trustees

FROM: Jason D. Guinasso, Esq.
District General Counsel

Steven J. Pinkerton
General Manager

SUBJECT: Review, discuss, and possibly approve offer of Aaron Katz to tender the entire amount currently due through September 13, 2017, on Judgment previously rendered against him by the District Court in the amount of \$241,646.11 in exchange for IVGID filing and recording a full satisfaction of the judgment and agreeing to a stipulated judgment pursuant to which IVGID would agree to the entry of a judgment in favor of Mr. Katz in the amount of \$241,646.11, plus interest at the legal rate from September 13, 2017, if, and only if, IVGID fails to return Mr. Katz's payments within 30 days following the Nevada Supreme Court's issuance of a remitter on a judgment which reversed the District Court's decision in IVGID's favor of Katz

DATE: September 5, 2017

I. RECOMMENDATION

That the Board of Trustees makes a motion that IVGID accept offer of Aaron Katz to tender the entire amount currently due through September 13, 2017, on Judgment previously rendered against him by the District Court in the amount of \$241,646.11 in exchange for IVGID filing and recording a full satisfaction of the judgment and agreeing to a stipulated judgment pursuant to which IVGID would agree to the entry of a judgment in favor of Mr. Katz in the amount of \$241,646.11, plus interest at the legal rate from September 13, 2017, if, and only if, IVGID fails to return Mr. Katz's payments within 30 days following the Nevada Supreme Court's issuance of a remitter on a judgment which reversed the District Court's decision in IVGID's favor of Katz.

Litigation Counsel Tom Beko and District Counsel recommend that IVGID Board approve agreement as negotiated with Mr. Katz on August 31, 2017.

II. BACKGROUND

This is agenda item arises out of ongoing litigation with resident Aaron Katz. While I have provided comprehensive regular updates on this litigation to the Board and to the Public, I now provide a brief summary of the background that has resulted in the offer from Mr. Katz to IVGID.

Mr. Katz's case against IVGID initially stemmed from objecting to paying IVGID's annual \$830.00 recreation fee, and eventually developed into a five-year campaign of litigation against the District resulting in a sizeable award of attorneys' fees to IVGID for his vexatious conduct before the Court. Notably, Mr. Katz is a former attorney who holds an inactive California bar license. He

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represented himself in this case. During the litigation, Mr. Katz alleged numerous causes of action seeking to invalidate the recreation fee, and also included a single cause of action alleging the failure to respond to certain requests for production of public records according to Chapter 239. The vast majority of Mr. Katz's claims were dismissed by the Court on motion. Because of the factual nature of allegations regarding his public records requests, however, the Court was required to hear testimony on the public records issues and a bench trial was held before Judge Patrick Flanagan in March 2016.

IVGID takes the requirements of Nevada's Public Records Act very seriously, and has appointed a Public Records Officer to ensure compliance with the law and respond to records requests from the public. While Mr. Katz recently insinuated to this Board that the purpose of the Public Records Officer was to put up barriers to members of the public requesting documents, nothing could be further from the truth. IVGID does not conceal public records, and the evidence presented to Judge Flanagan at trial proved that IVGID had fully complied with the law. The evidence also revealed that Mr. Katz's requests were not legitimate attempts to obtain documents, but were utilized as a weapon to harass and distract the employees of IVGID from their mission to serve the community at large. After carefully considering this evidence, Judge Flanagan ruled decisively that IVGID and its appointed Public Records Officer had fully complied with Nevada's requirements, acting in good faith and with due diligence in responding to Mr. Katz's numerous requests for records. Written judgment was rendered in favor of IVGID. Judge Flanagan gave great deference to the right of the public to inspect public records and documents. However, the Court also emphasized that the government must retain the ability to function without undue harassment and unreasonable interference. In reviewing the evidence regarding the specific public records requests at issue, the Court concluded IVGID's responses were appropriate.

Following judgment, IVGID pursued a motion for attorney's fees and costs against Mr. Katz under NRS 18.010(2)(b), which allows a District Court to award attorney's fees to a prevailing party where the opposing party brought or maintained a claim without reasonable ground or for the purposes of harassment. In addition to Mr. Katz's litigation tactics, with which the Court was intimately familiar after overseeing the case for five years, IVGID also presented evidence of Mr. Katz's actions in pursuing meritless actions before the Nevada Commission on Ethics, complaints under the Open Meeting Law and relentless requests for voluminous public records – including a harassing request made during the bench trial – as part of Mr. Katz's campaign against IVGID.

The Court agreed with IVGID. Judge Flanagan issued a well-reasoned written decision on July 15, 2016, awarding IVGID \$229,372.75 in attorney's fees and costs against Mr. Katz. Judge Flanagan's Order reveals the award was appropriately based upon Mr. Katz's vexations and harassing conduct. In awarding fees, Judge Flanagan saw through the arguments presented by Mr. Katz, ruling that his "entire suit was a pretext for Mr. Katz to obstruct and impede IVGID's operation to the detriment of thousands of other residents." (Order, p. 4, ll. 1-3).

Regarding the public records claim, Judge Flanagan explained that, "[a]t trial, it became abundantly clear that IVGID had made every effort to accommodate Mr. Katz's numerous request[s] for documents." (Order, p. 4, ll. 18-19). Continuing on, the Court found that "Mr. Katz [was] under the dubious impression that simply having the ability to make a public records request entitles him to treat the employees of IVGID as his own [displaying] an unfounded sense of entitlement that goes far beyond the bounds of what the Nevada public records laws allow for,

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and further illustrat[ing] Mr. Katz's contempt for both this court and the orderly operation of IVGID." (Order, p. 6, ll. 6-16). The Court continued on as follows:

While Mr. Katz may fancy himself a community watchdog, his actions, taken as a whole, lead this court to one undeniable conclusion: this was a frivolous lawsuit. NRS 18.010(2)(b) was designed precisely for these matters "because such claims . . . overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public." NRS 18.010(2)(b).

What began as a quest by Mr. Katz to invalidate the \$800 recreation fee he was required to pay as a resident of Incline Village, morphed into an obsession with obstructing the staff of IVGID with burdensome records requests and contentious litigation. Neither courts nor the laws of Nevada exist so that those who detest their local governments can bully them into submission. At some point, these actions must come to an end. That point has now been reached. (Order, pp. 6-7, ll. 17-6).

Mr. Katz appealed the decisions of the District Court. Mr. Katz's appeal consists of the original appeal of the dismissal of his substantive causes of action, Case No. 70440. His second appeal is an appeal of the award of attorney's fees and costs in favor of the District, Case No. 71493.

The second appeal has been put on hold by the Court's recent order entered March 1, 2017. Mr. Katz's attorney filed a Motion to Stay proceedings in the second appeal pending disposition of the first appeal. He argued that if the underlying judgment was not affirmed then the District would not have a basis for an award of attorney's fees because it would validate that some or all of Katz's claims were not frivolous or not brought for the purpose of harassment. IVGID opposed that motion and argued that proceeding in a piecemeal fashion would not be efficient. Nonetheless, the Court ordered that the briefing schedule and other deadlines in Case No. 71493 be suspended until a decision is entered in the first appeal. However, the Court did not stay the enforcement of the judgement entered against Mr. Katz. Therefore, IVGID was permitted to take the necessary steps to collect the judgment.

Regarding IVGID's efforts to enforce the judgment, this has turned out to be a very complex process because of the award of fees against Mr. Katz personally and the vast majority of his assets are held in various trusts. IVGID attorneys proceeded with post-judgment discovery to gain information about Mr. Katz's assets so that IVGID could collect the money it is owed under the judgment. Post-judgment discover included the scheduling of a Judgement Debtors Examination. Mr. Katz refused to answer several discovery requests and opposed being examined under oath by filing a motion to stay discovery and execution proceedings with the District Court. On August 24, 2017, a hearing was held on Mr. Katz' motions. After hearing the arguments, the Court denied all of Mr. Katz's motions.

After the ruling, Mr. Katz' debtor's exam was scheduled for August 31, 2017. At the Judgment Debtors Examination, negotiations ensued and resulted in a tentative agreement between Mr. Katz and the District, pending IVGID Board approval. In this regard, Aaron Katz will tender the entire amount currently due (through September 13, 2017) pursuant to the Judgment previously rendered against him by the District Court. This would total the sum of \$241,646.11. Payment

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upon this Judgment must be made immediately upon board approval on September 13, 2017. Once the check clears, IVGID would then be obligated to file and record a full satisfaction of the judgment. Because this money is not being paid as security for the future payment of the Judgment, Mr. Katz would have no obligation to tender anything further to cover the anticipated interest that might accrue before the Supreme Court rendered its decision in this case. By law, Mr. Katz would have every right to tender this payment and upon receipt of those funds, IVGID would have no choice but to record a satisfaction of the outstanding judgment.

Additionally, Mr. Katz has requested a further concession from IVGID. In this regard, he has requested that IVGID agree to a stipulated judgment pursuant to which IVGID agrees to the entry of a judgment in favor of Mr. Katz in the amount of \$241,646.11, plus interest at the legal rate from September 13, 2017, if IVGID fails to return Mr. Katz's payments within thirty (30) days following the Nevada Supreme Court's issuance of a remitter on a judgment which reversed the District Court's decision in IVGID's favor. While IVGID is not obligated to agree to this additional term, IVGID would arguably be legally obligated to return those funds and Mr. Katz could simply file an action to obtain a judgment in that amount. Thus, this agreement simply avoids the filing of a lawsuit that IVGID would have to defend, but would inevitably lose. Under the proposed agreement, Litigation Counsel would sign the stipulated judgment on behalf of IVGID, however, that judgment would remain in his possession until the expiration of 30 days after remitter. If IVGID loses on Mr. Katz' appeal on this underlying merits case, and does not repay Mr. Katz his payment plus interest within the thirty (30) day period, Counsel would then release the stipulation to Mr. Katz which he could thereafter file with the Court. If IVGID does refund Mr. Katz's funds, with interest, Counsel would simply destroy the stipulation.

This proposed resolution provides IVGID everything the law entitles it to, and simply limits the need for future litigation over the return of these funds, if required. There is, however, a small caveat. If the Supreme Court reversed the underlying merits decision of Judge Flanagan, such a ruling would not automatically mean that IVGID would lose its entire right to recover attorney's fees, however, its right to fees would be significantly limited to only a few events where the District Court found that Mr. Katz's actions merited an award of fees (when Mr. Katz failed to follow some Court orders). But a reversal of Judge Flanagan's decision would undoubtedly mean that Mr. Katz's case was not frivolous and thus IVGID would likely lose its right to the vast majority of the fees it recovered from Mr. Katz. This agreement would not mean that IVGID would not be able to continue to pursue its right to recovery attorney's fees, it would simply mean that IVGID would give up the right to immediate payment of those fees. Thus, while IVGID may be giving up some right it might otherwise have to continue to hold Mr. Katz's funds, those rights would not outweigh the costs which IVGID is now accruing to seek satisfaction of this judgment.

III. ALTERNATIVES

- A. Not approve agreement.
- B. Require Mr. Katz to tender entire cash settlement in exchange for IVGID filing a satisfaction of judgment only without any other stipulation.