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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MARIAN K. PORTER )  
)  
Plaintiff, )  
)  
vs. )  
)  
SHYAM K. CHETAL, individually )  
and d/b/a ADVANGAGE REAL )  
ESTATE PRO, UNITED CAPITAL )  
INVESTMENT, INC. d/b/a )  
NEVADA UNITED CAPITAL )  
INVESTMENTS, INC., )  
SMARTTOUCH SYSTEMS, INC. )  
and DOES 1 through 30, inclusive, )  
)  
Defendants. )  
/

Docket No.:

**COMPLAINT**

**COMES NOW** the Plaintiff, MARIAN K. PORTER, by and through her attorney of record, CHARLES R. KOZAK, ESQ., and for her causes of action against Defendants, SHYAM K. CHETAL, individually and d/b/a ADVANTAGE REAL ESTATE PRO; UNITED CAPITAL INVESTMENT, INC., d/b/a NEVADA UNITED CAPITAL INVESTMENTS, INC.; SMARTTOUCH SYSTEMS, INC. and DOES 1 through 30, inclusive, states as follows:

**I. PARTIES**

1  
2           1. Plaintiff, MARIAN K. PORTER (hereinafter “MARIAN”), is an adult individual  
3 who at all material times hereto was and continues to be a resident of Battle Mountain, Lander  
4 County, Nevada.  
5

6           2. Defendant, SHYAM K. CHETAL (hereinafter “CHETAL”), is an adult individual  
7 who at all material times hereto was, and continues to be, a resident of Alameda County,  
8 California with a principal residential address of 45319 Whitetail Ct., Fremont, California  
9 94539. CHETAL also does business as a real estate broker under the name, ADVANTAGE  
10 REAL ESTATE PRO (hereinafter “ADVANTAGE”) which is not incorporated in California,  
11 but uses CHETAL’S address as its place of business.  
12

13           3. Defendant, UNITED CAPITAL INVESTMENTS, INC. d/b/a NEVADA UNITED  
14 CAPITAL INVESTMENTS, INC., (hereinafter “UNITED”), at all material times hereto was,  
15 and continues to be, a California corporation with a principal place of business at 45319  
16 Whitetail Ct., Fremont, Alameda County, California 94539. UNITED’S registered agent for  
17 service of process is SHYAM CHETAL. According to the Office of the Secretary of State of  
18 California, the registered agent’s address for UNITED is SHYAM CHETAL, 45319 Whitetail  
19 Ct., Fremont, California 94539.  
20

21           4. Defendant, SMARTTOUCH SYSTEMS, INC. (hereinafter “SSI”) at all material  
22 times hereto was, and continues to be, a California Corporation with a principal place of  
23 business at 45319 Whitetail Ct., Fremont, Alameda County, California 94539. SSI’S  
24 registered agent for service of process is SHYAM CHETAL. According to the Office of the  
25 Secretary of State of California, the registered agent’s address for SSI is SHYAM CHETAL,  
26 45319 Whitetail Ct., Fremont, California 94539.  
27  
28

1           5. The true names or capacities of Defendants, DOES 1 through 30, whether  
2 individual, corporate, associate, business entity of any kind or otherwise, are unknown to  
3 Plaintiff, who therefore makes claims against said Defendants and by such fictitious names.  
4 Plaintiff is informed and believes and alleges that each of the Defendants designated as a  
5 DOE is responsible in some manner for the events and occurrences herein alleged and  
6 therefore caused injuries and damages to Plaintiff as alleged below. Upon determining the  
7 true identities of any such DOE Defendants, Plaintiff will ask leave of Court to amend this  
8 Complaint to insert the true names and capacities of said Defendants when the same have  
9 been ascertained and to add said Defendants as Defendants to this Complaint, together with  
10 the proper charges and allegations.  
11  
12

## **II. JURISDICTION AND VENUE**

13  
14  
15           6. Jurisdiction is proper in this Court pursuant to 28 U.S.C.A. Sec.1332 because the  
16 matter in controversy exceeds Seventy-Five Thousand Dollars (\$75,000.00), exclusive of  
17 interest and costs, and that complete diversity of citizenship exists between the Plaintiff who  
18 is a Nevada resident, and all Defendants who are California residents.  
19

20           7. Venue is proper in this court because the acts giving rise to the matters complained  
21 of herein occurred in part in Battle Mountain, Lander County, Nevada.  
22  
23

## **III. STATEMENT OF FACTS GIVING RISE TO PLAINTIFF'S COMPLAINT**

24  
25           8. For nearly 27 years Plaintiff and her now deceased husband, Duane H. Porter had  
26 owned certain mining claims on approximately 17,000 acres of land located on the eastern  
27 side of the Bighorn Basin near Ten Sleep, Wyoming. These Ten Sleep claims will be referred  
28

1 to hereinafter, generally as “mining claims” and occasionally as the “Ten Sleep mining  
2 claims”.

3  
4 9. The land on which these mining claims were staked is owned by the BUREAU OF  
5 LAND MANAGEMENT (hereinafter “BLM”).

6 10. These mining claims contained high quality gypsum and have a net appraised  
7 value of at least Eleven Billion, Five Hundred Sixteen Million, Five Hundred Sixty Thousand  
8 Dollars (\$11,516,560,000).

9  
10 11. For some 26 years prior to 2012, MARIAN and her husband (until his death on  
11 November 25, 2003 when MARIAN became the sole owner of these mining claims) paid the  
12 annual maintenance fees of approximately Fifteen Thousand Dollars (\$15,000) per year  
13 required by the BLM in order to for MARIAN to keep ownership of these mining rights.

14  
15 12. These maintenance fees were raised nearly ten-fold to approximately One  
16 Hundred Thirty-Eight Thousand Dollars (\$138,000) per year by Congress for the 2012/2013  
17 registration year and all subsequent years. MARIAN’S first One Hundred Thirty-Eight  
18 Thousand Dollar (\$138,000) payment was due on September 3, 2013.

19  
20 13. Due to uninsured medical expenses in excess of One Million Dollars  
21 (\$1,000,000) for the care of her husband, Duane, who had been terminally ill with cancer,  
22 MARAIAN could not afford to make the One Hundred Thirty-Eight Thousand Dollar  
23 (\$138,000) annual payments.

24 14. Therefore in late 2012 MARIAN decided to sell off her mining claims.

25  
26 15. By June of 2013 MARIAN had several buyers who were willing to pay in excess  
27 of One Hundred Million Dollars (\$100,000,000) for these claims. MARIAN decided with the  
28 help of her advisors to accept an offer for Two Hundred Million Dollars (\$200,000,000).

1           16. Before MARIAN could finalize the Two Hundred Million Dollar (\$200,000,000)  
2 offer, Defendant CHETAL contacted MARIAN with a proposal to send her an offer of Two  
3 Hundred Twenty Million Dollars (\$220,000,000) for these mining rights.  
4

5           17. On August 20, 2013 after several months of negotiations, CHETAL sent  
6 MARIAN a written offer to buy her Ten Sleep mining claim rights for Two Hundred Twenty  
7 Million Dollars (\$220,000,000) through his alleged holding company, UNITED. Attached  
8 hereto as **Exhibit 1**, and by this reference incorporated as if set forth in full herein, is a copy  
9 of said offer.  
10

11           18. An essential term in this offer to purchase was CHETAL'S agreement to make a  
12 One Million Dollar (\$1,000,000) down payment on this purchase by September 2, 2013. This  
13 down payment was necessary so that the Two Hundred Seventy-Six Thousand, Four Hundred  
14 Eighty Dollar (\$276,480) maintenance fees for both the 2012/2013 and 2013/2014  
15 maintenance years could be timely paid to the BLM.  
16

17           19. On or about August 20, 2013, MARIAN signed a written acknowledgement that  
18 she accepted CHETAL'S offer including the One Million Dollar (\$1,000,000) down payment.  
19 Attached hereto as **Exhibit 2**, and by this reference incorporated as if set forth in full herein,  
20 is a copy of MARIAN'S acceptance of CHETAL'S offer.  
21

22           20. On information and belief, after MARIAN signed her acceptance (Exhibit 2), this  
23 document was altered by CHETAL. The alteration involved, at a minimum, adding the last  
24 sentence: "Funds are being arranged by Walter Atonell to cover the check [to the BLM] for  
25 Two Hundred Seventy-Six Thousand, Four Hundred Eighty Dollars (\$276,480) for the  
26 mining claim maintenance fees]". Walter Atonell never had any responsibility to arrange for  
27 funds to cover CHETAL'S Two Hundred Seventy-Six Thousand, Four Hundred Eighty  
28

1 Dollar (\$276,480) check.

2 21. Included with CHETAL'S offer were various documents purporting to verify that  
3 CHETAL and UNITED had the wherewithal to enter into a contract to purchase MARIAN'S  
4 mining rights.  
5

6 22. Of particular importance was CHETAL'S presentation of documentation that  
7 CHETAL and/or his holding company, UNITED would be receiving Two Billion Dollars  
8 USD (\$2,000,000,000) from CONTINENT FINANCE LTD (hereinafter "CONTINENT") in  
9 time to fund the agreed upon Two Hundred Twenty Million Dollar (\$220,000,000) purchase  
10 price.  
11

12 23. On information and belief, what CHETAL failed to disclose to MARIAN was  
13 that CONTINENT had only been formed in England on March 3, 2013 and had a total capital  
14 of only One Hundred Pounds (£100).  
15

16 24. CHETAL had also authorized MARIAN to send the BLM copies of all of his  
17 documents allegedly confirming his financial ability to pay the full purchase price for  
18 MARIAN'S mining rights including the Two Hundred Seventy-Six Thousand, Four Hundred  
19 Eighty Dollars (\$276,480) in maintenance fees. Copies of these documents are attached  
20 hereto as **Exhibit 3** and by this reference incorporated as if set forth in full herein.  
21

22 25. MARIAN did, in fact, send a copy of the Exhibit 3 documents to the BLM.

23 26. In early August of 2013 MARIAN informed CHETAL that the maintenance fees  
24 check had to be postmarked by August 30, 2013.

25 27. CHETAL agreed to pay the Two Hundred Seventy-Six Thousand, Four Hundred  
26 Eighty Dollars (\$276,480) due the BLM directly to the BLM in an envelope postmarked by  
27 August 30, 2013.  
28

1           28. In response to her inquiry, the BLM informed MARIAN that they were agreeable  
2 to accepting payment for MARIAN'S mining claim maintenance fees directly from  
3 CHETAL.  
4

5           29. Without MARIAN'S knowledge or the BLM'S permission, CHETAL postdated  
6 his check to September 3, 2013. On information and belief CHETAL mailed his check to the  
7 BLM in an envelope postmarked August 30, 2013.  
8

9           30. CHETAL then contacted the BLM on September 3, 2013 and told them that he  
10 was having "some problems with his bank" and that is why he postdated his check.  
11

12           31. Plaintiff believes CHETAL justified to the BLM the postdating of his check on  
13 the basis that, due to September 2 being Labor Day, September 3, 2013 was the first day (after  
14 receipt of his August 30, 2013 postmarked envelope containing his check) that the BLM could  
15 present it for payment, a clearly presumptuous and unauthorized rationalization.  
16

17           32. The BLM gratuitously accepted CHETAL'S postdated check as they did not want  
18 MARIAN to lose her mining claims on which she had paid the maintenance fees for 27 years.  
19

20           33. CHETAL wrote the mining claim maintenance fee check on his personal account  
21 with "HSBC Premier" [bank], account no. 276127625 in the sum of Two Hundred Seventy-  
22 Six Thousand, Four Hundred Eighty Dollars (\$276,480) to be delivered to the BLM.  
23

24           34. On the memo portion of his check CHETAL wrote "payment of claims". A copy  
25 of this check is attached hereto as **Exhibit 4** and by this reference incorporated as if set forth  
26 in full herein.  
27

28           35. CHETAL'S above described check was dishonored by HSBC Premier for  
insufficient funds immediately upon presentation by the BLM.

          36. The BLM immediately contacted CHETAL about this dishonored check on or

1 about September 3, 2013.

2 37. CHETAL told BLM personnel that the check was good and they should deposit it  
3 again.

4  
5 38. The BLM did so on or about September 6, 2013 and was informed that this check  
6 had been dishonored this second time, again for insufficient funds. A copy of the BLM  
7 receipt which shows the notations of Pamela Stiles with regard to CHETAL'S dishonored  
8 check and that MARIAN'S claims were therefore forfeited is attached hereto as **Exhibit 5** and  
9 by this reference incorporated as if set forth in full herein.

10  
11 39. The BLM then informed MARIAN that because CHETAL'S check had been  
12 dishonored twice for insufficient funds, she would not be allowed to send in another check to  
13 cover the unpaid maintenance fees.

14  
15 40. The BLM further informed MARIAN that because of CHETAL'S twice  
16 dishonored check MARIAN had permanently and irrevocably lost all of her rights to the Ten  
17 Sleep mining claims after 26 years of timely paying all maintenance fees.

18  
19 41. They also informed MARIAN that she would be getting the formal written notice  
20 in March of 2014 informing her that she no longer owned the Ten Sleep mining claim rights  
21 due to CHETAL'S dishonored check.

22  
23 42 In answer to MARIAN'S inquiry the BLM informed her that to their knowledge  
24 no one in the history of the BLM involvement with mining rights had ever regained any  
25 mining rights lost due to non-payment or untimely payment of maintenance fees even though  
26 numerous administrative appeals and law suits had been pursued.

27  
28 43. On information and belief, it appears that there never was a sum of Two Billion  
Dollars (\$2,000,000,000) which ever existed and/or was ever transferred into any account of



1 CHETAL'S which would have provided funds for either the payment of the Two Hundred  
2 Seventy-Six Thousand, Four Hundred Eighty Dollars (\$276,480) due on the mining claim  
3 maintenance fees or the Two Hundred Twenty Million Dollar (\$220,000,000) purchase price  
4 of the mining claims owned by Plaintiff.  
5

6 44. In an especially egregious and blatant act of bad faith, CHETAL, after causing  
7 MARIAN to lose all of her Ten Sleep mining claims, then, without MARIAN'S knowledge,  
8 went to the BLM and attempted to buy these mining claims in his own name.  
9

10 45. While the BLM refused to sell them to CHETAL, Plaintiff believes CHETAL  
11 intentionally caused his check to the BLM for MARIAN'S mining claims to be twice  
12 dishonored so he could buy these claim for considerably less than his contract with MARIAN  
13 had provided.  
14

15 46. Plaintiff believes CHETAL'S actions resulting in her loss of her mining claims  
16 was intentional and done with malfeasance and intentional disregard of any and all of her  
17 rights, including ownership of her mining claims.  
18

19 47. What CHETAL did not discover until after he caused MARIAN to lose her  
20 mining claims was that what made her claims so valuable was that her claims were  
21 "grandfathered in" and thus were not subject to mining and environmental regulations which  
22 came into effect after she and her husband had first staked out these claims some 27 years  
23 earlier.  
24

25 48. In addition, even if MARIAN attempted to "restake" these lost claims, her rights  
26 to mine any of her lost mining claims would come behind any other mining rights, gas or oil  
27 leases which have been granted with regard to the 17,000 acres over the last 27 years which  
28 means that it is unlikely that the Ten Sleep gypsum deposits can ever be mined.



1           56. It is also clear that CHETAL always intended that MARIAN'S mining rights  
2 would be his and not UNITED'S as is evidenced by his communication to BLM'S official,  
3 Pamela Stiles, wherein he told Ms. Stiles that "All the mineral rights at the closing to be  
4 transferred to Shyam Chetal, according to the list mentioned above in the item Number 2."  
5 See a copy of this communication on the last page of CHETAL'S documents which were sent  
6 to Ms. Stiles as part of Exhibit 3.  
7

8           57. This communication further evidences that CHETAL was not only a direct party  
9 to the contract for the purchase of MARIAN'S mining rights but intended to be the sole  
10 owner and beneficial user of these rights at closing.  
11

12           58. CHETAL also does business as ADVANTAGE, an unincorporated California  
13 real estate brokerage, which CHETAL lists as having its main office at CHETAL'S residence,  
14 45319 Whitetail Ct., Fremont, California 94539.  
15

16           59. On information and belief CHETAL used his knowledge, skills and expertise as a  
17 real estate broker in negotiating, allegedly financing and ultimately consummating the  
18 contract for the purchase of MARIAN'S mining rights.  
19

20           60. MARIAN would never have entered into the contract regarding her mining rights  
21 if CHETAL had not disclosed to her and/or others acting on her behalf that CHETAL was a  
22 licensed real estate broker who handled substantial financial transactions.  
23

24           61. SSI was also an integral player along with CHETAL, UNITED and  
25 ADVANGTAGE in the effort to convince MARIAN to contract away her mining rights to  
26 CHETAL and /or UNITED.  
27

28           62. SSI was a principal actor in the financing scheme to enable CHETAL and/or  
UNITED to buy MARIAN'S mining claims. See the evidence of SSI'S role in the financing

1 scheme as documented in Exhibit 3.

2 63. All of the Defendants aided and abetted each other's actions in contracting with  
3 MARIAN to buy her mining rights as well as to develop and carry out the financing scheme  
4 which they used to convince MARIAN to contract away her rights.  
5

6 64. MARIAN fully performed all of the terms required of her to sell her mining  
7 rights to CHETAL and/or UNITED by signing her acceptance of their offer to purchase these  
8 rights (Exhibit 2).  
9

10 65. MARIAN justifiably relied on CHETAL and/or UNITED to fully perform all of  
11 their contractual obligations to her, as set forth in Exhibit 1 and described herein above.

12 66. Defendants breached the contract to buy MARIAN'S mining rights in that  
13 CHETAL'S personal check in payment of the mining claim maintenance fees of Two  
14 Hundred Seventy-Six Thousand, Four Hundred Eighty Dollars (\$276,480) which CHETAL  
15 and UNITED agreed to pay as part of One Million Dollar (\$1,000,000) down payment of the  
16 Two Hundred Twenty Million Dollar (\$220,000,000) purchase price for MARIAN'S mining  
17 rights was twice dishonored by CHETAL'S bank.  
18

19 67. As a result thereof, MARIAN lost all rights to the mining claims she had held for  
20 some 27 years and which had an appraised value of at least Eleven Billion, Five Hundred  
21 Sixteen Million, Five Hundred Sixty Thousand Dollars (\$11,516,560,000).  
22

23 68. By their failures, CHETAL and UNITED, aided and abetted by ADVANTAGE,  
24 SSI and the DOE Defendants have deprived MARIAN of everything she bargained for in the  
25 contract to sell her mining rights as well as any further claim to these rights.  
26

27 69. As a direct and proximate result of the Defendants' actions in breaching the  
28 contract to buy MARIAN'S mining claims or causing the contract to be breached, MARIAN

1 has been caused to suffer a minimum of Two Hundred Twenty Million Dollars  
2 (\$220,000,000) in actual damages (the purchase price of her claims), and a maximum of at  
3 least Eleven Billion, Five Hundred Sixteen Million, Five Hundred Sixty Thousand Dollars  
4 (\$11,516,560,000) in actual, consequential and reasonably foreseeable damages (the appraised  
5 value of the Ten Sleep gypsum mining claims less the purchase price and the costs of mining  
6 the gypsum in these claims).  
7

8           70. Furthermore, as a direct and proximate result of Defendants' actions in breaching  
9 the contract to purchase MARIAN'S mining claims, Plaintiff has been forced to retain  
10 counsel and incur the costs associated with this lawsuit.  
11

12           **WHEREFORE**, Plaintiff, MARIAN K. PORTER by and through her attorney of  
13 record, CHARLES R. KOZAK, ESQ., prays for judgment jointly and severally against  
14 Defendants, SHYAM K. CHETAL, individually and d/b/a ADVANTAGE REAL ESTATE  
15 PRO; UNITED CAPITAL INVESTMENT, INC., d/b/a NEVADA UNITED CAPITAL  
16 INVESTMENTS, INC.; SMARTTOUCH SYSTEMS, INC.; and the DOE Defendants as  
17 follows:  
18

- 19           1. For compensatory damages in a sum in excess of Seventy-Five Thousand Dollars  
20           (\$75,000);
- 21           2. For interest as allowed by law until all damages are fully paid;
- 22           3. For an award of reasonable attorney's fees and the costs of suit incurred herein;
- 23           and
- 24           4. For such other and further relief as the Court deems just, equitable and reasonable  
25           in the premises.  
26  
27  
28

1 **COUNT II – TORTIOUS BREACH OF CONTRACT**

2 71. Plaintiff incorporates by reference paragraphs 1 through 70 of this Complaint as  
3 if set forth in full herein.

4  
5 72. The above described breaches of contract by the Defendants, CHETAL and  
6 UNITED as aided and abetted by ADVANTAGE, SSI and the DOE Defendants were tortious  
7 and so willful and wanton as to be in complete disregard for the rights and wellbeing of  
8 MARIAN.

9  
10 73. As a direct and proximate result of Defendants’ tortious breaches of contract as  
11 described herein, MARIAN has been caused to suffer substantial economic damages in excess  
12 of Seventy-Five Thousand Dollars (\$75,000).

13 74. As a consequence thereof Defendants are liable, jointly and severally, to  
14 MARIAN for an award of punitive or exemplary damages in an appropriate sum.

15 **WHEREFORE**, Plaintiff, MARIAN K. PORTER, by and through her attorney of  
16 record, CHARLES R. KOZAK, ESQ., prays for judgment jointly and severally against  
17 Defendants, SHYAM K. CHETAL, individually and d/b/a ADVANTAGE REAL ESTATE  
18 PRO; UNITED CAPITAL INVESTMENT, INC., d/b/a NEVADA UNITED CAPITAL  
19 INVESTMENTS, INC.; SMARTTOUCH SYSTEMS, INC.; and the DOE Defendants as  
20 follows:  
21

- 22
- 23 1. For compensatory damages in a sum in excess of Seventy-Five Thousand Dollars  
24 (\$75,000);
  - 25 2. For punitive or exemplary damages as permitted under law;
  - 26 3. For interest as allowed by law until all damages are fully paid;
  - 27 4. For an award of reasonable attorney’s fees and the costs of suit incurred herein;
  - 28



1           80. On information and belief, CHETAL never did have Two Billion Dollars  
2 (\$2,000,000,000), the One Million Dollars (\$1,000,000) down payment or even the Two  
3 Hundred Seventy-Six Thousand, Four Hundred Eighty Dollars (\$276,480) for MARIAN'S  
4 mining claim maintenance fees coming into any of his accounts by or before September 3,  
5 2013.  
6

7           81. CHETAL'S Co-defendants aided and abetted CHETAL'S false representations  
8 that he had the financial wherewithal to pay MARIAN'S mining claim maintenance fees as  
9 well as the Two Hundred Twenty Million Dollar (\$220,000,000) purchase price for these  
10 claims.  
11

12           82. On further information and belief, all of the Defendants knew that no funds ever  
13 existed for CHETAL or UNITED to purchase MARIAN'S mining claims.  
14

15           83. The Defendants perpetrated this fraud on MARIAN for the specific purpose of  
16 making sure that she irrevocably lost her mining claims due to not paying the mining claim  
17 maintenance fees so they could buy the same directly from the BLM immediately after  
18 causing MARIAN to lose these claims.  
19

20           84. On information and belief these Defendants intended to pay the BLM a sum  
21 considerably less than the Two Hundred Twenty Million Dollars (\$220,000,000) they had  
22 contracted to pay MARIAN.  
23

24           85. All of the Defendants conspired together with one another to carry out this fraud.

25           86. MARIAN was informed by BLM personnel that within a few days after  
26 CHETAL'S check for Two Hundred Seventy-Six Thousand, Four Hundred Eighty Dollars  
27 (\$276,480) for payment of MARIAN'S mining claim maintenance fees was dishonored for  
28 the second time, CHETAL attempted to buy these claims directly from the BLM.



1 87. All of the other Defendants conspired together to carry out this part of the fraud  
2 as well.

3 88. The BLM refused to participate in any of the fraudulent acts described herein.

4 89. The above described fraudulent acts and statements were done with the specific  
5 intent to deceive MARIAN as well as the BLM.  
6

7 90. MARIAN justifiably relied on the false statements and representations of all the  
8 Defendants, each of whom aided and abetted each of the other Defendants in carrying out the  
9 above described fraud on MARIAN.  
10

11 91. As a direct and proximate result of Defendants' acts of fraud as described herein,  
12 MARIAN has been caused to suffer substantial economic damages in excess of Seventy-Five  
13 Thousand Dollars (\$75,000).

14 92. Defendants' acts of fraud committed against MARIAN were done in wanton and  
15 willful disregard of Plaintiff's rights and MARIAN is therefore entitled to an award of  
16 punitive or exemplary damages in an appropriate sum.  
17

18 **WHEREFORE**, Plaintiff, MARIAN K. PORTER, by and through her attorney of  
19 record, CHARLES R. KOZAK, ESQ., prays for judgment jointly and severally against  
20 Defendants, SHYAM K. CHETAL, individually and d/b/a ADVANTAGE REAL ESTATE  
21 PRO; UNITED CAPITAL INVESTMENT, INC., d/b/a NEVADA UNITED CAPITAL  
22 INVESTMENTS, INC.; SMARTTOUCH SYSTEMS, INC.; and the DOE Defendants as  
23 follows:  
24

- 25 1. For compensatory damages in a sum in excess of Seventy-Five Thousand Dollars  
26 (\$75,000);  
27
- 28 2. For punitive or exemplary damages as permitted under law;



1           **WHEREFORE**, Plaintiff, MARIAN K. PORTER, by and through her attorney of  
2 record, CHARLES R. KOZAK, ESQ., prays for judgment jointly and severally against  
3 Defendants, SHYAM K. CHETAL, individually and d/b/a ADVANTAGE REAL ESTATE  
4 PRO; UNITED CAPITAL INVESTMENT, INC., d/b/a NEVADA UNITED CAPITAL  
5 INVESTMENTS, INC.; SMARTTOUCH SYSTEMS, INC.; and the DOE Defendants as  
6 follows:  
7

- 8           1. For compensatory damages in a sum in excess of Seventy-Five Thousand Dollars  
9           (\$75,000);
- 10           2. For punitive or exemplary damages as permitted under law;
- 11           3. For interest as allowed by law until all damages are fully paid;
- 12           4. For an award of reasonable attorney’s fees and the costs of suit incurred herein;
- 13           and
- 14           5. For such other and further relief as the Court deems just, equitable and reasonable  
15           in the premises.  
16  
17

18                           **COUNT V – BREACH OF THE IMPLIED COVENANT  
19                           OF GOOD FAITH AND FAIR DEALING**

20           99. Plaintiff incorporates by reference paragraphs 1 through 98 of this Complaint as  
21 if set forth in full herein.  
22

23           100. Nevada recognizes the implied covenant of good faith and fair dealing in  
24 contract law, wherein if a party performs a contract in a manner that is unfaithful to the  
25 purpose of the contract and the justified expectations of the other party are thus denied,  
26 damages may be awarded against the party who does not act in good faith. *Hilton Hotels*  
27 *Corp. v. Butch Lewis Prods, Inc.*, 107 Nev. 226, 808 P.2d 919, 923 (1991).  
28

1           101. The above described facts in this Complaint demonstrate that Defendants did  
2 not timely pay for MARIAN'S mining claims, caused MARIAN to irrevocably lose said  
3 claims and then attempted to buy the mining claims they had caused MARIAN to lose by  
4 making a direct offer for the same to the BLM.  
5

6           102. MARIAN in good faith had entered in to a contract with CHETAL and/or  
7 UNITED to sell her mining claims in the Ten Sleep gypsum deposits.  
8

9           103. By entering into a contract wherein UNITED and/or CHETAL, as part of the  
10 One Million Dollar (\$1,000,000) down payment to her, would pay the Two Hundred Seventy-  
11 Six Thousand, Four Hundred Eighty Dollars (\$276,480) due for MARIAN'S mining claim  
12 maintenance fees, MARIAN, in good faith, irrevocably placed at risk any and all of her  
13 mining claims.  
14

15           104. The Defendants' failures to insure that the Two Hundred Seventy-Six Thousand,  
16 Four Hundred Eighty Dollars (\$276,480) in mining claim maintenance fees were timely paid  
17 and then seeking to buy these claims outright from the BLM at a cost far lower than what they  
18 had agreed to pay MARIAN, breached the covenant of good faith and fair dealing attendant to  
19 any contract entered into in whole or in part in the State of Nevada.  
20

21           105. As a direct and proximate result of Defendants' breaches of their covenants of  
22 good faith and fair dealing, as described herein, MARIAN has been caused to suffer  
23 substantial economic damages in excess of Seventy-Five Thousand Dollars (\$75,000).  
24

25           106. The Defendants are therefore liable, jointly and severally, to MARIAN for their  
26 breaches of good faith and fair dealing.  
27

28           107. The breaches by the Defendants of their covenants of good faith and fair  
dealing, as described herein, were tortious and done in wanton and willful disregard of

1 Plaintiff's rights and MARIAN is therefore entitled to an award of punitive or exemplary  
2 damages in an appropriate sum.

3           **WHEREFORE**, Plaintiff, MARIAN K. PORTER, by and through her attorney of  
4 record, CHARLES R. KOZAK, ESQ., prays for judgment jointly and severally against  
5 Defendants, SHYAM K. CHETAL, individually and d/b/a ADVANTAGE REAL ESTATE  
6 PRO; UNITED CAPITAL INVESTMENT, INC., d/b/a NEVADA UNITED CAPITAL  
7 INVESTMENTS, INC.; SMARTTOUCH SYSTEMS, INC.; and the DOE Defendants as  
8 follows:  
9

- 10 1. For compensatory damages in a sum in excess of Seventy-Five Thousand Dollars  
11 (\$75,000);
- 12 2. For punitive or exemplary damages as permitted under law;
- 13 3. For interest as allowed by law until all damages are fully paid;
- 14 4. For an award of reasonable attorney's fees and the costs of suit incurred herein;
- 15 and
- 16 5. For such other and further relief as the Court deems just, equitable and reasonable  
17 in the premises.  
18  
19

20  
21 Respectfully submitted this 2<sup>nd</sup> day of December, 2013.

22  
23  
24 */s/ Charles R. Kozak*  
25 CHARLES R. KOZAK, ESQ.  
26 Nevada State Bar No. 11179  
27 Charles R. Kozak, Attorney at Law, LLC  
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Attorney for the Plaintiff

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9 Attorney for the Plaintiff

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**UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA**

MARIAN K. PORTER )  
)  
Plaintiff, )  
)  
vs. )  
)  
SHYAM K. CHETAL, individually )  
and d/b/a ADVANGAGE REAL )  
ESTATE PRO, UNITED CAPITAL )  
INVESTMENT, INC. d/b/a )  
NEVADA UNITED CAPITAL )  
INVESTMENTS, INC., )  
SMARTTOUCH SYSTEMS, INC. )  
and DOES 1 through 30, inclusive, )  
)  
Defendants. )  
/

Docket No.:

**Fed. R. Civ. P. 7.1 DISCLOSURE  
STATEMENT**

**COMES NOW** CHARLES R. KOZAK, ESQ., the undersigned counsel of record for Plaintiff, MARIAN K. PORTER, and hereby certifies that there are no known interested parties other than those parties listed in the caption of this case and which parties presumably will be participating in this case. This certification is made pursuant to LR 7.1-1 of the Local Rules of Practice for the UNITED STATES DISTRICT COURT for the DISTRICT OF NEVADA.

1 Respectfully submitted this 2nd day of December, 2013.  
2  
3

4 /s/ Charles R. Kozak

5 CHARLES R. KOZAK, ESQ.

6 State Bar No. 11179

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