

IN THE SUPREME COURT OF THE STATE OF MONTANA
SUPREME COURT CAUSE NO. DA 24-0414

PAUL DENIS,

Plaintiff and Appellant,

v.

CARY MASSEY, ROSE GALLAGHER, and
SPANISH PEAKS MOUNTAIN CLUB,

Defendants and Appellees

APPELLEES' ANSWER BRIEF

On Appeal from the Montana Eighteenth Judicial District, Gallatin County,
Cause No. DV-24-227; the Honorable Andrew Breuner

Attorneys for Defendants and Appellees

Ian McIntosh
Kelsey Bunkers
CROWLEY FLECK, PLLP
P.O. Box 10969
Bozeman, MT 59719-0969
Telephone: (406) 556-1430
Facsimile: (406) 556-1433
Email: imcintosh@crowleyfleck.com
kbunkers@crowleyfleck.com

Appellant, Pro Se

Paul Denis
360 Wildridge Fork
Big Sky, MT 59716

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STATEMENT OF THE ISSUE

Appellees Cary Massey, Rose Gallagher, and Spanish Peaks Mountain Club (collectively “Defendants”) restate the issue on appeal as follows:

Whether the District Court correctly granted Defendants’ Motion to Dismiss, and dismissed Appellant Paul Denis’s Complaint with prejudice for failure to state a claim upon which relief can be granted under Montana Rule of Civil Procedure 12(b)(6)?

STATEMENT OF THE CASE

Appellant Paul Denis (“Denis”) filed his Complaint against Defendants in the Montana Eighteenth Judicial District Court on February 29, 2024. At the time, Denis appeared *pro se*. In his Complaint, Denis expressly requested injunctive relief, and asked that the District Court issue an order instructing Spanish Peaks Mountain Club to either reinstate his parking permit for the Spanish Peaks Mountain Club, or activate a membership in the Spanish Peaks Mountain Club that would allow him to use club parking. Dkt. 1, at 1-5. Denis, however, did not plead any facts that he has, or will, suffer irreparable injury or harm in support of his request for injunctive relief. In fact, apart from his request for injunctive relief, Denis did not assert any other claims for relief against Defendants. He did not allege that Defendants breached any duties or obligations owed to him, contractual

or otherwise, or that Defendants made any promises to him related to members' only parking privileges at Spanish Peaks.

Accordingly, Defendants moved to dismiss Denis's Complaint pursuant to Montana Rule of Civil Procedure 12(b)(6). *See* Dkt. 5. Even taking Denis's allegations in the Complaint as true pursuant to Rule 12(b)(6), he failed to state any cognizable claims entitling him to the injunctive relief he sought, or any other type of relief, against Defendants. Dkt. 5, at 1-3, 6-10. Shortly after Defendants moved to dismiss Denis's Complaint, counsel appeared on behalf of Denis and advised the District Court of an intent to file a first amended Complaint on behalf of Denis. *See* Dkts. 6 & 7. Shortly after appearing in the underlying action, however, Denis's counsel withdrew without filing an amended Complaint. Dkt. 8.

Denis filed a response in opposition to Defendants' motion to dismiss. *See* Dkt. 9. In response, Denis failed to cure, or even address, any of the deficiencies Defendants identified in his Complaint. *See* Dkt. 5, at 1; Dkt. 9. Denis did not assert any other claims apart from his request for injunctive relief. He did not amend, or seek leave to amend, his Complaint at any time. Instead, Denis made five unsupported "statements" in his response that he claimed supported his request for injunctive relief.

The District Court granted Defendants’ motion to dismiss and dismissed Denis’s claims against Defendants in their entirety and with prejudice. Dkt. 13.¹ The District Court applied the correct standard in considering Defendants’ motion to dismiss under Rule 12(b)(6) and construed the well-pled factual allegations in Denis’s Complaint as true and in Denis’s favor. *See* Dkt. 13, at 1. Under this standard, the District Court correctly determined that Denis failed to state a cognizable claim for the injunctive relief he requested. Dkt. 13, at 1-2. Denis did not plead or assert any other claims for relief. Accordingly, the District Court properly granted Defendants’ motion to dismiss, and dismissed Denis’s Complaint. Dkt. 13, at 1-2.

Denis filed this appeal of the District Court’s Order, claiming the District Court erred in granting Defendants’ motion to dismiss and dismissing his Complaint. *See* Dkt. 14.

STATEMENT OF THE FACTS

As an initial matter, the “facts” Denis relies upon in his Opening Brief are not supported by any citation or reference to the pages or parts of the record at which the facts appear, as required by Mont. R. App. P. 12(1)(d).

¹ Although Mont. R. App. P. 12(1)(i) required Denis to submit the District Court Order from which he appeals in an appendix, he failed to do so. A copy of the District Court’s Order is included in Defendants’ Appendix at Appendix 1.

Denis filed his Complaint Seeking Injunctive Relief to Reinstate Parking Permit or Reinstate Club Membership on February 29, 2024. Dkt. 1. Denis is a resident of the Spanish Peaks community. Dkt. 1, at pg. 1; Dkt. 5, at pg. 3. In 2004, Denis entered a Real Estate Purchase and Sale Agreement with Spanish Peaks Holdings, LLC. Dkt. 1, at pg. 2, ¶ 1; Dkt. 1, at Exhibit A. Spanish Peaks Holdings, LLC is not a party to this action, and none of the named are parties to the Purchase Agreement between Denis and Spanish Peaks Holdings, LLC. *See* Dkt. 1, at Exhibit A. In his Complaint, Denis contends that the Purchase Agreement required him to pay Spanish Peaks Holdings, LLC a “\$35,000 deposit for a resident membership” in The Club at Spanish Peaks. Dkt. 1, at pg. 2, ¶ 2. Denis does not contend that he paid this deposit to any of the Defendants, or that he made this deposit in exchange for a membership in the Spanish Peaks Mountain Club. *See* Dkt. 1.

In 2011, over six years after Denis entered the Purchase Agreement, Spanish Peaks Holdings, LLC, filed for bankruptcy. Dkt. 1, at pg. 2, ¶¶ 5-6. After filing for bankruptcy, Denis contends Spanish Peaks Holdings, LLC, which is now defunct, did not refund him the \$35,000 Resident membership deposit he paid to that entity in 2004. Dkt. 1, at pg. 2, ¶ 6. In 2013, CH SP Acquisition LLC acquired The Club at Spanish Peaks, which is now named Spanish Peaks Mountain Club. Dkt. 1, at pg. 5, ¶ 5; Dkt. 5, at 4. CH SP Acquisition LLC owns the club and

its facilities. Dkt. 1, at Exhibit E, pg. 2. Spanish Peaks Mountain Club, LLC operates the club. Dkt. 1, at Exhibit E, pg. 2. CP SP Acquisition LLC is not a party to this action. Dkt. 1. Spanish Peaks Mountain Club, LLC is also not a party to this action. *See* Dkt. 1.

Although Denis resides in the Spanish Peaks community, he is not a member of the Spanish Peaks Mountain Club that is owned by CH SP Acquisition, LLC and operated by Spanish Peaks Mountain Club, LLC. Dkt. 1, pgs. 2-3, at ¶¶ 8-11; Dkt. 1, at Exhibit E, pg. 5-6. Pursuant to the SP Membership Plan, which Denis attached to and incorporated into his Complaint, “[o]wnership of a residence or home site in the [Spanish Peaks] Community does not give any vested right or easement, prescriptive or otherwise, to use Club Facilities, and does not grant any ownership or membership interest in the Club or the Club Facilities.” Dkt. 1, at Exhibit E, pg. 6. The SP Membership Plan defines “Club Facility” to include Clubhouse “parking,” which is the parking privilege Denis seeks through this action. Dkt. 1, at Exhibit 1, pg. 1. Accordingly, individuals who reside in the Spanish Peaks community, but who are not members of Spanish Peaks Mountain Club, such as Denis, do not have any right to use Club Facilities, which include Clubhouse parking, and are not entitled to a parking permit for Clubhouse parking. *See id.*

Denis admits he is not a member of Spanish Peaks Mountain Club. Dkt. 1, at pg. 3, ¶¶ 10-11. He has not made any membership payments to Spanish Peaks Mountain Club, LLC to become a member of Spanish Peaks Mountain Club. Dkt. 1, at pg. 3, ¶¶ 10-11. He has not made any payments to any of the Defendants for membership in the Spanish Peaks Mountain Club. In fact, Denis admits that despite offers and an opportunity to join Spanish Peaks Mountain Club in 2013 after CH SP Acquisition, LLC acquired it, Denis “declined” such offers. Dkt. 1, at pg. 3, ¶ 9-11. Denis therefore is not a member of Spanish Peaks Mountain Club, and pursuant to the plain terms of the SP Membership Plan, as a non-member, he is not entitled to use Club Facilities, which include Clubhouse parking. Despite this, Denis seeks injunctive relief to either “reinstate” a Clubhouse parking permit, or “reinstate” Membership in the Spanish Peaks Mountain Lodge. Dkt. 1, at 1, 5.

Denis now contends, for the first time in his Opening Brief on appeal, that Defendants made a “clear and definite” promise to him that he would have access to “certain recreational areas,” such as access to Nordic skiing. Appellant’s Opening Brief, at 5. Not only does Denis not provide any citation in support of these alleged promises in his brief, he does not contend that these alleged “promises” gave him any interest or right to use the members’ only Clubhouse parking. Appellant’s Opening Brief, at 5.

STANDARD OF REVIEW

The Montana Supreme Court reviews a district court's ruling on a motion to dismiss pursuant to Mont. R. Civ. P. 12(b)(6) de novo. *Meagher v. Butte-Silver Bow City-County*, 2007 MT 129, ¶ 13, 337 Mont. 339, 160 P.3d 552. A motion to dismiss under Rule 12(b)(6) is properly granted when the plaintiff fails to plead facts sufficient "to state a claim upon which relief can be granted." Mont. R. Civ. P. 12(b)(6). An asserted claim is subject to dismissal if, as pled, it is "insufficient to state a cognizable claim entitling the claimant to relief." *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, 407 P.3d 692. A claim should be dismissed under Rule 12(b)(6) if it either fails to "state a cognizable legal theory for relief or states an otherwise valid legal claim but fails to state sufficient facts that, if true, would entitle the claimant to relief under that claim." *Id.*

Under Rule 12(b)(6), the factual allegations in the complaint are viewed in the light most favorable to the plaintiff, but the court "is under no duty to take as true legal conclusions that have no factual basis" *Cowan v. Cowan*, 2004 MT 97, ¶ 14, 321 Mont. 13, 89 P.3d 6. While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations. *Harris v. St. Vincent Healthcare*, 2013 MT 207, ¶ 14, 371 Mont. 133, 305 P.2d 852.

SUMMARY OF THE ARGUMENT

As an initial matter, this Court should dismiss Denis's appeal because he fails to present a sufficient record and legal authority in support of his appeal. As the appellant, Denis has an obligation to present the Court with a sufficient record on appeal, with citations and references to the parts of the record in support of his arguments. *See* Mont. R. App. P. 12(1)(d). Denis similarly has an obligation to provide citations to the legal authorities, statutes, and pages of the record relied upon with respect to his legal argument. Mont. R. App. P. 12(1)(g). Denis failed to do that. Denis's Opening Brief contains no citations to the record in support of his statement of facts. *See* Appellant's Opening Brief. Denis similarly fails to provide any citation to legal authorities in support of his argument on appeal. *Id.* Because Denis failed to comply with his obligations as the appellant, his appeal should be dismissed.

On appeal, Denis raises new theories and arguments for the first time that were not raised before the District Court. This Court should disregard those arguments and legal theories. Denis sought injunctive relief from the District Court. Dkt. 1. He did not assert any other legal theories against Defendants before the District Court. *See* Dkt. 1. On appeal, Denis asserts new legal theories of promissory estoppel and breach of a contractual relationship. Appellant's Opening Brief, at 4-9. Denis did not plead these theories in his Complaint. *See* Dkts. 1, 9.

Denis also contends, for the first time on appeal, that the District Court erred by not allowing him to amend his Complaint. *See* Appellant’s Opening Brief, at 2. Denis, however, did not seek to amend his Complaint before the District Court, despite the opportunity to do so and his counsel’s representations that he intended to do so. Denis failed to present or preserve any theories or legal arguments other than his request for injunctive relief. He cannot raise new arguments or legal theories for the first time on appeal. For this reason, this Court should affirm the District Court’s ruling.

Setting aside the deficiencies and new arguments in Denis’s Opening Brief, this Court should affirm the District Court’s decision dismissing Denis’s claims because Denis failed to state any cognizable claims for relief. The District Court applied the correct standard when granting Defendants’ motion to dismiss. The District Court expressly construed Denis’s Complaint in the light more favorable to him and treated his well-pled factual allegations as true. *See* Dkt. 13, at 1. The District Court correctly found that Denis’s Complaint asked the District Court to “Instruct” Spanish Peaks Mountain Club to either reinstate his parking privileges or activate a club membership. *Id.* The District Court further correctly found that Denis’s Complaint failed to address any of the elements required for an injunctive remedy under Mont. Code Ann. § 27-19-201(3). *Id.* Accordingly, the District

Court properly granted Defendants' motion to dismiss and dismissed Denis's claims in their entirety.

Based on the allegations in his Complaint, Denis failed to state any cognizable claims for relief. Even taking Denis's factual allegations as true, he failed to state a cognizable claim for injunctive relief, or any other type of relief, against Defendants. As a non-member of the Spanish Peaks Mountain Club and pursuant to the plain terms of the Membership Plan applicable to the Spanish Peaks Mountain Club, which governs the use of Club Facilities such as parking, Denis is not entitled to the parking pass or membership benefits he seeks. Denis failed to dispute this before the District Court and cannot do so now. Despite the opportunity to do so, Denis failed to cure, or even address, the deficiencies in his Complaint. This Court should affirm the District Court's Order dismissing Denis's Complaint for failure to state a claim.

ARGUMENT

I. This Court Should Dismiss Denis's Appeal Because he Fails to Present a Sufficient Record and Legal Authority in Support of His Appeal.

As the appellant, Denis has an obligation to present an opening brief that meets specific requirements for the presentation of an argument before this Court. Mont. R. App. P. 12. The opening brief must include, among other things: (1) "[a] statement of the facts relevant to the issues presented for review, with references to

the pages or the parts of the record at which material facts appear” and (2) an argument section setting forth “the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes, and pages of the record relied on” Mont. R. App. P. 12(1)(d) & (g) (underline emphasis added). Denis’s Opening Brief contains general conclusory claims that the District Court erred, but it does not contain any citations to the record or legal authority to support these claims. For example, Denis’s Opening Brief does not include any citations to the record in support of his statement of facts. Similarly, Denis’s Opening Brief does not include any citations or references to legal authorities in support of his arguments on appeal. This is contrary to his obligations under Mont. R. App. 12(1)(d) and (f). Further, Denis did not include an appendix to his Opening Brief with the District Court’s decision from which the appeal is taken as required by Mont. R. App. P. 12(1)(i).²

This Court has repeatedly held that it will not consider unsupported issues or arguments. *In re Marriage of Damschen*, 2011 MT 297, ¶ 41, 363 Mont. 19, 265 P.3d 1245; *In re Marriage of McMichael*, 2006 MT 237, ¶ 12, 333 Mont. 517, 143 P.3d 439; *In re Custody of Krause*, 2001 MT 37, ¶ 32, 304 Mont. 202, 19 P.3d 811; *In re Marriage of Pfennigs*, 1999 MT 250, ¶ 32, 296 Mont. 242, 989 P.2d 327. “[I]t is not this Court’s obligation to conduct legal research on appellant’s behalf,

² Defendants included the District Court’s Order in their Appendix.

to guess as to his precise position, or to develop legal analysis that may lend support to his position.” *In re Estate of Bayers*, 1999 MT 154, ¶ 19, 295 Mont. 89, 983 P.2d 339; *see also Botz v. Bridger Canyon Planning and Zoning Commission*, 2012 MT 262, ¶ 46, 367 Mont. 47, 289 P.3d 180; *Broadwater Development, LLC v. Nelson*, 2009 MT 317, ¶ 43, 352 Mont. 401, 219 P.3d 492; *Snow v. Snow*, 2002 MT 143, ¶ 28, 310 Mont. 260, 49 P.3d 61; *In re B.P.*, 2001 MT 219, ¶ 41, 306 Mont. 430, 35 P.3d 291.

Failure to make arguments that are supported by citations to the record and legal authority, as required by Montana Rule of Appellate Procedure 12 is fatal to an appeal. *See Kenck v. State, Child Support Enforcement Division*, 2013 MT 380, ¶ 30, 373 Mont. 168, 315 P.3d 957; *In re Marriage of McMahon*, 2002 MT 198, ¶ 6, 311 Mont. 175, 53 P.3d 1266. “This Court has repeatedly stated that [it] will not consider unsupported issues or arguments.” *In re Marriage of McMahon*, ¶ 6. “While dismissal is a harsh result, it is nonetheless necessary when the utter failure to comply with the rules of appellate procedure results in an appellate filing that can neither be comprehended by this Court or realistically responded to by the opposing party.” *Id.* In the past, this Court has demonstrated that it is “willing to make accommodations for pro se parties by relaxing those technical requirements which do not impact fundamental bases for appeal.” *Id.* “However, a district court’s decision is presumed correct and it is the appellant who bears the burden of

establishing error by that court.” *Id.*, at ¶ 7. Denis – through his unsupported arguments – has failed to establish the District Court erred. Accordingly, this Court should dismiss Denis’s appeal.

II. Denis Waived His Equitable Estoppel, Breach of Contract, and Amendment Arguments By Failing to Raise the Arguments Before the District Court.

It is “well established” under Montana law that a “party may not raise new arguments or change its legal theory on appeal.” *State v. Ferguson*, 2005 MT 463, ¶ 38, 330 Mont. 103, 126 P.3d 463. This Court will not review issues or theories raised for the first time on appeal. *Paulson v. Flathead Conservation Dist.*, 2004 MT 136, ¶ 37, 321 Mont. 364, 91 P.3d 569; *Kovarik v. Kovarik*, 1998 MT 33, ¶ 27, 287 Mont. 350, 954 P.2d 1147; *In re Marriage of Binsfield*, 269 Mont. 336, 344, 888 P.2d 889, 894 (1995). Similarly, this Court “is not obligated to develop legal analysis that may lend support to a litigant’s position.” *Ferguson*, ¶ 38 (citing *In re Estate of Bayers*, ¶ 19). It is “fundamentally unfair to fault the trial court for failing to rule correctly on an issue it was never given the opportunity to consider.” *Paulson*, ¶ 37.

Denis devotes much of his Opening Brief to arguments and statements that are not supported by the District Court record, and that were not raised before the District Court. This Court should disregard those arguments and statements. For example, Denis appears to assert a new legal theory on appeal of promissory

estoppel and breach of some sort of contractual relationship between the parties, and argues the District Court should have allowed him the opportunity to amend his Complaint instead of dismissing his Complaint for failure to state a claim. *See* Appellant's Opening Brief, at 2-9.

Denis did not, however, assert or allege promissory estoppel or the existence or breach of a contractual relationship between the parties before the District Court in either his Complaint or in his response in opposition to Defendants' motion to dismiss. *See* Dkt. 1, Dkt. 9. Nor did he attempt to amend his Complaint, or seek leave from the District Court to amend his Complaint to address or cure any of the deficiencies in his Complaint despite his counsel's representation that he would do so. Because issues raised for the first time on appeal will not be considered by this Court, Denis's arguments that he stated a valid claim for relief under the theory of promissory estoppel, that Defendants breached a contractual relationship with Denis, and that the District Court should have allowed Denis an opportunity to amend his Complaint, must be rejected. *See Ferguson*, ¶ 38 (holding that a party may not assert new theories raised for the first time on appeal); *Paulson*, ¶ 37 (declining to address the merits of an argument raised for the first time on appeal).

Denis's attempt to assert new arguments and legal theories that were not raised below is improper. The new arguments Denis makes in his Opening Brief, which he raises for the first time on appeal, are not properly before this Court.

They are not part of, or supported by, the District Court record. This Court should disregard the new arguments raised in Denis's Opening Brief and affirm the District Court's dismissal of Denis's Complaint for this reason.

III. The District Court Properly Dismissed Denis's Complaint Because He Failed to Alleged Facts that Would Entitle Him to Injunctive Relief or Any Other Relief.

Denis appears to make two different arguments as to why the District Court erred. First, Denis contends the District Court "failed to properly apply the standard for a motion to dismiss" to accept all allegations in his Complaint as true and construe the allegations in the light most favorable to him. Appellant's Opening Brief, at 3. Second, Denis contends the District Court erred by not allowing him to amend his Complaint to cure any deficiencies. Appellant's Opening Brief, at 2. As detailed above, however, none of these arguments are supported by citation to the record or legal authority, and the Court should affirm the District Court on this basis alone.

In any event, these arguments fail because the District Court properly granted Defendants' Motion to Dismiss under the appropriate standard, the record reveals that Denis had the opportunity to amend his Complaint but did not, and any attempt by Denis to amend his Complaint would be futile.

A. The District Court applied the correct standard when it granted Defendants’ motion to dismiss and dismissed Denis’s Complaint.

In considering a motion to dismiss under Rule 12(b)(6), although the factual allegations in the complaint are viewed in the light most favorable to the plaintiff, the district court “is under no duty to take as true legal conclusions that have no factual basis” *Cowan*, ¶ 14. A motion to dismiss under Rule 12(b)(6) is properly granted where the claims, as pled, are “insufficient to state a cognizable claim entitling the claimant to relief.” *Anderson v. ReconTrust Co., N.A.*, 2017 MT 313, ¶ 8, 390 Mont. 12, 407 P.3d 692. The District Court expressly applied this standard and properly dismissed Denis’s Complaint. The District Court’s Order makes clear that it “constru[ed] [Denis’s] complaint in the light most favorable to him.” Dkt. 13, at 1. It was not required, as Denis appears to contend on appeal, to accept as true Denis’s unsupported legal conclusions. *Cowan*, ¶ 14; *see* Appellant’s Opening Brief, at 4.

The District Court applied the appropriate standard and determined Denis’s Complaint failed to address any of the elements required for an injunctive remedy under Mont. Code Ann. § 27-19-201(3). Dkt. 13, at 1. In his Complaint, Denis requested injunctive relief and an order from the District Court instructing Spanish Peaks Mountain Club to “reinstate” a parking permit allowing Denis, as a non-member of Spanish Peaks Mountain Club, to use its members’ only parking areas outside the Clubhouse, or “activate” a Spanish Peaks Mountain Club membership

for Denis to allow him to use the Clubhouse parking. Dkt. 1, at pg. 1; Dkt. 9, at 1-2.

The party seeking injunctive relief has the “burden of demonstrating the need for an injunctive order.” Mont. Code Ann. § 27-19-201(3). Injunctive relief is available “only where necessary to prevent irreparable injury in the absence of a plain, speedy, and adequate statutory or common law remedy.” *Estate of Mandich v. French*, 2022 MT 88, ¶ 27, 408 Mont. 298, 509 P.3d 6. An injunction may be ordered when the applicant establishes the following elements:

- (1) the applicant is likely to succeed on the merits;
- (2) the applicant is likely to suffer irreparable harm in the absence of preliminary relief;
- (3) the balance of equities tips in the applicant’s favor; and
- (4) the order is in the public interest.

Mont. Code Ann. § 27-19-201(1).

Denis failed to state a valid claim that would entitle him to relief in the form of a Clubhouse parking permit or an active Spanish Peaks Mountain Club membership, or any other type of relief. Denis failed to plead or establish the requisite elements for injunctive relief. Denis did not plead any facts to establish he is likely to succeed on the merits. Likewise, Denis did plead any facts to establish he has or will suffer “irreparable injury” or harm absent injunctive relief. Denis also did not plead any facts to establish that he has or will suffer a breach of

any obligation in his favor absent an order for injunctive relief or activation of a Clubhouse parking permit. Denis failed to address these deficiencies before the District Court, and similarly fails to address them now on appeal. This is fatal to his claim seeking injunctive relief.

Denis is not a Spanish Peaks Mountain Club member and is not entitled to the members' only parking benefit he seeks. Denis acknowledged he has not paid any membership fees to Spanish Peaks Mountain Club, LLC for use of Club Facilities or to become a member of the Spanish Peaks Mountain Club. Dkt. 1, at pg. 3, ¶¶ 10-11. Denis admits he declined the opportunity to re-join Spanish Peaks Mountain Club after its acquisition by CH SP Acquisition, LLC. Dkt. 1, at pg. 2-3, ¶¶ 1-11. These admissions are fatal to Denis's request for injunctive relief. Pursuant to the express terms of the SP Membership Plan and Denis's own admissions, Denis is not entitled to the membership-based parking benefits he requests and the District Court properly dismissed his Complaint with prejudice. *See* Dkt. 1, at Exhibit E, pg. 5-6.

B. Denis failed to allege sufficient facts that would entitle him to relief under any other legal theories.

Although Denis now contends on appeal that he sufficiently alleged a claim of promissory estoppel and breach of a contractual relationship, Denis did not assert these claims before the District Court. Appellant's Opening Brief, at 3-4.

As stated above, the Court should disregard these claims because Denis raised these new claims for the first time on appeal. Even if Denis had asserted these claims before the District Court, he did not plead sufficient facts to support the claims and allowing Denis to amend his Complaint would be futile.

To state a claim of promissory estoppel, the party asserting the claim must prove four elements: a clear and unambiguous promise; reliance by the promisee; reasonableness and foreseeability of the reliance; and resulting injury to the promisee. *S&P Brake Supply, Inc. v. STEMCO LP*, 2016 MT 324, ¶ 44, 385 Mont. 488, 385 P.3d 567. Denis did not plead that any of the Defendants made any sort of promise, let alone a clear and unambiguous promise, to him regarding his use of members' only parking privileges.

Instead, he contends, without any support, that Defendants made a clear and definite promise that he would have access to recreational areas, such as Nordic skiing. Appellant's Opening Brief, at 5. This does not amount to a promise that Denis would be issued a parking permit allowing him, as a non-member, to access members' only parking areas. Similarly, although Denis contends Defendants issued a Winter 2023 parking permit to him, this too does not amount to a promise that he would be issued a parking permit for members' only privileges indefinitely or in the future. Appellant's Opening Brief, at 5. Denis therefore has failed to plead sufficient facts to assert a claim for promissory estoppel against Defendants

and any amendment to his Complaint to assert such a cause of action would be futile.

Denis likewise failed to plead facts sufficient to establish breach of any contractual relationship. To state a claim for a breach of contract, the claimant must allege a valid and enforceable contract; breach of an express or implied contractual duty or obligation; and resulting damages. *Kostelecky v. Peas in a Pod LLC*, 2022 MT 195, ¶ 41, 410 Mont. 239, 518 P.3d 840. Denis does not allege he entered a valid or enforceable contract or contractual relationship, either express or implied, with any of the Defendants. Dkt. 1. In fact, Denis has not even identified a contract between him and any of the Defendants. Denis also acknowledges he has not made any payments for a membership, or any membership benefits, any of the Defendants that would entitle him to use of the members' only parking areas. Dkt. 1, at pg. 2-3, ¶ 1-11.

Although Denis entered a Purchase Agreement with Spanish Peaks Holdings, LLC and paid a membership deposit to that entity in 2004, Spanish Peaks Holdings, LLC is now a defunct entity and is not, and has never been, a party to this action. Dkt. 1, at pg. 2, ¶¶ 1-2. Spanish Peaks Holdings, LLC does not own or operate Spanish Peaks Mountain Club or its Club Facilities, which include the members' only parking facility. Dkt. 1, at Exhibit E. Denis has failed

to state a cognizable claim for breach of contract, and any attempt to amend his Complaint would be futile.

Denis failed to address or cure any of these deficiencies before the District Court. Dkt. 9. Despite the opportunity to amend his Complaint and his counsel's representation that Denis would be amending his Complaint, Denis did not. Denis did not seek leave from the District Court to amend his Complaint at any time. Instead, Denis filed a response in opposition to Defendants' motion to dismiss and restated his request for injunctive relief. Dkt. 9, at 1-2.

Taking the factual allegations in Denis's Complaint as true, which the District Court did, Denis failed to plead sufficient facts to support his claim that he is entitled to Club member parking benefits as a nonmember. The District Court properly dismissed Denis's Complaint for these reasons, and this Court should affirm the District Court's decision.

CONCLUSION

This Court should affirm the District Court's decision dismissing Denis's Complaint for multiple reasons. Because Denis failed to comply with his obligations as the appellant to present the Court with argument, supported by citations to the record and legal authority, to support his appeal, his appeal should be dismissed. Setting the deficiencies in Denis's appeal brief aside, the District Court properly dismissed Denis's claims against Defendants pursuant to Montana

Rule of Civil Procedure 12(b)(6). Even taking Denis's factual allegations as true and construing the allegations in his favor, Denis failed to state a cognizable cause of action against any of the Defendants. Denis failed to address or cure any of the deficiencies in his Complaint before the District Court, despite the opportunity to do so and his counsel's representations that he would be filing an amended complaint. In any event, any attempt to amend his Complaint would be futile. For all of these reasons, Defendants respectfully requests that this Court affirm the District Court's decision.

DATED this 11th day of September 2024.

CROWLEY FLECK PLLP

/s/ Ian McIntosh _____

Ian McIntosh

Kelsey Bunkers

Attorneys for Defendants and Appellees

CERTIFICATE OF COMPLIANCE

Pursuant to Mont. R. App. P. 11(4)(e), I certify that Appellee's Answer Brief is typed in 14-point Times New Roman Font, a proportionally spaced typeface, and contains 5,227 words, as calculated by Microsoft Office Word.

/s/ Ian McIntosh

Ian McIntosh

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and correct copy of the foregoing Appellees' Answer Brief with the Clerk of the Montana Supreme Court; and that I have served true and accurate copies of the foregoing brief upon each attorney of record and each party not represented by an attorney in the above-referenced action as follows:

- U.S. Mail
- Hand Delivery
- Facsimile
- FedEx
- eServe

Paul Denis
360 Wildridge Fork
Big Sky, MT 59716
Appellant, Pro Se

/s/ Ian McIntosh
Ian McIntosh

CERTIFICATE OF SERVICE

I, Ian McIntosh, hereby certify that I have served true and accurate copies of the foregoing Brief - Appellee's Response to the following on 09-11-2024:

Kelsey Evans Bunkers (Attorney)
1915 S. 19th Ave.
P.O. Box 10969
Bozeman MT 59719
Representing: Cary Massey, Rose Gallagher, Spanish Peaks Mountain Club
Service Method: eService

Paul Denis (Appellant)
501 Westfield Ave
Westfield NJ 07090
Service Method: Conventional

Electronically Signed By: Ian McIntosh
Dated: 09-11-2024