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October 30, 2017

Via E-Mail: rcampbell@rgclawoffice.com
Richard C. Campbell, Jr., Esq.
200 South Virginia Street, 8th Floor
Reno, NV 89501

Re: ***Criswell Radovan, LLC adv. George Yount***
Proposed Findings of Fact

Dear Rick:

We are in receipt of your October 24, 2017 letter, and have reviewed your comments against the transcripts of the testimony and Judge Flanagan's oral ruling from the bench. For the reasons stated below, we don't believe your comments and objections are supported by either. We will, therefore, be submitting the Findings of Fact, Conclusions of Law and Judgment to the Court today, with a copy of your October 24 letter and this response.

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I. Findings of Fact

***Paragraph 59:** There was evidence that Radovan told Marriner not to tell Mr. Yount that he was purchasing one of the CR shares instead of a share under the Private Placement memo.

Response: This is your argument that the Court did not agree with. And it is contrary to Marriner's testimony at trial. *See, e.g.,* pages 174-175 of the trial transcripts.

***Paragraph 60**: Under the Operating Agreement if the other shareholders did not approve the transfer of the share from CR to Mr. Yount, then the founders share was materially different in that voting rights did not attach to the share and a shareholder was only entitled to receive the economic benefits, if any, from the share.

Response: The share itself is identical in terms to all other shares and the Court found as such. Yount offered no expert witness opinion testimony indicating that the value of the transferred share that Yount received was different from the original issued share that he thought he was going to receive. Judge Flanagan's conclusions and colloquy with counsel in this regard could not have been more emphatic. Not even Yount's own CPA, Ken Tratner (who gave business valuation advice to Yount in conjunction with the subject membership purchase, and who testified at trial),

ventured to offer such an opinion. Whether Yount was or was not approved is a separate issue. The fact that the transfer to him had not yet been formally approved is about its transfer, not about the terms of the share. He certainly could (and would) have been approved and had voting rights if he had not immediately tried to avoid that happening.

***Paragraph 74**: The recorded voice mail from Pender to Radovan did not clearly evidence that both Cal Neva and Mosaic had been working hard on the loan and that mosaic was enthusiastic about getting it closed before the end of the year.

Response: This is a matter of your opinion. The judge heard the message, could weigh its seriousness and enthusiasm and decided that it did. This was the Court's interpretation.

***Paragraph 83**. There was no evidence that at the December 12, 2015 meeting that CR was seeking executive committee approval for the Mosaic loan.

Response: There was evidence of this in Robert and Bill's testimony. *See, e.g.,* Transcript p. 232:17-24.

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***Paragraph 89**. There was no testimony at trial that the Executive Committee approved the Mosaic loan in a January 27, 2016 meeting.

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Response: There was evidence in Robert and Bill's testimony. *See, e.g.,* Transcript p. 264:16-19.

***Paragraph 92**. Every witness at trial did not testify that the Mosaic loan would have covered the Project's debt and expenses to completion.

Response: I took this from the Court's ruling. (Transcript, p. 52) Many witnesses so testified and the judge found them credible and accepted their testimony. However, I deleted the second sentence as it is unnecessary.

***Paragraph 95:** Exhibit 3 does not support that CR Cal Neva was only paid a portion of the development fees it was due under the operating agreement.

Response: There was supporting testimony from Bill and/or Robert. The Court heard the evidence and found CR Cal Neva was still owed development fees. *See, e.g.,* Transcript pp. 186, 188.

* **Paragraph 96**. There was no evidence presented that proved the Marriner suffered significant compensatory damage.

Response: Trial Exhibit 4, at page 22, contains a page entitled "CAL NEVA HOTEL Phase II -- 28 Managed Residences For Sale," which shows projected gross sales income from sales of the 28 condos to be constructed at $43,288,000 total. The table includes notes explaining the basis for the projections, including comparable prices per square foot. Pursuant to the terms of Exhibit 1, Marriner would have earned 3% of that gross revenue, or $1.3 million. ($43,288,000 X 0.03 = $1,298,640.) This information is specific and quantifiable from the documents admitted into evidence without objection.

Marriner testified at Vol 1 (8/29/2017) at 122:13 to 123:13 that the project/condo sales was going to be his next five years of work, and provided other testimony regarding the impact to Marriner caused by of the failure of the project. As a result of the failure of the project, Marriner lost his equity stake shown in the Cal Neva Lodge Capital Tables to be $187,500. See Trial Exhibit 5, Cal Neva Lodge, LLC, Amended and Restated Operating Agreement, Schedule 4.2, showing capital contributions of preferred members as of November 24, 2014, including: "Marriner Real Estate, LLC $187,500." This information is likewise specific and quantifiable from the documents admitted into evidence without objection. Marriner also lost his right to an Honorary Founding Membership, as set forth in Trial Exhibit 1, Page 2, last line, and potential compensation for other consulting work shown on Trial Exhibit 1, Page 3, "Additional Work." Thus, the court's award of $1.5 million to Marriner ties to the substantial figures identified above: $1,298,640 in lost sales commissions, plus $187,500 in lost equity.

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II. Conclusions of Law

* **Paragraph 3.** Since the other shareholders did not approve the transfer of the CR share to Mr. Yount, he does not have the same share as other shareholders.

Response: See FOF #60 response.

* **Paragraph 4**. There is a difference between what Mr. Yount agreed to buy, as set forth above, regarding Mr. Yount's being in the same position as if he had bought a share under the PPM.

Response: See FOF #60 response above.

III. Counterclaim

*** Paragraph 4**: The Court never found or ever discussed that by consent of the parties that the trial centered around Plaintiff's collusion with IMC and Molly Kingston to interfere with the Mosaic loan.

Response: There is no question that a significant part of the trial centered around Yount's collusion with IMC/Kingston to interfere with the Mosaic loan and the resulting damages to my clients. This issue was exhaustively addressed during the testimony of every witness other than Coleman and Tratner. Judge Flanagan was thoroughly familiar with all the pre-trial filings and was not mislead about the fact we had not plead counterclaim. His decision to award the defendants damages to conform to proof at trial couldn't be clearer.

*** Paragraph 6.** There was no evidence that defendants mistakenly plead a counterclaim as affirmative defenses, nor was there a finding by the Court that the affirmative defenses should have been treated as a counterclaim.

Response: See #4 above.

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*** Paragraphs 9, 10, and 11.** There was no evidence quantifying any specific dollar amounts to either Mr. Criswell or Mr. Radovan as to any type of damages accruing to them individually or as to them being entitled to a salary, nor was there evidence that CR Cal Neva was entitled to $480,000 of development fees.

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Response: The Court found that these defendants suffered damages stemming from Yount's interference, which was supported by substantial evidence. The Court clarified its damage award in the Amended Order filed 3 days after ruling from the bench. As stated above, there was evidence that the $480k development fee was earned and unpaid. The court found lost salary to be a resultant damage and the amount will be quantified in an affidavit, to be filed after judgment is entered (no different than how attorney fees awarded at trial are proven up by affidavit). There was substantial evidence to support the resultant $1.5 mm award, including the loss of their investment, expected returns, loss of advances made to the company and the damage to their professional reputations. The loss of development fees was also in evidence through Robert and Bill's testimony and Trial Ex. 4. The amount of this loss will be quantified by affidavit just like lost salary and attorney fees. Attorney fees are supported by paragraph 16.9 of the Operating Agreement (Trial Ex 5/42) and NRS 18.010 and NRS 7.085.

*** Paragraph 13.** There was no evidence at trial that quantified any damages sustained to Marriner Real Estate or Mr. Marriner.

Response: see response to #96 above

***Paragraphs 14 and 15:** There is no statutory or contractual basis to award Marriner or Powell Coleman its attorneys' fees and costs.

Response: Wrong. See NRS 18.010 and NRS 7.085. See also Paragraph 16.9 of the Operating Agreement

We will be submitting the Findings of Fact to the Court, along with a copy of your letter. I will copy you on the letter.

Very truly yours,

HOWARD & HOWARD ATTORNEYS, PLLC

Martin A. Little, Esq.

MAL/krg
Enclosures
cc: Andrew Wolf, Esq.

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DISTRICT COURT

WASHOE COUNTY, NEVADA

GEORGE STUART YOUNT, individually and in his capacity as owner of GEORGE YOUNT IRA, Plaintiff, *vs.* CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN AND ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10, Defendants.	Case No. CV16-00767 Dept. No. 7 **PLAINTIFF'S RESPONSE TO DEFENDANTS' BRIEFS REGARDING CASE STATUS**

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INTRODUCTION

Defendants argue in their briefs regarding post-trial procedure by a successor judge that the district court should proceed with the "ministerial" act of entering judgment and enter judgment in accordance with Judge Flanagan's decision. In this case, however, entering judgment is not a simple ministerial act but rather an act that requires the successor judge to speculate as to Judge Flanagan's intent. Further, where evidence is disputed and requires credibility determinations the court should order a new trial or rehear disputed evidence. Defendants cannot show any basis for computing a damage award nor can they substantiate it. And even on the liability aspects, defendants' theory of the case defies common sense.

Notably, even defendants seem to understand the limitations of this court to simply proceed as they speculate Judge Flanagan would have. Defendants appear to abandon their proposed findings of fact and conclusions of law. Now they seem to contend that the court should enter only a simple judgment that merely refers to the transcripts of Judge Flanagan's findings. The court cannot take even that limited approach, however, for the reasons set out below.

RELEVANT FACTS

Defendants rely heavily on the fact that Judge Flanagan spoke at length about his ruling, resulting in 51 transcript pages of material. Yet, careful examination of these pages only undermines confidence in Judge Flanagan's rulings.

It is true that Judge Flanagan ruled orally on plaintiff's claims, with some express findings. For the first forty (of 51) pages, Judge Flanagan merely summarized the testimony of each witness. (Hr'g Tr. 9/08/2017, at 1090-1131.) Only the last ten pages of Judge Flanagan's decision consisted of Judge Flanagan's analysis of the claims. (Hr'g Tr. 9/08/2017, at 1131-1141.)

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Judge Flanagan did not discuss damages at any point, neither in summarizing testimony nor analysis. Judge Flanagan never discussed his computation of damages nor any relevant facts related to the calculation of damages. Judge Flanagan simply found in favor of all the defendants and awarded Radovan and Criswell $1.5 million each, two years' salary, management fees, and lost wages. (Hr'g Tr. 9/08/2017, at 1141: 1-4.) Later, in an amended order, Judge Flanagan awarded Criswell and Radovan $1.5 million each in compensatory damages, two years' salary and management fees. (Amended Order filed 09/15/2017 at 2.) Without explanation, Judge Flanagan then proceeded to add Marriner to the damage award and awarded him $1.5 million in compensatory damages. (Id.) Lastly, he awarded both CR Cal Neva LLC and Criswell Radovan LLC development fees. (Id.)

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LEGAL ARGUMENT

Judge Flanagan's oral findings lack fundamental elements, which both precludes entering judgment and, in general, ought to undermine this Court's confidence in his analysis. The determinations are conclusory and, in some aspects, run counter to common sense.

I.
NOT WITHSTANDING JUDGE FLANAGAN'S FIFTY-ONE PAGE DECISION, THERE IS NOT ENOUGH INFORMATION TO ENTER A SOUND JUDGMENT

Defendants argue the successor judge has enough information in Judge Flanagan's fifty one-page decision to enter judgment. This is incorrect. There are several areas where his findings lack essential premises necessary to support claims.[1] The most glaring example of which lies in Judge Flanagan's

[1] See "Plaintiff's Brief Regarding Status of Case and Appropriate Procedure Going Forward," filed January 16, 2018.

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award of damages. Nowhere in Judge Flanagan's findings did he articulate how he calculated damages and on what basis he awarded damages. The decision is completely devoid of any analysis regarding damages.

A. Defendants Did Not Adequately Prove the Amount of Damages

Criswell, Radovan, and Marriner contend the basis for the erroneous damage award is "firmly established" in the record. (Marriner's Opening Brief RE Post-Trial Proceedings By Successor District Judge, pg. 6, lns. 6-28, Defendants' Brief Regarding Post-Trial Procedure By Successor Judge pg. 8, lns. 5-10.) However, defendants fail to demonstrate the testimony on the amount of damages was not speculative. *Clark Cty. Sch. Dist. v. Richardson Const., Inc.*, 123 Nev. 382, 397, 168 P.3d 87, 97 (2007). The party seeking damages has the burden of proving both the fact of damages and the amount thereof. *Wallin of Lake Tahoe, Inc. v. Commercial Cabinet Co.*, 105 Nev. 855, 857, 784 P.2d 954, 956 (1989). There must be an evidentiary basis for determining a reasonably accurate amount of damages. *Id.; Shack v. Trust*, 373 P.3d 960 (Nev. 2011) (holding that even when there is some evidence of damages in the record, the damages award must be substantiated and the court must be able to determine how damages were calculated).

Here, Judge Flanagan's decision does not contain any analysis as to how he calculated damages. Judge Flanagan simply found in favor of all the defendants and awarded Radovan and Criswell $1.5 million each, two years' salary, management fees, and lost wages. In an amended order Judge Flanagan awarded Criswell and Radovan $1.5 million each in compensatory damages, two years' salary, and management fees. Judge Flanagan then added Marriner to the damage award and also awarded him $1.5 million in compensatory damages—again, without analysis. He then awarded both CR Cal Neva LLC and Criswell Radovan LLC development fees.

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Judge Flanagan *could not* have provided any computation or substantial basis for his decision, moreover, *because defendants provided none* at trial. They assert they are entitled to millions of dollars in damages including real estate broker's commission, salaries, and management fees. But mere assertions are not enough.

Defendants provided no competent testimony to establish the required basis for an award of substantial damages. Neither Criswell nor Marriner testified as to specific dollar amounts. In a seven day trial, the value of defendants' damages was only raised once. Counsel asked Radovan how CR Cal Neva had been damaged by Mr. Yount and the IMC's alleged interference. Radovan, having no knowledge or basis of how the entity had been damaged, instead wildly guessed that he personally lost $1.6 million and contended his operating company would have made over a million dollars in revenue. [2] Radovan presented no further evidence, just this brief, biased and unsubstantiated guestimate.

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While Marriner submitted a sliver of evidence regarding damages, their consulting agreement and real estate broker's commission, Marriner never testified as to any damage amounts. He alleged the Cal Neva was his "next five years"[3] and nothing further. Marriner's testimony does not adequately prove damages. For instance, there was no evidence that if the project had gone through it would have been successful, that the 28 condos for sale would have sold, or that the investors would have profited. Thus, the damage awards were unsubstantiated and highly speculative.

Furthermore, despite Criswell, Radovan, and Marriner holding different roles in the investment project and different equity stakes in Cal Neva Lodge,

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[2] Hr'g Tr. 8/31/2017, at 493:11-16

[3] Hr'g Tr. 8/29/2017, at 122:13

Judge Flanagan awarded all three defendants the exact same damage award, $1.5 million in compensatory damages. This identical award of damages to Marriner, who was allegedly entitled to a three percent commission and only contributed $187,500 to the Cal Neva and to Criswell and Radovan who purportedly contributed $2,000,000 million through their development LLC, demonstrates the capricious nature of Judge Flanagan's damage award.

B. It Would Be Plain Error to Allow Defendants to Retroactively Raise New Claims in Effort to Somehow Cure Judge Flanagan's Faulty Findings and Conclusions

The simple reason that defendants provided essentially no proof of damages is that *the trial was never about* any affirmative claims of Defendants or their alleged damages. (*See* plaintiff's Jan. 16, 2018 brief at 13-14.) Defendants now contend that this deprivation of due process to Yount can be swept under the rug by allowing them to amend their answers to raise counterclaims under NRCP 54(c), 8(c), and 15(b). ("Marriner's Opening Brief RE Post-Trial Proceedings By Successor District Judge," at 7:9-18; "Defendants' Brief Regarding Post-Trial Procedure By Successor Judge" at 9:1-26.)

The Nevada Supreme Court has determined that under rule 54(c) a court may not grant judgment for relief which is neither requested by the pleadings nor within the theory on which the case was tried. *Idaho Res., Inc. v. Freeport-McMoran Gold Co.*, 110 Nev. 459, 461 874 P.2d 742, 743 (1994). Furthermore, under rule 8(c) a party does not mistakenly plead a counterclaim as an affirmative defense when the request for relief clearly indicates otherwise. *Glob. Healing Ctr., LP v. Powell*, No. 4:10-CV-4790, 2012 WL 1709144, at *6 (S.D. Tex. May 15, 2012). Under 15(b), implied consent to a counterclaim is not established merely because evidence bearing directly on an unpleaded issue was introduced without objection; it must appear that the parties understood the

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evidence was aimed at the unpleaded issue. *Viox v. Weinberg*, 861 N.E.2d 909, 917 (Ohio Ct. App. 2006).

Here, the successor judge does not have enough information to enter an award of damages under 54(c), 8(c), or 15(b). Neither the defendants nor Judge Flanagan's oral decision demonstrate that the award of monetary damages was within the theory of the case. Judge Flanagan's oral decision never addressed any elements of intentional interference with contractual relations or that defendants mistakenly plead unclean hands. Further, Mr. Yount never consented to try any counterclaims. Judge Flanagan's oral decision never discussed amending defendants' pleadings nor did he find Mr. Yount impliedly consented to a counterclaim. Accordingly, despite Judge Flanagan's fifty-one page soliloquy there is still not enough information to award over six million dollars in damages.

Defendants also ignore the Nevada case directly on point that articulates how a party must earn leave to amend a pleading after the expiration of a deadline set out in a pretrial order. Under *Nutton v. Sunset Station*, a party must first demonstrate "good cause" under NRCP 16(b) for extending the deadline. *Nutton v. Sunset Station, Inc.*, 357 P.3d 966, 131 Nev. Adv. Op. 34 (Nev. Ct. App. 2015). Rule 16(b) governs amendment of pleadings after a scheduling order deadline has expired. *Id.* In determining whether "good cause" exists under Rule 16(b) the basic inquiry is the diligence of the party seeking the amendment. *Id.* Disregard of the scheduling order disrupts the agreed-upon course of the litigation and rewards the indolent and the cavalier. *Id.* at 971.

Here, Criswell and Radovan make no effort whatsoever to show good cause for deviating from the scheduling order. Good cause cannot exist when the proposed amendment rests on information the defendants knew, or should have known in advance of the deadline. The scheduling order required that all amendments to pleadings be filed by April 15, 2017. Defendants had until March 15, 2017 to complete discovery and if Criswell and Radovan believed

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they had a viable intentional interference with contractual relations claim they had a considerable amount of time to amend the pleadings. They have no excuse.

C. It Would Be Unjust For the Successor Judge to Enter Judgment on Issues That Were Never Tried

Defendants Radovan and Criswell argue that as an alternative approach the district court may enter new findings of fact and conclusions of law that counsel submitted around the time of Judge Flanagan's passing. (Defendants Brief Regarding Post-Trial Procedure by Successor Judge, pg.7, lns. 2-6.) However, a successor judge should not enter judgment where the original judge's finding do not support the basis for the findings.[4] *See Smith's Food King No. 1 v. Hornwood*, 108 Nev. 666, 668 fn. 1-2 (Nev. 1992). Due process entitles a plaintiff to reasonable advanced notice of the issues to be raised. *Schwartz v. Schwartz*, 95 Nev. 202, 205, 591 P.2d 1137, 1140 (Nev. 1979). A party is procedurally prejudiced if it is surprised by the district court's action and that surprise results in the party's failure to present evidence in support of its position. *Bridgeway Corp. v. Citibank*, 201 F.3d 134, 139 (2d Cir. 2000).

Defendants never tried the claim and Judge Flanagan never discussed the tort of intentional interference with contractual relations. Not a single element was mentioned at the hearing or in Judge Flanagan's amended order. In fact, Judge Flanagan expressly mentioned unclean hands and discussed its two elements. Moreover, Mr. Yount did not have sufficient notice of an

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[4] In Nevada, under Rule 58 a judge is required to affirmatively sign the judgment, even in entering judgment on clerical issues. NRCP 58 ("[U]pon a general verdict of a jury, or upon a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the court shall sign the judgment and the judgment shall be filed by the clerk.") The Federal rule on the other hand, creates exceptions where the court's approval is not required. FRCP 58. This distinction shows how Nevada judges must affirmatively make the final call on judgments.

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intentional interference with contractual relations claim against him. Mr. Yount did not have an opportunity to present witnesses who could corroborate his testimony and did not have an adequate opportunity to prepare his case. The court is not permitted to abandon the due process requirement of advanced notice. Accordingly, it would be unjust for the successor judge to enter judgment on issues that did not appear anywhere in Judge Flanagan's oral decision.

II.
A SUCCESSOR JUDGE SHOULD REFRAIN FROM MEMORIALIZING OBVIOUSLY INCORRECT FINDINGS

With due respect to Judge Flanagan, his decision contained several legally incorrect findings. It erroneously awarded the defendants damages, disregarded basic principles of contract law, and made nonsensical findings. The district court can and should correct clearly erroneous rulings at any time prior to the entry of final judgment. *See Ins. Co. of the W. v. Gibson Tile Co.*, 122 Nev. 455, 466 n.4, 134 P.3d 698, 705 n.4 (2006) (Maupin, J., concurring). Where a prior judge articulated an erroneous ruling based on flawed or deficient rationale, the successor judge must refrain from just rubberstamping it. *Id.*

A. Judge Flanagan's Decision Erroneously Awarded Damages

As discussed above, Judge Flanagan's oral decision is completely devoid of any analysis or computation of damages. He awarded over six million dollars in damages with no substantiation.

B. Judge Flanagan's Decision Disregarded Basic Principles of Contract Law

It has long been the policy in Nevada that absent some countervailing reason, contracts will be construed from the written language and enforced as written. *Ellison v. California State Auto. Ass'n*, 106 Nev. 601, 603, 797 P.2d 975, 977 (1990). Interpretation of an agreement does not include its modification or the creation of a new or different one. *Reno Club v. Young Inv. Co.*, 64 Nev. 312, 323–24, 182 P.2d 1011, 1016 (1947). A court is not at liberty to

revise an agreement while professing to construe it. *Mohr Park Manor, Inc. v. Mohr*, 83 Nev. 107, 111, 424 P.2d 101, 104 (1967). The prime objective of contract law is to protect the justified expectations of the parties. *Erwin v. Cotter Health Centers*, 161 Wash. 2d 676, 700, 167 P.3d 1112, 1124 (2007).

Here, Judge Flanagan disregarded Nevada's policy for strictly construing contracts. Judge Flanagan found the CR Share was allegedly the same as an original founders share. However, the subscription agreement Mr. Yount signed expressly indicated he was purchasing a founders share ownership interest in the Cal Neva Lodge under the PPM. And yet, Judge Flanagan, rather than construe the written language of the contract, impermissibly altered the terms in his interpretation of the contract. He found the CR share was fundamentally equal to an original founders share. However, the CR share was materially different in that voting rights did not attach to the share and the shareholder was only entitled to receive the economic benefits, if any, from the share. The shareholder was not vested with any of the rights and powers of the other members. The shareholder did not have the right to participate in the management of the business and affairs of the Company. The sale of the CR share to Mr. Yount was also never consummated because it never received the required shareholder approval per the terms of the contract.

Further, under the terms of the contract Mr. Yount's $1 million was to go into the Cal Neva project. Instead, it was erroneously given to Criswell and Radovan. These fundamental differences altered Mr. Yount's expectations under the contract. Judge Flanagan's modification of the contract terms goes against Nevada policy.

C. Judge Flanagan's Decision Ignores Common Sense

Judge Flanagan reached conclusions that are illogical. For instance, despite Mr. Yount's testimony that he had no contact with the Mosaic lending group and made no attempts to stop their loan, Judge Flanagan found that "but for the intentional interference with the contractual relations between Mosaic

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and Cal Neva LLC" the project would have succeeded. It defies even common sense, however, to infer that Mr. Yount would have intentionally interfered with the Mosaic loan after he had already invested his $1 million into the Company. It would be to Mr. Yount's detriment to "tank" a project he had personally invested in. Thus, assuming the prospective loan was the Company's only hope of success, *procurement of the loan would have been Mr. Yount's best hope of ever recouping his $1 million.*

It would be a legal error, and even an abuse of any discretion this Court may have, to proceed to enter judgment on this infirm record.

CONCLUSION

Based on the foregoing, the district court cannot grant judgment in favor of the defendants. If the Court does not grant judgment in favor of Mr. Yount, it must hold a new trial.

The undersigned hereby affirms that this document does not contain the social security number of any person.

Dated this 2nd day of February, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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CERTIFICATE OF SERVICE

I hereby certify that on the 2nd day of February, 2018, I served the foregoing "Plaintiff's Response to Defendants' Briefs Regarding Case Status" on counsel by the Court's electronic filing system to the persons and addresses listed below:

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Attorneys for Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA,

Plaintiff,

v.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company and DOES 1-10,

Defendants.

CASE NO. CV16-00767

DEPT NO. B7

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MARRINER'S REPLY BRIEF RE POST-TRIAL PROCEEDINGS BY SUCCESSOR DISTRICT JUDGE

TO THE HON. JERRY POLAHA, DISTRICT JUDGE:

Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC (collectively

"Marriner"), respectfully submit the following reply brief re post-trial proceedings to be conducted by the successor district judge assigned to this matter after the untimely passing of Hon. Patrick Flanagan. This brief is submitted per the court's order made during a telephonic status conference held on November 13, 2017, and the parties' stipulation extending the deadline for filing reply briefs to February 2, 2018.

1. Introduction

As shown in Marriner's opening brief, the next steps in this case are governed by NRCP 52 and 63. Yount has failed to cite either of these rules or address the steps the court should take to follow the rules. Instead, Yount presents what is, in essence, a premature motion to alter or amend judgment and/or an appellant's opening brief on appeal. In no uncertain terms, Yount is attempting to retry the case and reargue all of the evidence through his latest filing.

Marriner hereby joins in the points and authorities presented by the other defendants, Criswell-Radovan, et al. In particular, Marriner agrees with the other defendants' arguments regarding the applicability of NRCP 54(c), mandating that judgment must be rendered for the relief to which each party is entitled regardless of the pleadings, and their citation of *Magill v. Lewis*, 74 Nev. 381, 387-388 (1958), cited for the proposition that Rule 54(c) implements the principle that in a contested case (not a default prove-up) a judgment is to be based on what has been proven rather than what has been pleaded.

Marriner objects to the excessive length of Yount's brief. Paragraph II(C) of the court's Pretrial Order filed June 9, 2016, provides that legal memoranda submitted in support of any motion shall not exceed 15 pages in length, opposition memoranda shall not exceed 15 pages in length, and reply memoranda shall not exceed five pages in length. Yount's brief consumes 25 pages of text.

2. NRCP 63 is Not an Invitation to Reargue the Rulings of the Trial Court. (Wright & Miller, Federal Practice & Procedure, Civil.)

> "Rule 63 is not an invitation to reargument before a new judge of legal questions already determined by the original judge. If the initial judge has made a decision before becoming disabled, the successor judge may properly hear reargument in the light of an intervening decision of a higher court. But in the absence of such changed

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> circumstances as an intervening decision, the second judge may not properly overrule a prior decision of the first judge in the case.

11 Wright & Miller, Fed. Prac. & Proc. Civ. (3d ed.),§ 2922 *Action by Another Judge*, footnotes omitted.

3. The evidence supports a judgment against Mr. Yount based on his participation in a civil conspiracy to interfere with Criswell-Radovan's management of the Company, which included interference with the Mosaic loan.

Judge Flanagan recited the litany of documentary evidence showing that Mr. Yount was in "cahoots with this cabal involving certain members of the IMC…" Trial Transcript 1120:22-1121:4. In fact, Judge Flanagan implied that Mr. Yount was not being truthful when he testified he was not part of the IMC or the IMC's efforts to displace Criswell Radovan as the Company managers. Judge Flanagan noted more than a dozen trial exhibits, the clear implication of which is that Mr. Yount was part of the "team" (1120:4) and that he was in fact the spokesperson (1121:7) for the group led by the IMC seeking to remove Criswell and Radovan. Transcript 1119:23 to 1121:12. The intent to interfere and the interference is well documented in the record, and is based on both written correspondence admitted as exhibits and the testimony of the witnesses at trial. All of the trial exhibits were moved into evidence.

In Nevada, the elements for a claim of civil conspiracy are:

1. A combination of two or more persons;
2. Who intend to accomplish an unlawful objective together;
3. The association acts by a concert of action by agreement, understanding, or "meeting of the minds" regarding the objective and the means of pursuing it, whether explicit or by tacit agreement;
4. The association intends to accomplish an unlawful objective for the purpose of harming another;
5. Commission of an unlawful act in furtherance of the agreement; and
6. Causation and damages.

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Boorman v. Nev. Memorial Cremation Society, Inc., 772 F.2d. 1309 (D. Nev. 2011*); GES, Inc. v. Corbitt*, 17 Nev. 265, 270–71, 21 P.3d 11, 15 (2001); *Consolidated Generator-Nevada, Inc. v. Cummins Engine Co., Inc.*, 114 Nev. 1304, 971 P.2d 1251 (Nev. 1998); *Dow Chem. Co. v. Mahlum*, 114 Nev. 1468, 1488, 970 P.2d 98, 112 (1998).

The evidence in the record adequately supports the elements of a conspiracy to interfere. However, this is not the appropriate place to argue over the content of Judge Flanagan's ruling. A judgment should be entered first, after which Yount will have a full opportunity to seek postjudgment relief in the trial court, in addition to any relief he might wish to seek on appeal.

4. Options Available and Recommended Course of Action for the Successor Judge.

Fundamentally, the court has three different options to pursue at this time in accordance with NRCP 52 and 63: (A) enter a "bare-bones" judgment based on the findings of fact and conclusions of law made by Judge Flanagan orally on the record per NRCP 52; (B) enter comprehensive written findings of fact, conclusions of law and judgment substantially in the form previously submitted by defendants; or (C) recall certain witnesses to the extent the court deems it necessary before utilizing either option A or B. above. These three options are discussed next. Marriner suggests that the court should utilize option "A."

A. Judgment based on the existing record, which includes Judge Flanagan's findings, rulings and decision, with no additional findings by the successor judge. This approach is authorized by NRCP 52 and 63. See, e.g., *In re Marriage of Zander*, 273 Ill.App.3d 669 (1995), 653 N.E.2d 440, 210 Ill.Dec.535 [After trial judge entered oral findings and order into record in dissolution of marriage case, successor judge entered judgment on those oral findings -- held proper]; *Donahue v. Donahue*, 222 So.3d 249 (La.App. 2017) [successor judge was entitled to sign judgment filed in accordance with previous judge's oral ruling granting sole custody to father]; *Marsala v. Groonell*, 771 A.2d 967, 46 Conn.Supp. 650 (2000) [upon death of the trial judge, a successor judge was authorized to rule on postverdict motions and to enter judgment on the jury's verdict; a new trial was unnecessary]; *Berry v. School Dist. of City of Benton Harbor*, 494 F. Supp. 118, 120 (W.D. Mich. 1980), citing Wright

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& Miller ["A court may not properly overrule a decision of the first judge in the absence of special circumstances. 8 Wright & Miller, Federal Practice and Procedure § 2922, at 339. Even where such circumstances exist, deference must be paid to the trial judge's findings. See, *Brady v. TWA, Inc.*, 167 F. Supp. 469, 470 (D.Del.1958)."] This course of action recognizes that Judge Flanagan's oral ruling from the bench on the record constituted adequate findings of fact and conclusions of law as explicitly allowed by NRCP 52.

B. Full written findings of fact, conclusions of law and judgment (FFCLJ).

If the court prefers, it may utilize the FFC&L a previously submitted by defendants, and modified as the successor judge may deem it appropriate.

C. Recall witnesses if the court deems it necessary.

Although Marriner does not believe there is a need to recall witnesses, and no party has requested an opportunity to recall witnesses, should the court determine that recalling witnesses is necessary, a suitable date needs to be scheduled. At that time, in addition to any testimony requested by the successor judge, Marriner and the other defendants will have an opportunity to elaborate further about their respective damages.

D. Recommendation: Option "A" above.

The most straightforward and simple path forward is for the successor judge to enter a relatively bare-bones judgment based on Judge Flanagan's record to date, without any further testimony, findings of fact, conclusions of law, etc. For this purpose, Marriner has prepared and attaches hereto as **Exhibit 1** a proposed judgment for the court's use, a copy of which will be emailed to the court's judicial assistant. The proposed judgment reduces to a concrete form of judgment the things clearly decided by Judge Flanagan as to liability and damages. Anything not completely resolved in Judge Flanagan's oral ruling from the bench or Amended Order is not contained in the proposed judgment. For example, certain items of damages which were not quantified in Judge Flanagan's Amended Order are not set forth in the attached proposed judgment. Upon entry of the attached judgment, the successor judge will have properly acted under NRCP 63 by utilizing the findings of fact and conclusions of law made by Judge Flanagan orally on the record in accordance with NRCP 52. Thereafter, the parties may,

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through post judgment motions in the District Court, seek orders altering or amending the judgment, whether by increasing the damages awarded, reducing the damages awarded or completely altering the outcome of the trial, as advocated by Yount. The simplest and most appropriate course of action for the successor judge to follow is to give effect to what Judge Flanagan decided, and only what he decided, and then decide motions to alter/amend judgment thereafter.

5. Conclusion

Yount's attempt to reargue the outcome is premature. On a motion to alter or amend judgment, the court can entertain these arguments. First, we need a judgment. As postured, Yount is rearguing the entire case, before any judgment has been entered. Yount is doing nothing less than reopening the trial by rearguing all of the evidence and inferences from the evidence. This is premature and without authority of any kind.

The only thing left for the successor judge to do in this case is to sign a final form of Judgment per NRCP 52(a) and then receive and decide motions for attorney's fees under NRCP 54(d)(2), as well as any appropriate motions for postjudgment relief under the NRCP. Per NRCP 52(a) the final form of judgment may either (A) specify only the bottom-line results in a concise manner and rely solely upon the previous rulings from the bench and the Amended Order by Judge Flanagan, or alternatively, (B) may recite the complete findings of fact, conclusions of law and the bottom-line results. Either approach would satisfy NRCP 52(a).

Marriner has taken the liberty of preparing a concise form of judgment, which is served herewith. A copy is attached as **Exhibit 1**. Marriner recommends that the court proceed by signing the proposed judgment attached as Exhibit 1. After the judgment is entered, each party may utilize appropriate Rules of Civil Procedure to argue that the judgment should be altered or amended. Yount's brief is attempting to alter or amend the judgment before it has even been entered. Yount will have an ample opportunity to file a formal motion to alter or amend judgment following entry of judgment. But we need to get the horse back in front of the cart, and have a judgment entered in accordance with Judge Flanagan's ruling from the bench and

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his subsequent Amended Order, with regard to those things that he actually decided and quantified.

The undersigned does hereby affirm that the foregoing document does not contain the social security number of any person.

Date: February 2, 2018.

INCLINE LAW GROUP, LLP

By: s/Andrew N. Wolf
ANDREW N. WOLF
Nevada State Bar No. 4424
Attorneys for Defendants DAVID MARRINER
and MARRINER REAL ESTATE, LLC

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Incline Law Group, LLP, and that on this day, I caused to be served, a true and correct copy of:

MARRINER'S REPLY BRIEF RE POST-TRIAL PROCEEDINGS BY SUCCESSOR DISTRICT JUDGE

UPON:

Richard G. Campbell, Jr. THE LAW OFFICE OF RICHARD G. CAMPBELL, JR. INC. 333 Flint Street Reno, NV 89501 Telephone: (775) 384-1123 Fax: (775) 686-2401 rcampbell@rgclawoffice.com	Attorney for Plaintiff George Stuart Yount, Individually and in his capacity as Owner of George Stuart Yount IRA
Martin A. Little HOWARD & HOWARD ATTORNEYS PLLC 3800 Howard Hughes Parkway, Suite 1000 Las Vegas, NV 86169 Telephone: 702-257-1483 Fax: 702-567-1568	Attorney for Defendants Criswell Radovan, LLC, CR CAL NEVA LLC, Robert Radovan, William Criswell, Cal Neva Lodge, LLC, Powell, Coleman and Arnold, LLP
Daniel F. Polsenberg Joel D. Henriod LEWIS ROCA ROTHGERBER CHRISTIE LLP 3993 Howard Hughes Parkway, Suite 600 Las Vegas, Nevada 89169 Telephone: (702) 949-8200 Fax: (702) 949-8398	Attorneys for Plaintiff George Stuart Yount, etc.

VIA: Washoe County Eflex e-filing system: A true and correct copy of the foregoing document(s) was (were) electronically served via the court's electronic filing system to the above named attorneys associated with this case. If the any of the above named attorneys (and all of their listed co-counsel within the same firm) are not registered with the court's e-filing system, then a true and correct paper copy of the above-named document(s) was(were) served on the attorney via U.S.P.S. first class mail with first-class postage prepaid, to the attorney's address listed above, on this date.

Date: February 2, 2018.

___/s/ Andrew N. Wolf_____
Andrew N. Wolf

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Exhibit Index

Exhibit No.	Description	No. of Pages
Exhibit 1	*Proposed* Judgment	5 pages

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EXHIBIT 1

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EXHIBIT 1

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Attorneys for Defendants DAVID MARRINER and MARRINER REAL ESTATE, LLC

IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, Plaintiff, v. CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company and DOES 1-10, Defendants.	CASE NO. CV16-00767 DEPT NO. B7

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JUDGMENT

This matter came before the Court for a bench trial on August 29, 2017, through September 8, 2017, the late Hon. Patrick Flanagan, District Judge, presiding. Plaintiff George Stuart Yount, individually and in his capacity as owner of George Stuart Yount IRA, appeared

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by and through his counsel of record, Richard G. Campbell, Jr., Esq. Defendants Criswell Radovan, LLC, CR Cal Neva, LLC, Robert Radovan, William Criswell, and Powell, Coleman and Arnold, LLP, appeared by and through their counsel Martin A. Little, Esq., of Howard & Howard Attorneys PLLC. Defendants David Marriner and Marriner Real Estate, LLC, appeared by and through their counsel of record, Andrew N. Wolf, Esq., of Incline Law Group, LLP.

On September 8, 2017, at the conclusion of the trial and following the close of the evidence, Judge Flanagan, ruling from the bench, orally stated his findings of fact, conclusions of law and decision on the record in open court pursuant to NRCP 52. Judge Flanagan also adopted the proposed findings of fact submitted by the defendants prior to trial. Transcript 1131:14-16.

On or about September 15, 2017, a transcript of the trial was filed, containing Judge Flanagan's ruling from the bench. On September 15, 2017, the same day, Judge Flanagan issued an *AMENDED ORDER* clarifying his award of damages to the various Defendants.

At the conclusion of his ruling from the bench, Judge Flanagan requested that defendants' counsel prepare the judgment. Thereafter, Judge Flanagan suddenly fell ill and passed away on October 6, 2017. Thereafter, on October 30, 2017, defense counsel jointly submitted a proposed form of findings of fact, conclusions of law and judgment.

Subsequently, the matter was assigned to the undersigned District Judge. On November 13, 2017, the court held a status conference wherein the court directed the parties to file briefs regarding the appropriate procedure to be followed after Judge Flanagan's untimely passing. This briefing was completed on or about February 2, 2018. Based on the briefing, the court determines that the primary rules which govern further proceedings by the undersigned successor judge are NRCP 52 (findings by the court; judgment on partial findings), NRCP 58 (entry of judgment) and NRCP 63 (inability of a judge to proceed).

In this case, Judge Flanagan left an extensive record of his decision, including summaries of witness testimony, the credibility of certain witnesses, his analysis of various trial exhibits, and his determination of each claim for relief.

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The court has reviewed the trial transcript in its entirety and the exhibits referenced in the transcript and in Judge Flanagan's ruling. Pursuant to NRCP 63, the court hereby certifies its familiarity with the record. Moreover, given the status of the case at the time of Judge Flanagan's passing (evidence closed, closing arguments completed, and a completed ruling from the bench on the merits, followed by his written Amended Order), and the detailed extent of Judge Flanagan's ruling from the bench and his subsequently filed Amended Order dated September 8, 2017, the court has determined, pursuant to NRCP 63, that the proceedings in this case may be completed as set forth herein without prejudice to the parties.

Under NRCP 63, the court has discretion to recall witnesses. The court finds no need or reason to recall witnesses. See: *Smith's Food King v. Hornwood*, 108 Nev. 666, 836 P. 2d 1241 (1992); and, *Canseco v. United States*, 97 F.3d 1224, 1227 (9th Cir. 1996) [successor judges need only certify their familiarity with those portions of the record that relate to the issues before them]. *Compare: Mergentime Corporation v. Washington Metropolitan Area Transit Authority*, 166 F.3d 1257 (DC Cir. 1999). Accordingly, the court now enters judgment as follows:

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IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Second Amended Complaint, and each of the causes of action stated therein, are dismissed with prejudice as to all Defendants.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Marriner's and Marriner Real Estate's crossclaim against the other defendants is moot and is dismissed with prejudice.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay William Criswell the sum of **$1.5 Million** in compensatory damages.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Robert Radovan the sum of **$1.5 Million** in compensatory

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damages.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay DAVID MARRINER, individually, the sum of **$1.5 Million**.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay each defendant its costs of suit as allowed by law. Each Defendant shall file and serve its verified memorandum of costs as required by Chapter 18 NRCP.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that defendants may seek recovery of their attorney's fees by an appropriate motion pursuant to NRCP 54(d) and NRS 18.010, or as otherwise allowed by law.

DATED this ____ day of _____ 2018.

_____
DISTRICT COURT JUDGE

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Submitted by:

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IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, Plaintiff, vs. CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company; and DOES 1 through 10, Inclusive, Defendants.	CASE NO.: CV16-00767 DEPT NO.: B7

DEFENDANTS' REPLY BRIEF REGARDING POST-TRIAL PROCEDURE BY SUCCESSOR JUDGE

Pursuant to the Court's instruction, Defendants Criswell Radovan, LLC (Criswell Radovan), CR Cal Neva, LLC ("CR Cal Neva"), Robert Radovan ("Radovan"), William Criswell ("Criswell"), and Powell, Coleman and Arnold LLP ("PCA") (collectively "Defendants"), respectfully submit this reply brief responding to the arguments raised by Plaintiff George Stuart Yount ("Plaintiff" or "Mr. Yount").

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I.

PLAINTIFF HAS IGNORED NRCP 52(a) AND IS PREMATURELY ATTEMPTING TO REARGUE THE DECISION MADE BY CHIEF JUDGE FLANAGAN

Defendants understood the direction from this Court was for the parties to brief what steps a successor court should take given the current state of the case. Ignoring this Court's instructions, Plaintiff took this as an opportunity to reargue the decision made by Chief Judge Flanagan, which is plainly not allowed by NRCP 63:

> Rule 63 is not an invitation to reargument before a new judge of legal questions already determined by the original judge. If the initial judge has made a decision before becoming disabled, the successor judge may properly hear reargument in light of an intervening decision of a higher court. But in the absence of such changed circumstances as an intervening decision, the second judge may not properly overrule a prior decision of the first judge in the case.

11 Wright & Miller, Fed. Prac. & Proc. Civ. (3d ed.) § 2922 *Action by Another Judge (footnote submitted).*

While the Plaintiff is certainly at liberty to attack Chief Judge Flanagan's decision in his current appeal, or by post judgment motion, now is not the time for such arguments. Indeed, Plaintiff inexplicably ignores NRCP 52(a) and NRCP 58, which make clear that the only thing left for a successor court to do now is enter a judgment -- which is a ministerial act. *Life & Fire Ins. Co. of New York v. Wilson's Heirs*, 33 U.S. 291, 294 (1834).

Pursuant to NRCP 52(a) "[i]n all actions tried upon the facts without a jury or with an advisory jury, the Court shall find the facts specifically and separately state its conclusions of law thereon and judgment shall be entered pursuant to Rule 58" Importantly, Rule 52 goes on to state that "**[i]t will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of evidence or appear in an opinion or memorandum of decision filed by the court.**" (Emphasis added).

Incredibly, Plaintiff takes the position that Chief Judge Flanagan "never considered, adopted or entered findings of fact or conclusions of law or a judgment. . . ." *See* Plaintiff's

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brief, p. 2:5-7. While the ministerial act of entering a judgment was not performed before his death, there is no question that Chief Judge Flanagan made detailed oral findings of fact and conclusions of law which were recorded in the record and documented in a 53-page transcript. In fact, at the very beginning of his decision, Chief Judge Flanagan stated:

> Good lawyers give judges a lot to think about. This is an important case to all sides. So I wanted to make sure I reviewed everything and pulled the Blanchard case, reviewed the cases cited by counsel, had an opportunity to listen to very good arguments by very good lawyers and the Court has listened to the testimony in this case.

See Partial Transcript of Proceedings Trial, September 8, 2017 at p. 3:4-10.

Chief Judge Flanagan then spent nearly 2.5 hours making thorough evaluations of every witness and piece of evidence that came before him. He followed this up by making detailed findings and conclusions supporting his dismissal of every cause of action pled by Plaintiff. He then made detailed findings supporting his award of damages to Defendants, ultimately summarizing the basis for his award as follows:

> In this case, but for the intentional interference with the contractual relations between Mosaic and Cal-Neva, this Project would have succeeded. That is undisputed. . . .
>
> This Court has documented dozens of email exchanges between Mr. Yount and the IMC in their efforts to undermine the Mosaic loan and there is no more solid evidence of that than in Exhibit 124. That deal was done. That deal has been executed. That deal was in place. Mosaic had evidenced its enthusiasm to close this deal. And yet the day that individuals from the IMC went to the Mosaic offices without the knowledge of [Criswell Radovan], that deal was dead. The testimony is unequivocal, there was never an attempt by the IMC to resurrect it, despite the open invitation by Mosaic to reintroduce the loan.
>
> **This Court finds that it was the intent of the IMC to kill this loan, divest [Criswell Radovan] from it shares on the threat of legal, civil, criminal actions for their own benefit and not the benefit of the project.**

Id. at 52-53 (emphasis added).

Chief Judge Flanagan then entered a multi-million dollar award against Mr. Yount and in favor of Defendants for this intentional interference. A week later, on September 15, 2017,

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he issued a separate Amended Order clarifying his damage award. *See* Amended Order, Exhibit 2 to Defendants' opening brief. Chief Judge Flanagan died before a final judgment could be entered.

Accordingly, pursuant to NRCP 52 and 58, the successor court can simply let Chief Judge Flanagan's 53-page oral decision stand as the findings of fact and conclusions of law and enter a simple judgment in conformance therewith. Alternatively, the successor court can enter its own findings of fact, conclusions of law and judgment in conformance with Chief Judge Flanagan's decision – a draft of which has already been submitted by Defendants. *See* Exhibit 3 to Defendants' opening brief. Importantly, Plaintiff's counsel had very few substantive objections to that document. *See* Exhibits 4 and 5 to Defendants' opening brief. What remains clear, however, is that Plaintiff is not entitled to re-argue the rulings made by Chief Judge Flanagan -- at least before a judgment is entered.

II.

THERE ARE A FEW ITEMS LEFT UNDECIDED BY CHIEF JUDGE FLANAGAN, WHICH SHOULD BE ADDRESSED IN A POST-JUDGMENT PROCEEDING

In his 53-page decision, which was clarified in the Amended Order, Chief Judge Flanagan found that Defendants are entitled to the following, which have yet to be quantified:

(1) Attorneys' fees and costs;

(2) The amount of lost development fees to Criswell Radovan; and

(3) The amount of lost management fees to Criswell and Radovan.

See Amended Order.

Once a judgment is entered, Defendants plan to file a memorandum of costs and a motion for attorneys' fees, which is the customary procedure for handling fees and costs to a prevailing party. Similarly, quantifying the amount of lost management and development fees can be handled in similar fashion, or, if the successor court feels more evidence is needed, it can hold an evidentiary hearing to determine the amount. However, the basis for this award is already firmly established in the record, and only the amount is left to be decided by the

successor court.[1]

III.

PLAINTIFF'S ATTACK ON CHIEF JUDGE FLANAGAN'S DECISION IS PREMATURE AND WITHOUT MERIT

The bulk of Plaintiff's argument takes exception with Chief Judge Flanagan's award of damages to the Defendants. As postured, however, he is attempting to re-argue the case before any judgment has been entered, which is without legal authority of any kind. In fact, the case upon which Plaintiff relies, *Smith's Food No. 1 v. Hornwood*, 108 Nev. 666, 336 P.2d 1241 (1992) is totally inapplicable as it covers a situation where Chief Judge Flanagan "made no competent findings" . . . , which clearly is not the case here.

As shown in Plaintiff's opening brief, and as Chief Judge Flanagan's 53-page decision makes clear, there is substantial evidence and ample legal justification in the civil rules to support his damage award to Defendants. *See*, discussion of NRCP 54(c), 8(c), and 15(b) in Defendants' opening brief. Importantly, where a question of fact has been determined by the trial court, the Supreme Court will not reverse unless the judgment is clearly erroneous and not based on substantial evidence. *Beverly Enters.v. Globe Land Corp.*, 90 Nev. 363, 526 P.2d 1179 (1974); *Landex, Inc. v. State ex rel. List*, 94 Nev. 469, 582 P.2d 786 (1978); *Stickelman v. Moroni*, 97 Nev. 405, 632 P.2d 1159 (1981). Rule 52 says "Findings of Fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses."

Chief Judge Flanagan's findings of fact are detailed and meticulously thought out, and evidence the fact that he had an opportunity to and did make credibility determinations of the witnesses who came before him. Plaintiff disagrees with his conclusions of law, but Plaintiff's recourse is to appeal or take this up in a a post-judgment motion (*e.g.*, a motion to alter or

[1] Of course, Plaintiff is free to challenge the basis for this damage award in his pending appeal, or by post-judgment motion.

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amend the judgment).[2]

IV.

MARRINER'S PROPOSED JUDGMENT

Defendants largely agree with the proposed form of judgment submitted by Marriner; however, Defendants take exception with the fact that he left out the references to the award of attorneys' fees, and lost development and management fees which were awarded to Defendants in the Amended Order. The award of those damages should be left in the judgment, to be qualified through subsequent proceedings as discussed above. Thus, the actual form of the Judgment should match the Amended Order.

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[2] Although not ripe for consideration now (as the issue can and should only addressed in a post-judgment motion or appeal), the suggestion that Mr. Yount did not have sufficient notice of the interference claim is completely disingenuous. A cursory review of his deposition, taken long in advance of the trial, shows a significant portion of the questioning pertained to his interference with the Mosaic Loan. This issue was subsequently addressed in Defendants' pre-trial brief and proposed findings of fact and conclusions of law, and a significant portion of the trial was tried on this issue. Chief Judge Flanagan was a sophisticated trial judge, and was well within his legal right to award damages notwithstanding the fact that Defendants had not formally pled a counterclaim. *See* NRCP 54(c), 8(c) and 15(b).

V.

CONCLUSION

Plaintiff has put the cart before the horse. Pursuant to NRCP 52, 58 and 63, a successor court simply need a judgment in conformance with Chief Judge Flanagan's findings of fact and conclusions of law, which are detailed in his 53-page oral pronouncement from the bench and his subsequent Amended Order. Thereafter, attorneys' fees, lost management fees and lost development fees need to be quantified by post-judgment motion. Only then may Plaintiff take issue with Chief Judge Flanagan's findings (which Plaintiff has already done by filing an appeal).

DATED this 2nd day of February 2018.

HOWARD & HOWARD ATTORNEYS PLLC

By: _____

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Case No. 74275

In the Supreme Court of Nevada

GEORGE STUART YOUNT, individually and in his capacity as owner of George Yount IRA,

Appellant,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN AND ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10.,

Respondent.

APPEAL

from the Second Judicial District Court, Washoe County, Nevada
The Honorable N. PATRICK FLANAGAN, District Judge
The Honorable JEROME POLAHA
The Honorable EGAN WALKER
District Court Case No. CV16-00767

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VOLUME 11
PAGES 2501-2750

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misrepresentation; plaintiff justifiably relied upon defendant's representation; and plaintiff sustained damages as a result. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1998); *Blanchard v. Blanchard*, 108 Nev. 908, 839 P.2d, 1320 (1992). The suppression or omission of a material fact which a party is bound in good faith to disclose is equivalent to a false representation, since that constitutes an indirect representation that such fact does not exist. *Nelson v. Heer*, 123 Nev. 26, 163 P.3d 420 (2007). Plaintiff has the burden of proving each and every element of the fraud claim by clear and convincing evidence.

21. As stated above, Plaintiff has failed to prove that he sustained damages as a result of any of Defendants' conduct. Therefore, his fraud claim fails for this reason alone.

22. Plaintiff's fraud claim fails against Criswell for the additional reason that Plaintiff admitted that he never met, spoke to or communicated with Criswell prior to making his investment. Thus, Criswell did not make any false representations to Plaintiff upon which he justifiably relied.

23. Plaintiff's fraud claim against Defendants fails for the additional reason that he has not proven any of these fraud elements by the heightened clear and convincing evidence standard. Indeed, when asked what evidence or proof he had to support his fraud claims, Plaintiff stated only his own personal supposition and belief, which falls far short of meeting his burden of proof.

24. Plaintiff's fraud claim against Defendants fails for the additional reason that he has not met his burden of proving that Defendants intended to induce his reliance or that he justifiably relied upon any representations made by Defendants. As stated above, Plaintiff is a sophisticated investor who performed his own due diligence and relied upon the advice and counsel of his CFO, CPA Ken Tratner and the Project's Architect (Peter Grove) in deciding to invest. Plaintiff and his team of advisors were admittedly given everything they asked for and he was repeatedly asked if he needed additional information or wanted to tour the Project to see its progress, including three days before investing. Nothing prevented Plaintiff or his advisors from touring the Project and seeing the progress with their own eyes

or asking more questions of Defendants or their construction team. In fact, Plaintiff was encouraged to do so yet refused. Plaintiff also read and understood all of the operative legal documents and disclaimers and decided to invest knowing the Project was over budget, delayed and in need of financing. He invested knowing this was a speculative, risky investment and that he could lose his entire investment if funding was not secured for the cost overruns.

25. Plaintiff's fraud claim against Defendants fails for the additional reason that there has been no evidence presented that Defendants misrepresented or omitted to disclose any material facts that were known to be false by the Defendants. In fact, the testimony was completely opposite.

26. Plaintiff claims he was misled about the date the Project would open. Yet, two days before he invested, Radovan told him by e-mail the soft opening was in spring and the Grand Opening Father's Day, 2016. Plaintiff admittedly has no evidence to believe this statement was false when made.

27. Plaintiff also contends he was defrauded because the Project was allegedly more over-budget than represented by Marriner and Radovan. Specifically, Plaintiff testified he was led to believe the Project was only $5 Million - $6 Million over-budget. Plaintiff's own testimony and notes, however, show he knew the Project was anticipated to be over-budget by $10 Million, which is entirely consistent with the status of cost overruns when he invested. Plaintiff has no evidence the Project was more over-budget than this when he made his investment, or that when these representations were made to him that Defendants knew or believed that information to be false.

28. Moreover, there is no evidence Defendants intended to conceal any information about the cost overruns from him. In fact, he was repeatedly being asked if he had additional questions or wanted to visit the site to see the status of construction himself.

29. Plaintiff also contends Defendants knew and misrepresented the financial health of the Project when he invested. The evidence presented at trial does not support this

contention. In fact, the evidence shows Plaintiff knew from multiple sources the Project was in fundraising mode -- meaning he knew financing was not in place for the additional cost impacts. Although prompted to ask if he needed additional information, Plaintiff never asked for any updates on the status of the Project's financing before he invested. Had he done so, he would have discovered that CR Cal Neva and Mosaic had been working hard on a loan and were enthusiastic about closing it.

30. Moreover, the evidence does not support that Defendants knew the Project was failing when Plaintiff invested. To the contrary, Mr. Busick had only recently walked the Project with Penta and Marriner and decided to invest an additional $1.5 Million after being satisfied with the status of construction. The evidence also shows that: (1) CR Cal Neva was enthusiastic about its ability to close a loan with Mosaic that would have insured the successful completion of the Project; (2) Penta and the other contractors were being paid; (3) there was $9 Million left on the Hall loan to pay Penta and its subcontractors; (4) Cal Neva Lodge had just hired its General Manager and Executive Chef, and was moving forward making the Project a Starwood Luxury brand; and (5) Criswell Radovan was putting money back into the Project when Plaintiff invested. All of this evidence points to the fact that the Project was reasonably believed by Defendants to be on track when Plaintiff invested. There simply is no evidence the Project was failing, or that CR Cal Neva sold Plaintiff one of its Founders' Shares because it believed the Project was failing. In fact, the evidence was undisputed that CR Cal Neva had the right and always planned sell one of its two shares, and there is nothing fraudulent about its intent to sell one of its Founders' Shares to a highly influential member of the Lake Tahoe community.

31. Plaintiff has failed to carry his burden of proof under the third cause of action. For all of these reasons, Plaintiff's third cause is without merit and is accordingly dismissed.

E.

PLAINTIFF'S FOURTH CAUSE OF ACTION (FOR NEGLIGENCE)

32. Plaintiff's fourth cause of action for negligence is plead against PCA.

33. Like his Second Cause of Action, this claim requires proof of a duty, breach, causation and damages.

34. This cause of action fails for the same reasons stated above with respect to his second cause of action, namely PCA did not owe or breach any duty to Plaintiff. Additionally, at most, this was a mistake situation which does not rise to the level of negligence.

35. Plaintiff has failed to carry his burden of proof under the fourth cause of action. Accordingly, Plaintiff's fourth cause of action is without merit and is accordingly dismissed.

F.

PLAINTIFF'S FIFTH CAUSE OF ACTION (FOR CONVERSION)

36. Plaintiff has asserted a conversion claim against CR Cal Neva, Criswell, Radovan, Criswell Radovan and New Cal Neva.

37. As stated above, New Cal Neva is subject to Chapter 11 Bankruptcy protection.

38. A claim for conversion requires a showing that Defendant committed a distinct act of dominion wrongfully exerted over Plaintiff's property; that the act was in denial of, or inconsistent with, Plaintiff's title or rights therein; or the act was in derogation, exclusion or defiance of Plaintiff's title or rights in the personal property. *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, P.3d 1043 (2000); *Ferreira v. P.C. Age, Inc.*, 105 Nev. 305, 775 P.2d 1041 (1989). Conversion is generally limited to those severe, major, and important interferences with the right to control personal property that justify requiring the actor to pay the property's full value. *Edward v. Emperor's Garden Restaurant*, 122 Nev. 317, 130 P.3d 1280 (2006).

39. As stated above, Plaintiff desired to purchase a Founders Share in Cal Neva Lodge. When the last authorized but unsold Founders Shares in Cal Neva Lodge were purchased by Les Busick, and therefore were no longer available for sale to Plaintiff, CR Cal Neva agreed to sell one of the two Founders Shares it owned to Plaintiff, and it so advised Marriner. There was no difference in value or otherwise between a Founders Share in Cal Neva Lodge purchased from Cal Neva Lodge and a Founders Share in Cal Neva Lodge purchased from CR Cal Neva. And because of the preceding sale to Les Busick of all of the

remaining authorized shares which could be sold by Cal Neva Lodge itself, Cal Neva Lodge had already received its full authorized capitalization. Plaintiff voluntarily wired the $1,000,000 purchase price for a Founder Share in Cal Neva Lodge to PCA, as requested by CR Cal Neva, the seller of the share, and in exchange he became the owner of the Founder Share in Cal Neva Lodge that he wished to purchase. This transaction was a sale, not conversion.

40. Moreover, Plaintiff got exactly what he bargained for, a Founders' Share in Cal Neva Lodge. Although Plaintiff may have been mistaken as to the source of that Founders' share, he still received a Founders' Share in Cal Neva Lodge, which does not rise to the level of an intentional tort of conversion.

41. Plaintiff has failed to carry his burden of proof under the fifth cause of action. For these reasons, as well as the fact that Plaintiff has not suffered damages, Plaintiff's fifth cause of action is without merit and is accordingly dismissed.

G.

PLAINTIFF'S SIXTH CAUSE OF ACTION (FOR PUNITIVE DAMAGES)

42. Plaintiff's seeks punitive damages against all Defendants.

43. This cause of action fails for the same reasons his fraud claim fails.

44. In Nevada, "in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the Plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant." *See* NRS 42.005. Pursuant to NRS 42.001, "fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person with intent to deprive another person of his or her rights or property or to otherwise injure another person. "Malice, express or implied," means conduct which is intended to injure a person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and

unusual hardship with conscious disregard of the rights of the person.

45. Plaintiff has failed to carry his burden of proof under the sixth cause of action. There is no evidence whatsoever that the conduct of any of the Defendants in this case was fraudulent, malicious or oppressive, and, therefore the sixth cause of action for punitive damages is without merit and accordingly, is dismissed.

H.

PLAINTIFF'S SEVENTH CAUSE OF ACTION (FOR FRAUD UNDER NRS 90.570)

46. Lastly, Plaintiff has asserted a claim for securities fraud under NRS 90.570.

47. As a result of the interplay between NRS 90.660 and NRS 90.570, to prevail on a private cause of action for securities fraud under NRS 90.570, Plaintiff must establish "Either: (a) an untrue statement of a material fact or (b) the failure to state a material fact necessary to make other statements made not misleading in the light of the circumstances under which they are made.

48. The Court finds this is not a securities fraud case, and NRS 90.570 has no applicability.

49. NRS 90.530 provides a list of transaction that are exempt from the registration requirements of Nevada's Uniform Securities Act.

50. Section 90.530.10 provides that "An offer to sell or the sale of a security to a financial or "institutional investor" is an exempt transaction.

51. The regulations further specify that an institutional investor includes an "accredited investor" as defined under Rule 501 of Regulation D.

52. In this case, the PPM and Subscription Agreement are clear this was a private offering open only to accredited investors, which are exempt from federal and state securities laws.

53. Aside from the fact this sale is not subject to the provisions of NRS 90.570, this fraud claim would fail for the same reasons Plaintiff's third cause of action for fraud fails. Specifically, Plaintiff has failed to establish "either: (a) an untrue statement of a material fact

or (b) the failure to state a material fact necessary to make other statements made not misleading in the light of the circumstances under which they are made..."

54. In light of the above, Plaintiff has failed to carry his burden of proof under the seventh cause of action. For these reasons, as well as the fact that Plaintiff has not suffered damages, Plaintiff's seventh cause of action is without merit and is accordingly dismissed.

I.

CROSS-CLAIM BY MARRINER AND MARRINER REAL ESTATE

Marriner and Marriner Real Estate's Cross-claim for indemnity/contribution against the other Defendants is dismissed as moot.

J.

COUNTERCLAIM

1. In this case, the Court finds that Plaintiff wrongfully colluded with IMC's principals and Molly Kingston to intentionally interfere with the contractual relations between Mosaic and Cal Neva Lodge, which interference caused Mosaic to rescind ("tear up") its executed term sheet. But for the intentional interference, this Project would have succeeded.

2. This Court has documented dozens of e-mail exchanges between Plaintiff and IMC and their efforts to undermine the Mosaic loan and there is no more solid evidence of that than in Trial Exhibit 124. That proposed loan was done and in place. Mosaic had evidenced its enthusiasm to close the loan. And yet the day the individuals from IMC went to Mosaic's offices without the knowledge of CR Cal Neva, that loan was dead. And the testimony is unequivocal that there was never an attempt by Plaintiff or IMC to resurrect it, despite the open invitation by Mosaic to reintroduce the loan.

3. This Court finds that it was the intent of Plaintiff, IMC, and Molly Kingston to kill this loan, and divest CR Cal Neva from its equity interest under the threat of civil and criminal actions for their own benefit and not the benefit of the Project. It is tragic.

4. Although Defendants did not formally plead a counterclaim against Plaintiff, the Court finds that, by consent of all parties, including Plaintiff, a significant portion of this

trial centered around Plaintiff's collusion with IMC and Molly Kingston to interfere with the Mosaic loan, which caused the demise of the Project and significant damages to Defendants and the other investors.

5. Pursuant to NRCP 15(b), "[w]hen issues not raised by pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause to them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues." Amendments to conform to proof are perfectly proper and courts should be liberal in allowing such amendments. *See Brean v. Nevada Motor Co.*, 269 P. 606, 606 (Nev. 1928) (citing *Miller v. Thompson*, 40 Nev. 35, 160 P. 775; *Ramezzano v. Avansino*, 44 Nev. 72, 189 P. 681).

6. Pursuant to NRCP 8(c), "[w]hen a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation." Here, Defendants plead, among other things, Plaintiff's unclean hands, estoppel, waiver, and Plaintiff's own fault as affirmative defenses and put on considerable evidence at trial of Plaintiff's involvement in the interference with the Mosaic loan, as well as Defendants' resulting damages.

7. Furthermore, pursuant to NRCP 54(c), "[e]very other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." "The Nevada Supreme Court recognized the liberal nature of NRCP 54(c) by confirming 'Under the liberalized rules of pleading,' a final judgment must grant the relief a party is entitled to, even where the prayer for relief did not ask for such relief." *Magill v. Lewis*, 74 Nev. 381, 387-88, 333 P.2d 717, 720 (1958). *Magill* recognized that Rule 54(c) "implements the general principle of Rule 15(c), that in a contested case a judgment is to be based on what has been proved rather than what has been pleaded." *Magill*, 74 Nev. at 388.

8. In this case, justice requires that judgment be entered in favor of Defendants

and against Plaintiff for his intentional interference with the contractual relations between sheet and led to the demise of the Project without privilege or justification and for his own interest and not in the interest of the Project or its other investors. Plaintiff knew a prospective contractual relationship existed between Cal Neva Lodge and Mosaic. Along with IMC and Molly Kingston, he intended to harm and disrupt this relationship without privilege or justification. And his conduct resulted in significant harm to Defendants and to the other investors.

9. As a result of Plaintiff's intentional interference, Criswell has been damaged and is awarded $1.5 Million in compensatory damages, plus two years' salary, and management fees (if applicable). Criswell is also awarded his attorneys' fees and costs of suit.

10. As a result of Plaintiff's intentional interference, Radovan has been damaged and is awarded $1.5 Million in compensatory damages, plus two years' salary, and management fees (if applicable). Criswell Radovan and CR Cal Neva are also awarded their attorneys' fees and costs of suit.

11. As a result of Plaintiff's intentional interference, CR Cal Neva has been damaged and is awarded its lost development fees $480,000.00. CR Cal Neva is also awarded its attorneys' fees and costs of suit.

12. As a result of Plaintiff's intentional interference, Criswell Radovan is awarded its attorneys' fees and cost of suit.

13. As a result of Plaintiff's intentional interference, Marriner has been damaged and is awarded $1.5 Million in compensatory damages. These damages include both lost commissions (Trial Exhibit 1) and loss of business goodwill.

14. Marriner Real Estate is awarded its attorneys' fees and costs of suit.

15. PCA is awarded its attorneys' fees and costs of suit.

///

III.

JUDGMENT

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Second Amended Complaint, and each of the causes of action stated therein, are dismissed with prejudice as to all Defendants.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Marriner's and Marriner Real Estate's crossclaim is moot and is dismissed with prejudice.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay William Criswell the sum of $1.5 Million in compensatory damages, plus two years' salary, management fees (if applicable), attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Robert Radovan the sum of $1.5 Million in compensatory damages, plus two years' salary, management fees (if applicable), attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay CR Cal Neva, LLC their lost development fee of $480,000.00, attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Criswell Radovan, LLC its attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay DAVID MARRINER the sum of $1.5 Million in compensatory damages, attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Marriner Real Estate its attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Powell Coleman Arnold, LLP its attorneys' fees and costs of suit.

DATED this ____ day of _____ 2017.

_____
DISTRICT COURT JUDGE

Jointly Submitted by:

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Transaction # 6485034 : pmsewell

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002512

DISTRICT COURT

WASHOE COUNTY, NEVADA

GEORGE STUART YOUNT, individually and in his capacity as owner of GEORGE YOUNT IRA, Plaintiff, *vs.* CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN AND ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10, Defendants.	Case No. CV16-00767 Dept. No. 7 **EXCERPTS OF TRANSCRIPTS CITED IN "PLAINTIFF'S BRIEF REGARDING STATUS OF CASE AND APPROPRIATE PROCEDURE GOING FORWARD"**

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For the Court's convenience, plaintiff George Stuart Yount attaches excerpts of the transcripts cited in his January 16, 2018 "Brief Regarding Status of Case and Appropriate Procedure Going Forward."

The undersigned hereby affirms that this document does not contain the social security number of any person.

Dated this 17th day of January, 2018.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By: */s/ Daniel F. Polsenberg*

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Attorneys for Plaintiff

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CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 2018, I served the foregoing "Excerpts of Transcripts Cited in 'Plaintiff's Brief Regarding Status of Case and Appropriate Procedure Going Forward'" on counsel by the Court's electronic filing system to the persons and addresses listed below:

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/s/ Adam Crawford
An Employee of Lewis Roca Rothgerber Christie LLP

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INDEX OF EXHIBITS

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Transaction # 6485034 : pmsewell

EXHIBIT 1

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EXHIBIT 1

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STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

--oOo--

GEORGE S. YOUNT, et al., Plaintiffs,	)	
vs.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

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TRANSCRIPT OF PROCEEDINGS

TRIAL VOLUME I

August 29, 2017

9:00 a.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

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APPEARANCES:

For the Plaintiff:

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264 Village Blvd.
Incline Village, Nevada

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A. David Fulton Marriner.
Q. Where do you reside?
A. In Incline Village.
Q. How long have you resided there?
A. 26 years.
Q. What's your occupation?
A. Real estate.
Q. And how long have you been in the real estate business?
A. 39 years.
Q. Was that all at Lake Tahoe or somewhere else?
A. No. Southern California first.
Q. As you know, we're here today on the Cal Neva project and the developers of that project were Mr. Radovan and Mr. Criswell. When did you first meet either Mr. Criswell or Mr. Radovan?
A. I met Mr. Radovan when I had the listing on a private residence below the Cal Neva called the Fairwinds Estate. And I approached Mr. Radovan, because I thought the missing link at the Cal Neva was a beach access beach club, and through a common friend, Julie Brinkerhoff, in Newport Beach, a landscape company that was contracted to design the landscaping at Cal Neva, Julie Brinkerhoff, put me in touch with Robert.

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So I called Robert up and met him at the Fairwinds Estate initially to just discuss, you know, having them consider buying or possibly allowing the owner to exchange their equity into the bigger Cal Neva Resort just up the hill. So that was February 2014.

Q. And, ultimately, you entered into a contract with the Cal Neva Lodge, is that correct?

A. Yes. In further discussion with Robert, I mentioned that my real estate company is a consulting firm that provides a service to landowners to help design and pull permits and do the sales and marketing brochures for new construction. Robert mentioned that he had permission to build 28 luxury residences on the Nevada side, and I said that's exactly what my company likes to do and we've been doing that for 25 years in Lake Tahoe.

And he asked me to put together a consulting contract, which I did, and I submitted it to him for review. And he mentioned, oh, by the way, Dave, you've been in Tahoe for 25 years, we're short $5 million in our equity raise, why don't you add five founding memberships to your consulting contract and maybe you can introduce me to some of the local VIP owners in the area that would help round out their Board of Directors or their equity.

So I added, I just edited my contract and just put

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signature page or next to the last signature page in that document?

A. Yes.

Q. Is that your signature?

A. Yes.

Q. And so you were a signatory to the amended restated operating agreement, correct?

A. Yes.

Q. So you must have -- did you review that prior to signing it?

A. Yes.

Q. So you signed your contract in February of 2014, did you immediately start contacting people that you knew to try to close out the rest of the 5 million available under the private placement memorandum?

A. Yes. I started making a list of possible investors in the surrounding community.

Q. Okay. And did you know how much money could legally be raised under that private placement memorandum?

A. Robert asked me to raise 5 million.

Q. Did it come to your attention later on that you were going to raise more than 5 million?

A. Much later, yes.

Q. How much later?

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A. Well, I think we raised that initial 5 million and Brandyn Criswell had an investor that fell out and that was probably in three or four months later. So I think the 8 million from a group called Bellagio Partners had fallen through and I had introduced Robert to several people that met with Robert and met with their legal team and eventually executed the investment.

Q. So that would have brought us up to March, April, May of 2014?

A. Probably about May.

Q. Now, when that 5 million was increased, did you understand how much could legally be raised under the private placement memorandum?

A. There were several tranches, I'd guess you would call it. 14 million was the minimum and 18 million was a target and 20 was maximum without a vote of the executive committee or the investors to increase that.

Q. So you knew that you could only sell so much under the private placement memorandum?

A. Yes.

Q. There was a legal cap?

A. Yes.

Q. Can you look at Exhibit 9 in the binder, the plaintiff's. Do you have that exhibit in front of you, Mr.

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from you in a while. How is the project going? And I offered to give him a tour.

And the other thing I was certified to do, and there were only a few people certified by Penta, I was certified to take site tours. So after I made introductions to Robert and they started talking about the financial investment, I continued to offer to Stuart and Geri, you know, any time you want, I can meet you at the Cal Neva every week, every day if you want so you can see the progress. I had to deliver the hardhats and I had to stay with the group and make sure nobody got into any trouble.

Q. So that correctly is represented in Exhibit Number 7?

A. Yes.

Q. And then if you go back to Exhibit Number 6, looks like there's a follow on or a separate e-mail string about the same time frame where it was just to Mr. Yount with some attached pictures, maybe a video, and then an incorporated e-mail to other founding members. Is that what we're looking at here with Exhibit Number 6?

A. Right.

Q. And in that exhibit, you told Mr. Yount that the project was on track to open December 12th, 2015?

A. Correct.

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after your June e-mail string. It looks like you had a tour. You say, it was a pleasure showing you our exciting project.

A. I had been offering to give the Younts a site tour and they finally had time in their schedule and we walked the property and they were very pleased with what they saw and the progress. That was a very exciting time, because the 178 room tower had been gutted and put back together and carpet and the bathrooms were complete, the carpet was down, brand-new windows floor to ceiling glass, the exterior had been painted, and everything still appeared to be, you know, on a fast track.

Q. Did you tell Mr. Yount that the schedule was still going to hold for the December 12th opening?

A. At that point, I believed that it was still scheduled for December 12th.

Q. You hadn't heard any information otherwise?

A. No.

Q. The next paragraph down, you say, as you mentioned on your tour, Robert had released an additional 1.5 million of equity. What did you tell Mr. Yount at that site visit about the equity for sale under the private placement memorandum?

A. I told him what Robert told me, that he had released an additional 1.5 million of equity.

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Q. To be clear, that was under the private placement memorandum?

A. Correct.

Q. What was your understanding as of July 14th of 2015 how much more could be raised under that private placement memorandum?

A. I'm not sure at this moment, but I think the 1.5 would have completed the 20 million of cash, of the cash equity, yes.

Q. As soon as that was sold, no more investment under the PPM?

A. That's what I understood.

Q. And then at that point, it looks like also you forwarded Mr. Yount the PPM. Do you see that?

A. Yes. That is the -- yes, the private placement memorandum with exhibits.

Q. Can you look at Exhibit Number 3 in the binder?

A. Yes.

Q. Is that the private placement memorandum that you forwarded to Mr. Yount as of this July 14th, 2015 e-mail?

A. Yes.

Q. And you also say you attached the founders progress report. Do you see that?

A. That's the July construction report with the

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pictures.

Q. If you could look to Exhibit Number 10?

A. Yes. That was the most current construction status report.

Q. One more question on that, Mr. Marriner. We've looked at Exhibit Number 4 before, which is the confidential offering memorandum.

A. Yes.

Q. Was that also provided to Mr. Yount as part of that package that you forwarded under Exhibit Number 8?

A. Yes. I believe Mr. Yount received the confidential offering memorandum and the PPM and they are consistent, I believe, with each other or the project.

Q. You had all of those documents whether in paper or electronic and you just forwarded them to Mr. Yount?

A. Yes. I only had the electronic versions. And I was allowed to forward those to qualified investors.

Q. And then it says the -- if you look at, I think you're referring to Exhibit Number 3, when you say attached are the signature pages?

A. Yes. Number 3, did you say the signature page?

Q. Yes. In your e-mail, number 8, you say you'd also forwarded signature pages. Do you see that in the e-mail?

A. That's part of the forwarding attachment. It came

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a security. It was a real estate development investment. And as far as I was concerned, the project was still booming and the project was looking great and it still looked like it was on track.

BY MR. CAMPBELL:

Q. Let's go back and talk about your conversation with Mr. Radovan again. Your testimony was that he told you to stay out of it, stay out of it?

A. No. He didn't say stay out of it. I said that he said, I'll take care of it. Which is consistent with all of my involvement with Robert is he would take care of the investment discussions so there wasn't a conflict or a misunderstanding. So the -- so it wasn't, stay out of it. It was, don't worry about it, I'll handle it. If Stuart -- Stuart's money ever arrives, then I'll deal with it.

MR. CAMPBELL: May I approach, your Honor?

THE COURT: Yes.

MR. CAMPBELL: Counsel, page 67 of Mr. Marriner's deposition starting with the question on line 14.

BY MR. CAMPBELL:

Q. Mr. Marriner, I asked you, did you ever tell Mr. Yount on or about October 1st, oh, by the way, Busick is also looking like he might invest and that is going to close out the private placement memorandum on your 1 million. And

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can you read the next seven or eight lines, your answer to the question starting at line I believe 18?

A. Called Robert because I report directly to Robert. I said we could have a perfect storm if Busick and Yount fund on the same day, because it was feeling like two people were sending their money in at the same time. Robert said, don't worry, stay out of it. Criswell Radovan has a million dollar piece or the developer could put another million unit up. So he told me to stay out, because I offered to call Mr. Yount. I said, if Busick funds, you know, we should call Mr. Yount and call him off, because his funds hadn't arrived.

Q. And you never called Mr. Yount to call him off?

A. No.

Q. And did you ever ask Mr. Radovan if he called Mr. Yount to call him off?

A. I don't recall.

Q. So your understanding of what Mr. Radovan told you that he was going to sell one of the CR shares to Mr. Yount?

A. He said he had an additional founding membership he could make available and I don't know what that means. It was called CR Cal Neva, so to me, I worked for the Cal Neva. So I didn't have a clear understanding of what is CR Cal Neva.

Q. Mr. Marriner --

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MR. CAMPBELL: May I approach, your Honor?

THE COURT: Certainly.

MR. CAMPBELL: Counsel, page 59 and starting at question on line nine.

BY MR. CAMPBELL:

Q. I asked you in your deposition, Mr. Marriner, do you have any general information related to how and when an investor could take money out of the project? You answered, I believe that's outlined in the investment document. Question, did you review those documents at about the same time in the summer of 2015? Your answer was, I think I, you know, read through, looked at them, but I'm not an expert in investment. Then I asked, what was your general understanding about the developer's ability to take money out of the project? What was your answer at line 18?

A. I don't believe they are allowed to take money out except per operating agreement.

Q. Now, you were a member of the LLC, right?

A. You mean as a founding member?

Q. You had a piece of a founding membership, right?

A. I believe so.

Q. Okay. As a member of the LLC, did you ever see anything from CR, Mr. Radovan, Mr. Criswell, or any of the CR entities that sought approval of the transfer of a share to

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Mr. Yount?

A. I was not on the executive committee, so I would not have see seen any discussions or votes, things like that.

Q. Not as to the executive committee. I know you're not on the executive committee. As a member, did you ever see any e-mail communication, anything from Mr. Radovan, Mr. Criswell, or any of the Criswell Radovan entities that asked the members to approve this transaction with Mr. Yount?

A. I do not recall.

THE COURT: If you could move the mic a little bit closer so Ms. Koetting can pick up. Thank you.

BY MR. CAMPBELL:

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Q. So Exhibit 37, do you have that in front of you, Mr. Marriner?

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A. Yes.

Q. This is an e-mail, it looks like it starts at the bottom of the page from you to Mr. Marriner and -- from you to Mr. Yount and it's dated October 10th, correct?

A. Okay. The lower one, yes.

Q. So Mr. Yount was communicating to you October 10th. And then it looks like you responded -- well, now, I'm sorry. Mr. Yount responded to you, how about this Thursday. We'll be flying in, but we'll try to close at 3:30. Looking forward to seeing the progress.

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Q. And that's the concern that he was expressing to you during that call?

A. Right.

Q. And when Robert told you not to worry, he didn't tell you to lie or mislead either Mr. Busick or Mr. Yount, correct?

A. That's correct.

Q. He was just telling you that if that hypothetical happened, Criswell Radovan had one of their shares they could sell?

A. That's correct.

Q. Now, sir, you mentioned an investor group in this subscription called the Incline Men's Group?

A. That's correct.

Q. Also referred to sometimes at IMG?

A. Or IMC.

Q. And they have about a $6 million interest in the subscription?

A. That's correct.

Q. So they're probably the largest investor?

A. It's a group of, I think there's -- I think there's five or six or seven investors into a pool.

Q. Who are those investors?

A. The only ones that I know are Brandon Chaney, Tim

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Rasich, Jeremy, Paul Jamieson. I can't remember Jeremy's last name. It escapes me. Troy Gillespie. I think that's it.

Q. And sometime in late December, January of 2016, they made some legal threats against you, correct?

A. That's correct.

Q. And they told you you needed to get on the right side?

A. That's correct.

Q. And you understood that to be their side, correct?

A. That's correct.

Q. And their side was trying to out Criswell Radovan from management and taking back Criswell Radovan's equity interest in the project, correct?

A. That's correct.

Q. Sir, can you turn over to Exhibit 59? Specifically turn over to page two of the exhibit down at the bottom. Actually, over on page three. I apologize. Sir, during this time period, the IMC group or IMG group is not only making legal threats about you, but they were spreading some rumors about you, correct?

A. Yes.

Q. And you sent this e-mail to respond to these rumors, correct?

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purchasing as part of the PPM?

A. No.

Q. Isn't that what your testimony in your deposition said, that Mr. Yount told you not to tell him?

A. He said, I'll deal with it. He never said, don't do anything. He said, if Mr. Yount's money funds, I will deal with it.

Q. Going back over your deposition.

MR. WOLF: I would object to rereading. It was asked and answered if he's asking him about the same deposition testimony.

THE COURT: Just a minute. Overruled.

MR. WOLF: Asked and answered and argumentative.

THE COURT: Thank you. It's overruled. Go ahead, Mr. Campbell.

BY MR. CAMPBELL:

Q. Mr. Marriner, remember when I showed you your deposition and we looked at page 67, I asked you, did you ever tell Mr. Yount, by the way, Mr. Busick is looking like he may invest and that's going to close out the private placement? You answered, I called Robert, because I report directly to Robert. I said we could have a perfect storm if Busick and Yount fund on the same day?

THE COURT: Slow down for Ms. Koetting.

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BY MR. CAMPBELL:

Q. Because it was feeling like two people were sending their money in at the same time. And Robert said, don't worry, stay out of it. Didn't Mr. Radovan tell you that?

A. I thought I had said, don't worry, I'll deal with it. But clearly it's a very complicated situation and he didn't want two stories. You know, all of the investment conversations were to be handled by Robert.

Q. And I think your testimony earlier was that somehow you felt that the nondisclosure agreement that you signed prevented you from telling Mr. Yount about this?

A. Well, the NDA clearly states that, and I might have a copy of it, but it clearly states that there is a chain of command that the developer has certain information, the executive committee has certain information, and I'm not supposed to have private conversations about the investment PPM discussion, because I'm not an attorney, I'm not a securities broker. So just refer anything related to the PPM to me.

So it was not don't. It was more of, you know, don't worry about it. And I was telling you that was when I was going out of town with my family and Robert just saying, don't worry about it. If the funds materialize, I'll deal

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Q. You were one of the partners in Criswell Radovan, which is an entity incorporated in Nevada, is that correct?
A. That's correct.
Q. And you and Mr. Radovan are the sole owners of that company?
A. Um --
Q. Albeit --
A. No. My wife is one of the owners also.
Q. At one time, your daughter Brandyn?
A. My daughter was, too, and I can't tell you whether or not she still has some interest.
Q. Okay. So is that, Criswell Radovan, is that kind of your umbrella operating entity that handles most of your business transactions?
A. No. We create separate LLCs for every activity we do in terms of the ownership. Criswell Radovan is basically just a conduit to move money through on behalf of each project. And we keep accounting for each project separately.
Q. Okay. So does Criswell Radovan have assets, buildings, anything?
A. No.
Q. Does it have employees?
A. I think at one time it had employees, but it just became easier for those people to be employees of Criswell

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Nevada LLC, which is in fact the manager designated under the operating agreement, correct?

A. I believe that's correct.

Q. Who owns CR Cal Neva?

A. I believe Robert, my wife Sherry and I.

Q. And that entity is a sole purpose entity to basically run the -- to be the manager of the Cal Neva Lodge?

A. That's correct.

Q. Not a separate company created just for that sole purpose?

A. That's correct.

Q. And hadn't been capitalized or doesn't own any buildings or anything like that?

A. That's correct.

Q. So as of today's date, does CR Cal Neva --

A. It may be the entity that owns the shares, the membership shares.

Q. Do you know --

A. I'm not sure. I don't know that for a fact, but I think it is.

Q. If it's not that, then it would be Criswell Radovan LLC?

A. Right. But I don't think Criswell Radovan owns those shares.

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A. I don't know.
Q. That's how the 2 million came into being?
A. That's my understanding.
Q. And that's how CR got their equity share in the $2 million PPM?
A. I believe that's right.
Q. If you look at the back of that exhibit, same Exhibit Number 5, it's at schedule 4.3 after the --
A. I see it.
Q. Okay. And so now we've got -- this is a document that was part of the operating agreement and part of the package in the PPM, at least an earlier version of it, right?
A. That's what I understand.
Q. And it was provided to all the potential investors?
A. Yes, sir.
Q. And you're telling investors, this is what we're going to use the $20 million we raised. That's what we're going to use it for. Am I reading that right? Uses of capital contributions?
A. The uses, it says, uses as capital contribution and it's a repayment of the loan amount of 6 million, plus interest on or before April 30th, 2014, and payment to seller of approximately $10 million to retain the equity interest.

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A. But I do know that of the 6 million, 3 million of it was spent on plans and specifications and work done by the lawyers and a lot of other things that were called predevelopment expenses.

Q. That's what we talked about before, but you still have to pay that loan back?

A. Sure.

Q. With interest?

A. Right.

Q. Do you know after those two payments were made, was there anything left for development capital for the project?

A. I do not know.

Q. You know $20 million was going to be raised under the private placement memorandum?

A. Correct.

Q. But you had to take $2 million out of that, because you guys got a $2 million credit for money that you already put in?

A. Yeah. But we probably paid those interest payments that you're talking about ourselves.

Q. And so the actual -- the raise --

A. Where it says 1.6 or whatever it is, I think that's money that we spent on interest or other payments that

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STATE OF NEVADA)
) ss.
County of Washoe)

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on August 29, 2017, at the hour of 9:00 a.m., and took verbatim stenotype notes of the proceedings had upon the trial in the matter of GEORGE S. YOUNT, Plaintiff, vs. CRISWELL RADOVAN, et al., Defendant, Case No. CV16-00767, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 203, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 25th day of September 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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Jacqueline Bryant
Clerk of the Court
Transaction # 6485034 : pmsewell

EXHIBIT 2

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EXHIBIT 2

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STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

--oOo--

GEORGE S. YOUNT, et al., Plaintiffs,	)	
vs.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

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TRANSCRIPT OF PROCEEDINGS

TRIAL VOLUME II

August 30, 2017

9:00 a.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

002541

APPEARANCES:

For the Plaintiff:

RICHARD G. CAMPBELL, ESQ.
Attorney at Law
100 W. Liberty
Reno, Nevada

For the Defendant:

HOWARD & HOWARD
By: MARTIN LITTLE, ESQ.
3800 Howard Hughes Parkway
Las Vegas, Nevada

ANDREW WOLF, ESQ.
Attorney at Law
264 Village Blvd.
Incline Village, Nevada

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talking to said they would not be interested in the mezzanine piece, but they would be interested in a refinance of the whole thing.

Q. But you don't remember any details of the amount?

A. No, I don't.

Q. When did you become aware that Les Busick invested an additional 1.5 million under the PPM?

A. Either towards the end of my trip to Europe or when I came back from that trip.

Q. Do you know when you came back?

A. I think it was around October 10th.

Q. And was your understanding at that point in time that once Mr. Busick made the investment, that the PPM was essentially shut down, no more money could be raised under it?

A. That was my understanding at the time.

Q. Did you know that Mr. Yount was -- made his investment shortly after that?

A. Yeah. I found out about that time, yes.

Q. You found out about Mr. Yount's investment?

A. Yes.

Q. At about the same time that Mr. Busick --

A. I would say within a couple of days.

Q. Do you know if it was before Mr. Yount made his

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A. Well, part of it was the money he owed to my daughter -- I mean, Criswell Radovan owed to my daughter. Part of it was past due bills for the Arlington projects, some of it was past due bills for the winery, other projects that Criswell Radovan was involved in.

Q. Let's talk about your daughter's money that was owed to her. That was the note we talked about earlier?

A. Yes.

Q. So that was -- you paid her in the October time frame about 200, 250, somewhere in that range?

A. Somewhere in that time frame, yes.

Q. And the rest of it had nothing to do with the Cal Neva Lodge?

A. I think some of it did. I think it was reimbursing money we had also put into Cal Neva, like the $50,000 that went to Mosaic, and maybe some other things. I don't remember.

Q. Did you tell Mr. Yount specifically where the money went?

A. No.

Q. And why not?

A. As I said in my testimony, I -- we were selling him one of our shares and the money was coming to us, meaning Criswell Radovan and CR Cal Neva, and that I believed we were

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entitled to spend that money on whatever we wanted to spend it on.

Q. You understand under your sale of your share to him, he would have been a member of the LLC, right?

A. Yes.

Q. Let's look at Exhibit Number 49.

A. Okay.

Q. And this is a package it looks like Heather Hill sent to the investors in the project. Am I looking at that right?

A. I think that's a complete list, but I don't know for sure.

Q. And let me ask you this, there's a new budget in here, correct, that has got some different numbers. It looks like a side-by-side comparison.

A. Okay.

Q. First let me ask you this, do you understand that the only budget Mr. Yount had ever received would have been in the confidential offering memorandum, exhibit number, I believe it's number four.

A. I don't know. How would I know that?

Q. Do you know there was a budget in that document, right?

A. Yes.

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Q. And did you and Mr. Radovan and Ms. Hill review these documents when you got ahold of Mr. Coleman on or about February 1st?

A. I was under the impression this is what needed to be signed.

Q. Did you review these documents?

A. I think so.

Q. Let's go through that. The first one at Bates 214 is called an assignment of interest in limited liability company.

A. Okay.

Q. And if you go down into the third whereas, it says, assignor and assignee have erroneously executed a subscription agreement dated October 13th, indicating the assignee was purchasing an interest as a preferred member from the company when actually the intent of the parties that assignee purchase such interest from assignee rather than the company.

So a couple there. Where did you get the information -- or where did Mr. Coleman get the information that somehow the two of you had erroneously signed the subscription agreement?

THE COURT: How would he know where Mr. Coleman got the information?

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length of the loan term?

A. I don't know whether he would have known that or not, because I don't know whether he was given a copy of it or not.

Q. Mr. Little asked you about the difference between a founders share that Mr. Yount would have received if he had purchased under the PPM, and a founders share that he bought from you, and you said there was no difference, correct?

A. As far as I know, there's no difference.

Q. If Mr. Yount had bought a founders share under the PPM, where would the million dollars have gone?

A. You mean if he, Mr. Busick?

Q. Yes.

A. That money would have gone to be part of the million five that was unfunded under the $20 million cap.

Q. To be used for the project, correct?

A. Yes. That's right.

Q. Where did the million dollars go under the transaction that you claim Mr. Yount entered into with the sale to you?

A. Well, the million that was in there stayed in there and then the money that he paid to buy our share went to us.

Q. It didn't go into the project?

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Q. Did that change?
A. It did.
Q. What did the number change to?
A. It went into I think it was 51.
Q. And when did that number change?
A. In late October, early November.
Q. So your recollection by the end of September it was still $48 million?
A. I believe so.
Q. Did you ever tell Mr. Yount that instead of a mezzanine refinancing, you were looking for a new loan to refinance the entire project?
A. I don't believe I did. We were looking at a lot of different financing elements, and this was one that came in as an option that allowed us to, when you take out the mezz and the first, it was more expensive than the current first, yet substantially cheaper than the mezzanine. So at the blended rate, it did better than the two other loans.
Q. That would give you the funds, then, to finish the project?
A. Correct.
Q. Without that refinancing, the funds would not --
A. Without a financing, as we've been talking about, since even quite a bit before July, I was trying to ascertain

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A. I did not know that until I was informed of that, I don't know, a couple of days later.

Q. Informed by who?

A. I don't remember if it was Mr. Yount or Dave.

Q. Do you remember a conversation with Mr. Marriner where he said, we've got a perfect storm brewing. If Mr. Yount and Mr. Busick fund at the same time, what are we going to do?

A. It wasn't the same time, that was impossible, but I remember them talking about, it looked like they both could fund. I think Les had already funded.

Q. And did you tell Mr. Marriner what you were going to do if they, you know, contemporaneous funding like that?

A. It wouldn't be contemporaneous. But if later Mr. Yount wanted to fund, there's an available share under the PPM under the CR Cal Neva's founders share.

Q. So you would have to know whether or not Mr. Yount wanted to still continue to buy a CR share?

A. Whether he wanted to buy a founders share.

Q. Yes. But he couldn't buy a PPM share anymore, right?

A. Sure, he can. There's one available, the CR Cal Neva. It was preapproved in the PPM that every single investor signed.

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Q. And did you ever try to get approval of the transfer?

A. We went to the operating agreement and looked at how those worked and we were going to do that, as it says, in the next annual meeting.

Q. You don't believe you needed any conversation or confirmation from Mr. Yount to tell him that instead of buying under the PPM, he was going to in essence buy a share, one of your shares?

A. I had thought Dave had actually told him that. I did not. I communicated with him, talked to him two times.

Q. So if you thought Dave told him that, was it your understanding that before this deal should be consummated, Mr. Yount should have been informed about it?

A. I don't know. What I understand is Mr. Yount was wanting a founders member share.

Q. Do you know if Mr. Yount was told by Dave?

A. I don't know for sure. He says no now.

Q. You heard Mr. Marriner's testimony. Did you tell him not to tell Mr. Yount?

A. Of course not.

Q. Was there any prohibition from him telling Mr. Yount?

A. Of course not.

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STATE OF NEVADA)
) ss.
County of Washoe)

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on August 30, 2017, at the hour of 9:00 a.m., and took verbatim stenotype notes of the proceedings had upon the trial in the matter of GEORGE S. YOUNT, Plaintiffs, vs. CRISWELL RADOVAN, et al, Defendants, Case No. CV16-00767, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 389, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 26th day of September 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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2018-01-17 02:46:52 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6485034 : pmsewell

EXHIBIT 3

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EXHIBIT 3

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STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

--oOo--

GEORGE S. YOUNT, et al., Plaintiffs,	)	
vs.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

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TRANSCRIPT OF PROCEEDINGS

TRIAL VOLUME III

August 31, 2017

9:00 a.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

002553

APPEARANCES:

For the Plaintiff:

RICHARD G. CAMPBELL, ESQ.
Attorney at Law
100 W. Liberty
Reno, Nevada

For the Defendant:

HOWARD & HOWARD
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Attorney at Law
264 Village Blvd.
Incline Village, Nevada

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she would provide information or instructions to me that originated from Criswell Radovan and she was kind of the person who would keep track of paper work or kind of the detail type person, but she's not the one that would make the binding decisions on their companies.

BY MR. CAMPBELL:

Q. So you saw her as kind of -- somewhat of a conduit between Mr. Radovan and yourself. She would gather documents, forward you stuff, things like that?

A. Yes.

Q. That either Mr. Radovan or Mr. Criswell pretty much spoke on behalf of the company and were the clients that you were representing?

A. Correct.

Q. On the first page of Exhibit Number 33, she tells you that Cal Neva is now identified a person who will take the place of one of CR Cal Neva's $2 million investment bringing them down to $1 million. When this e-mail was sent on October 2nd, had you become aware that Mr. Les Busick had invested approximately one and a half million into the private placement memorandum?

A. I had heard -- I was familiar with him, since he was already an investor, and I had heard that he was discussing with them putting in another million and a half.

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A. Yes.

Q. So you were basically giving them legal advice on how to paper this transaction. The legal advice you were giving them was the second page October 6th e-mail, this is what you need to do?

A. Yes. And, I mean, the way -- I mean, it was a recommendation on how to do it. The operating agreement didn't specifically say exactly how you get that approval. I mean, what form the approval would take. There's different ways to get it.

Q. It just required some type of written approval from 67 percent of the members in the company?

A. Yes.

Q. And in the last page of that agreement -- excuse me -- of that exhibit, Exhibit Number 33, you say, I'm attaching a proposed form of assignment of interest in limited liability company to be used for the investment of Stuart Yount.

A. Yes.

Q. I wasn't provided with that assignment of interest, but that was just a form that would assign one share from CR to Mr. Yount, both parties would agree to it and sign it?

A. Correct.

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time frame?
A. Not at that time.
Q. And then I believe, if you recall, the money was received into your trust account about October 13th or 14th, correct?
A. Yes.
Q. And then -- actually, October 14th, and then on October 15th, the very next day, you released it from your trust account to Criswell Radovan LLC, correct?
A. Yes.
Q. And just to confirm that, let's look at Exhibit Number 71?
A. Okay. Just a minute.
Q. That's probably in the second binder there.
A. Yes. Okay.
Q. That's the next to last page in that exhibit. It's got a Bates stamp of CR 245.
A. Okay.
Q. CR Cal Neva was the owner of that share, correct?
A. Yes.
Q. Do you know why it was sent to Criswell Radovan LLC?
A. CR Cal Neva requested me to send it there, because they had an outstanding loan from Criswell Radovan in excess

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THE COURT: Thank you. Mr. Campbell.

REDIRECT EXAMINATION

BY MR. CAMPBELL:

Q. Mr. Coleman, when Ms. Hill told that they wanted to use your trust account to handle this transaction, did you question why they would want to use your trust account to handle a transaction between an entity and an individual?

A. No.

Q. It could have been sent directly to CR, correct?

A. It could have been.

Q. And as we talked earlier, the documents that you prepared in January -- excuse me -- in February and sent to Mr. Yount that he didn't sign, those documents were really intended to validate and make legal the transaction that took place back in October of 2015, correct?

A. It was intended to document it the way I had been told that it was -- the deal was done.

Q. But if the money sitting in your trust account, you had been told the deal was done, if in fact the conditions to a transfer had not occurred correctly, doesn't section 12.2 of Exhibit 5 say any attempt to transfer or encumber any such interest without such approval will be null and void and will not bind the company or the other members, correct?

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A. Yes. That's correct.

Q. So if Mr. -- if the other members didn't approve and the money was already gone out of your trust account, that money would not have been protected in your trust account, and, in fact, Criswell Radovan would not be legally entitled to it, because the transfer would have -- the attempted transfer was null and void, correct?

MR. LITTLE: Objection, mischaracterizes the evidence.

THE WITNESS: No.

THE COURT: Overruled.

THE WITNESS: The section we read a minute ago, 12.3, approval ultimately has to be obtained, but it didn't have to be obtained before they did their transaction.

BY MR. CAMPBELL:

Q. But if we look --

A. It would be at the next annual meeting.

Q. Your testimony when I talked to you about the purchase agreement that you drafted, section four says that as a condition to closing, approval has to be obtained, right, you agreed with me on that?

A. That was the proposed deal that was being made by CR and Yount.

Q. But a condition to close --

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not as an interest, but as part and parcel of an interest. It's actually a definition of economic interest, right?

A. Correct.

Q. Then if you go to 12.6.3, if a proposed transfer of interest is approved by all the members, the transferee will then be admitted as a member and will be vested with the rights and powers, right?

A. Correct.

Q. And that transfer of interest was never approved by the members, right?

A. That is correct.

Q. Okay. And 12.6.4 just talks about if the proposed transfer of interest is refused, then the -- the members interest will be not be admitted as a member, they will not have the right to participate in the business or anything like that?

A. Yes. They would just have economic interest, but no voting rights or any other.

Q. So it really delineates that they may -- in fact, it says, when they're defined in section 12.2 -- excuse me -- 12.1, economic benefit or economic interest only means the profits or other compensation?

A. Yes.

Q. So there is a difference between getting a share

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shouldn't be heard by the overall, we held these meetings open to the public -- open to members. Nobody was excluded from an executive committee meeting.

Q. So what was designated as an executive committee meeting, preparing some notes?

A. It included many other members.

Q. All of the members all were heard?

A. Right.

Q. Do you remember who the members were in that meeting who were not on the executive committee?

A. Some of them, Dicksons, Munnerlyns, Martins, Dave -- Marriners, Molly, and some of the IMC folks that were not on the board.

Q. When you say IMC, that was an entity that invested, but actually -- it was an investment club --

A. Yes.

Q. -- that has five or six members, correct?

A. Right.

Q. So according to Mr. Criswell, you gave the initial kind of presentation?

A. Uh-huh.

Q. To what we now know as the executive committee members and some of the members?

A. Right.

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with the appraisals, everything with them. Then they decided, this is like 4:00 in the afternoon, we're not going to give you the other extension. Do what you need to do. We filed Chapter 11 then on that date to avoid foreclosure.

BY MR. LITTLE:

Q. Sir, can you qualify how CR Cal Neva has been damaged by Mr. Yount and IMC's interference?

MR. CAMPBELL: Objection, lack of foundation.

THE COURT: Sustained. I'm sorry. Overruled. Go ahead.

THE WITNESS: I can tell you personally, you know, this thing is going to cost Bill and I at least 1.6 million, revenues that would have come to our operating company, a million dollars a year, roughly. Bill nor I have not been paid one penny in the last two years, which has dramatically cost us.

And the entire time, you know, me and my staff and Bill, we have worked tirelessly without getting paid, despite all of the, sorry, crap, worked to protect everyone's interests. And it's been a huge, huge toll on myself, my family. As Dave talked about it the other day, it's been unbelievably difficult, not just the capital side of it is devastating, and this never should have happened. This came from a couple of people trying to steal a project.

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A. Yes.
Q. -- chatter back and forth?
A. Yes.
Q. With the Incline Men's Group?
A. Yes.
Q. Mr. Yount, Ms. Kingston?
A. Yes.
Q. That's where you're getting the impression that somehow Mr. Yount interfered with the Mosaic loan?
A. That he's part of the group doing it, yes.
Q. And you're claiming that somehow Mr. Yount and the IMC are responsible for you and Mr. Criswell losing millions of dollars, correct?
A. Given that loan being tanked, that is -- I'm just talking about what it's cost us. The rest of the investor group, that could -- you know, we'll see where that ends up, but it's a substantial, substantial amount.
Q. Did you file a compulsory counterclaim against Mr. Yount from his lawsuit?
A. No.
Q. Did you file any lawsuit against the IMC or any of the other investors for interfering with that loan?
A. No. The outcome is not yet determined.
Q. You said the winery sale with Brandon Chaney, and

already explained this in your testimony, but the delay that Mosaic is talking about here, is that something that is attributable to you or Mr. Criswell?

A. No. We were waiting for approval. You know, as we said in the November meeting, I was given direction, go do X, Y and Z with them. I met with Mosaic and then they agreed to those aspects. We took it back to the committee, tried to do that on the 12th, and nobody wanted to -- it didn't even get to the point of being able to ask for the approval, honestly.

There was too much argument over we should be raising equity, we should be raising this, raising that, do a capital call, these types of things. By the time we got around to the January 27th, we had a structured meeting and asked for the approval of the loan and which was unanimously given.

Q. Sir, counsel asked you if you had filed a compulsory counterclaim against Mr. Yount in this litigation. You have through me in the pleading filed an affirmative defense for unclean hands, have you not?

A. Yes.

Q. So look at Exhibit 149. This is the January third party report for Hall. Go to page three again.

A. Okay.

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Q. And then if we go to Exhibit Number 8 next?
A. Eight?
Q. Yes.
A. All right.
Q. Now, it looks like you're now -- Mr. Marriner is telling you, kind of following up on the actual tour of the project?
A. Correct.
Q. And he goes on and he says, as I mentioned in the tour, Robert has released an additional 1.5 million of equity?
A. Yes.
Q. Did Mr. Marriner, was this the first time that he explained to you about how the Cal Neva was going to raise money for the development?
A. The $20 million cap and all of that?
Q. Yes.
A. I don't remember if it was -- it was on or about this time, but, yes.
Q. But he said on the tour he told you that Robert had released an additional 1.5 million of equity?
A. Correct. It was the last 1.5 possibility.
Q. You don't remember if it was at the tour, but somewhere in this July 14th time frame, did he explain to you

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that the money being raised, the equity being raised was under a private placement memorandum?

A. Yes.

Q. And did you understand what a private placement memorandum was?

A. Yes.

Q. And then it appears that then Mr. Marriner follows on and says, asked me to forward some documents for you, which would be the -- he says the PPM?

A. Private placement memorandum.

Q. Private placement memorandum. And then he sent a founders progress report with colored renderings and finish designs, right?

A. Yes.

Q. And you got those documents?

A. I did.

Q. And you looked at those documents?

A. I did.

Q. And then it goes down next and it says, the date on your PPM secures your position in line to secure a cabin location if you choose to buy a cabin. What was that about?

A. I'm sorry. Could you speak up just a little bit? I've had a cold and my ears are clogged.

Q. The date on your PPM secures your position in line

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to select a cabin location if you choose to buy a cabin.

A. Correct.

Q. What was that about?

A. That was what I believe they called the 28 units they had permission to build, and as a founding member, you had the right to buy one of those, in the first position to buy them.

Q. Okay. And then he says, the last eight pages are our signature pages. Do you remember seeing a package in the PPM, something along the lines of a subscription agreement or an agreement where you would sign documents?

A. Yes.

Q. And what did you understand that subscription agreement with the last eight pages of signature pages was?

A. It was agreeing to the PPM and terms and conditions of the operating agreement and also instructions as to how to invest, I believe.

Q. And in return for you sending in a check?

A. Yes. I think it also told me where to send the check.

Q. We'll look at that document a little later.

A. Okay.

Q. This site visit, this was done in July of 2015. Did you ever take any more site visits prior to making your

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Q. Was it kind of your habit at that time to communicate with parties via e-mail?
A. Yes. Most of it.
Q. I see you carry an IPad around with you.
A. I do.
Q. Is that pretty much how you communicate with people?
A. Yes.
Q. At this point, he says, I understand that you and Robert had a chance to talk yesterday in the first e-mail at the bottom of the string?
A. Yes.
Q. Do you remember that conversation with Robert?
A. I mentioned it happened. I don't remember the details of it.
Q. Let's go back to Exhibit Number 14. At the bottom of Exhibit Number 14, that first page, it says, as I understand it, you're over budget by more than 5 million so far. What will that and likely more funding needs come from?
A. Correct.
Q. As you understood it, where did your understanding come from? Had someone told you about the budget was $5 million over?
A. Robert Radovan had told me it was over 5 something

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million or perhaps more over budget at that point.
Q. And that would have been in the conversation?
A. Possibly the day before.
Q. Or that day of, right around that same time frame?
A. Yes.
Q. That's where you got the $5 million number?
A. Yes.
Q. Did Mr. Radovan at that time tell you that the 5 million and more might even total 9 or 10 million?
A. I believe he told me at the time that he was mentioning about the possibility of a refinancing the mezzanine loan. Should I not get into that?
Q. I'm talking about this meeting. When you would this discussion with Mr. Radovan --
A. He told me that it was a time about 5 million, maybe six, and that he was looking to create a cushion of some $3 million, making a total of nine.
Q. Okay. But he didn't tell you that the change orders he estimated, what the amount of the change orders he estimated to be at the time?
A. He expected more change orders, but he did not tell me there was any anticipated directly specifically over 5, 5 to 6.
Q. And he didn't ascribe a number to the amount of

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asked him if he wanted to talk to them about that. He says, I'm not a financier, I'm a developer, and so no.

Q. And at about that same time frame, before you invested, had you ever talked to anybody about a total refinance package?

A. No.

Q. Okay. Mr. Marriner talked, in his testimony, talked to you about the North Light -- some discussions with North Light. Were those before you invested?

A. I had no discussions with North Light before, during or after. I've never spoken to North Light.

Q. You've also sat through the court and heard some of the testimony about the Hall loan out of balance issue?

A. Yes.

Q. Had you ever been told in July or August that money, equity and infusion needed to keep the loan in balance?

A. At no time before I invested was I aware of that.

Q. What if you had been told that prior to your investment?

A. I would have inquired a lot more about it and been concerned.

Q. Were you ever told about whether or not Hall was continuing to fund in August of 2010 or 2015?

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A. No.
Q. Anybody at CR ever tell you?
A. No.
Q. Did Bruce Coleman ever tell you?
A. No.
Q. If you had been told that you could not buy a share under the PPM, but instead were buying a share of the CR portion of the PPM, would you have proceeded with the transaction?
A. No chance in hell.
Q. Why not?
A. Because to me that is a clear indication that the developer knows that the project is going to die and they're trying to escape with my money and it's not going into the project.
Q. You didn't find that out until a much later date, right?
A. Oh, yeah, until I believe late January.
Q. Okay. Let's proceed sequentially here. So I believe you then had some kind of a breakfast meeting with Mr. Radovan and Mr. Marriner?
A. Correct.
Q. And when did that take place?
A. Latter part of October.

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Q. And what happened at that breakfast meeting?
A. We discussed the project. I was again reassured that it was on schedule, on track, and then we went over to the Cal Neva project and walked the project.
Q. Any mention in those meetings after you had invested about the fact that you had purportedly bought a CR share?
A. No. None whatsoever.
Q. Did you take a tour of the property at that time?
A. Yes.
Q. About that same time frame?
A. That same day with Mr. Marriner and Mr. Radovan following breakfast, I believe.
Q. And the discussions you just testified, was that during the tour and breakfast?
A. Yes.
Q. So after that meeting, sometime in October, did you attend any member meetings or executive committee meetings of the Cal Neva Lodge LLC?
A. I never was at an executive committee meeting that didn't include the shareholders, but I was at several meetings, yeah, because I thought I was shareholder.
Q. Did you attend a meeting, either executive committee or member meetings in October of 2016?

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A. He explained the project was substantially over budget and it had to be totally refinanced or, basically, I believe it wasn't going to continue.

Q. Did he --

A. Refinanced or other capital put in somehow some way.

Q. Did he mention a number to your recollection?

A. He probably did, but I was kind of stunned at the moment. So, no, I don't recall.

Q. Prior to that time, I think your testimony was you didn't know about a total refinance at all?

A. No.

Q. And did Mr. Radovan or Mr. Criswell talk about the number ascribed to the change orders?

A. The number of change orders?

Q. The number ascribed to the change orders?

A. They may have. I don't recall what it was.

Q. You don't remember any discussion of how much the change orders amounted to?

A. I was under the impression from their discussion that it was substantially more than the 5 or 6 million, let alone the 9 million that was discussed previously.

Q. Okay.

A. And the project was not ready to be opened.

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e-mail he sent you the next day after the meeting?

A. Yes. I was surprised they weren't thanking me for helping to calm them as much as I had, including trying to get them not to confront Mosaic themselves. And including talking to Jeremy Page after his outburst they spoke of earlier and telling him he was out of line and off base and after that he no longer participated at all. He left it up to Paul Jamieson.

Q. Okay. Did you have conversations with the other members of the LLC related to the Mosaic loan itself?

A. You mean the IMC?

Q. IMC, yes.

A. Yes, there was conversation, but I didn't participate in trying to change anything or condoning that meeting that they had.

Q. In fact, you saw the testimony earlier that you had actually asked whether they could even do that meeting, right?

A. Did I what, sir?

Q. Whether they could even do that meeting?

A. It seemed out of line to me, which is why I raised the question. As we said, I'm no attorney and I'm not a member of the EC, but I just don't think that was an appropriate thing to do from what I was reading or hearing.

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Q. And did you attend the meeting with Mosaic?
A. No, not at all. I've never spoken to anyone in person or on the phone or any e-mail directly with Mosaic.
Q. And you never took any actions whatsoever with any of the other members to somehow undermine the Mosaic loan?
A. Not a chance. It would be to my detriment. Why would I do that? I didn't care who funded, as long as somebody funded it so they would get their money and I would get mine.
Q. Was that your position pretty consistently?
A. Very consistently.
Q. And that would be since December?
A. Yes, since December 12th.
Q. And that was your position in January?
A. Yes.
Q. And how about February?
A. Yes. How about today? Yes.
Q. Let's look at Exhibit Number 50.
A. All right. You want me to start at the back again?
Q. Sure.
A. Okay.
Q. And on the very first, go all the way to the back, the 2677 document?

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Q. By January 25th, 2015, if you look at your draft response, it appears -- are you now aware of the switch from buying a PPM share to a CR share?

A. Yes. I'm aware of the bait and switch.

Q. How did you find out about that?

A. I believe Mr. -- in fact, I know Mr. Criswell told me in a meeting with Mr. Criswell and Mr. Radovan I believe at the lobby of the Hyatt Regency Lake Tahoe. It was a side meeting to see -- one of their CR Cal Neva meetings with the executive committee and the shareholders they wanted to attend.

Q. Okay. And how did that subject come up?

A. He told me that is what is being done and I said, I was never told that. I never had any discussion whatsoever of buying a CR share. And I told them why that would bother me greatly and I would not accept that.

Q. And did you continue on those discussions about remedying that situation?

A. What was that?

Q. Did you continue in the discussion with Mr. Criswell and Radovan about how to remedy that situation?

A. Pay me my money.

Q. Did they talk about a note at that time?

A. I don't recall.

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Mr. Criswell was talking about?

A. Yes. Not the documents I expected.

Q. You got some documents?

A. I got documents.

Q. And did you review those documents?

A. Within, I believe an hour and a half I responded.

Q. And when you look at the first document, the assignment of interest in the limited liability company.

A. It was dating it back to October 13th and here we are in, what is it, February? February 2nd.

Q. Let me ask you this, under the whereas, did you believe you had erroneously executed a subscription agreement back in October?

A. No. I never erroneously did anything that I know of.

Q. That was the only document you were ever sent to sign, right?

A. Yes. There was no other documents to choose from.

Q. And Mr. Radovan had actually accepted that document we saw on the record?

A. In writing, yes.

Q. And it goes on to say, it was the intent of the parties that the assignee purchase such interest from the assignor. Was it ever your intent to purchase a CR share?

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A. I never knew of the concept until speaking with Mr. Criswell in January and Mr. Radovan. How could that have been my intent back in October?

Q. If you look at Exhibit Number 66, you responded fairly promptly to Mr. Coleman?

A. Yes. Quickly and strongly.

Q. And those are your comments to Mr. Coleman. We don't need to read those into the record. That's how you felt when you got the documents?

A. Yes. Absolutely.

Q. And you weren't going to sign these documents, right?

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A. I did what?

Q. You weren't going to sign these documents?

A. Not a chance. They were total lies. They were nothing I ever agreed to or signed. Why would I sign something that was a total falsehood?

Q. Okay.

A. I took it that they were trying to cover their ass for mistakes they had made.

Q. Mistakes they made, you mean back in October?

A. Back in October, either illegally over selling the subscription of the 20 million, or not telling me and trying to cover it with a sale of one of their shares. Which if it

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Q. What happened in that meeting?
A. It was a discussion about my share and where I stood and I just -- this reiterated my position on things, because it was still not being acknowledged and made clear.
Q. After the got the documents from Mr. Coleman in early February up until this mid March time, had Mr. Radovan or Mr. Criswell or even Mr. Coleman followed up with you about your e-mail about I'm not signing these documents?
A. I don't remember any follow-up on that.
Q. And do you remember getting any e-mails where they followed up and --
A. I do not recall any such e-mails.
Q. Kind of radio silence from them when you said I'm not going to sign these documents?
A. I believe so.
Q. And then this meeting, was this an executive committee or a membership meeting?
A. I believe so.
Q. Let me ask you this, so you're attending a meeting in March of the organization, but you're still wanting your money out. Why were you still attending the meetings, the membership meetings?
A. To try to get my money out.
Q. That was your sole purpose?

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correct?

A. Yes. I was trying to find out -- I could not find my investment in the project and I was asking him how I could find it. Where is it?

Q. So you had looked at the books and records of the Cal Neva Lodge?

A. Yes.

Q. And you weren't aware of where the $1 million went to?

A. No, I was not.

Q. And then --

A. I was pretty sure -- I could not find it in the books and records of Cal Neva LLC.

Q. Without going through the e-mail, you later found out that Mr. Coleman told you that he had just gone ahead and sent the money to Criswell Radovan, his clients?

A. Correct. And I asked him why, and he said because they told him to.

Q. Then you asked for some kind of written documentation?

A. Yes. I wanted a copy of the document he relied on to change my escrow instructions.

Q. And --

A. That was the end of my discussions with Mr.

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STATE OF NEVADA)
) ss.
County of Washoe)

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on August 31, 2017, at the hour of TIME, and took verbatim stenotype notes of the proceedings had upon the trial in the matter of GEORGE S. YOUNT, Plaintiff, vs. CRISWELL RADOVAN, et al, Defendant, Case No. CV16-00767, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

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That the foregoing transcript, consisting of pages 1 through 619, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

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DATED: At Reno, Nevada, this 28th day of September 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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Clerk of the Court
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EXHIBIT 4

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EXHIBIT 4

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STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

--oOo--

GEORGE S. YOUNT, et al., Plaintiffs,	)	
vs.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

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TRANSCRIPT OF PROCEEDINGS

TRIAL VOLUME V

September 6, 2017

1:30 p.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

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APPEARANCES:

For the Plaintiff:

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Attorney at Law
264 Village Blvd.
Incline Village, Nevada

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the meeting?

A. Possibly not. I got the feeling that the Mosaic meeting was a desperation move on Mosaic to possibly put the deal together, because I don't think they were getting communication, the documents now show, that they felt they needed and were required. So they were potentially, I assume, reaching out to the executive committee to assure them that the communication was better than they were finding out.

Q. Do you think it's a fair characterization in some of the e-mails we've looked at today and previously that the meeting with Mosaic on February 1, 2016 was a good meeting?

A. That's been represented in some of the documents.

Q. Do you believe that's a fair or accurate characterization?

A. Well, if a good meeting results in the deal being cancelled, it wasn't good enough to save it, evidently, so, no.

Q. Now, you indicated that you had lost trust or didn't trust Mr. Criswell and Mr. Radovan and that's why you didn't share with them that there was going to be this meeting behind their backs?

A. It wasn't my meeting. It wasn't my place to say. And, no, I was not communicating.

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Q. I believe one of your answers was you're trying to put words in my mouth, correct?
A. Yes.
Q. Was your understanding of what transpired at this Mosaic meeting pretty much garnered from this Exhibit Number 124?
A. Yes.
Q. So if you look at the first in the string of e-mails, which is at the back of the exhibit, it looks like the first e-mail was actually from Mosaic, correct?
A. Yes.
Q. So these are Mosaic's words, not yours, not members of the EC or anybody else?
A. Correct.
Q. And it starts out, they're interested in hearing about the history of the Mosaic involvement in Cal Neva with you and we explained our deal with them. We told them how we met you. We told them that we issued a term sheet. And we told them the day you executed. And he's sending this to Robert Radovan, right?
A. Yes.
Q. Then he also goes on and says, we also told them for better part of three months, we have not heard much from you or your team. They went on a little bit to explain the

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history of the deal from their perspective, and to tell you the truth, there seems to be a little bit of a mess right now. We're going to take a step back, tear up the executive term sheet, give you and the ownership time to figure things out on your own. And at the right moment, if you desire, reintroduce the deal to Mosaic. This was Mosaic speaking right now?

A. Yes.

Q. Would you agree with Mosaic that as of February 1st, 2016, that there was a little bit of a mess with the project?

A. That would be an understatement. It was grand magnitude.

Q. And then you were on the next e-mail string, which looks like was sent from -- I think this was Paul Jamieson in the middle of the second page. Your representatives on the executive committee had an informative, constructive and very positive meeting with Mosaic?

A. Yes.

Q. And who do you understand Phil Busick was?

A. Phil Busick is Les Busick's son and they work together on their investment, their family investment in the project.

Q. And the Busicks had how much money into this

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STATE OF NEVADA)
) ss.
County of Washoe)

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on September 6, 2017, at the hour of 1:30 p.m., and took verbatim stenotype notes of the proceedings had upon the trial in the matter of GEORGE S. YOUNT, et al., Plaintiffs, vs. CRISWELL RADOVAN, et al., Defendants, Case No. CV16-00767, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 845, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 10th day of October 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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Jacqueline Bryant
Clerk of the Court
Transaction # 6485034 : pmsewell

EXHIBIT 5

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EXHIBIT 5

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STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

--oOo--

GEORGE S. YOUNT, et al., Plaintiffs,	)	
vs.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

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TRANSCRIPT OF PROCEEDINGS

TRIAL VII

September 8, 2017

9:00 a.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

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APPEARANCES:

For the Plaintiff:

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Attorney at law
264 Village Blvd.
Incline Village, Nevada

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And, in addition, that refinance of the mezzanine loan, that was the only time that anybody told Mr. Yount about a refinance, those terms that we were going to get a better terms. But we know Mr. Radovan testified here and, again, in deposition that he knew in September, maybe even as early as August, that they needed to refinance the entire project. And if they didn't refinance that entire project, they were not going to finish this deal.

And he never told Mr. Yount that. Telling Mr. Yount that we're going to do a 15 million mezz refinance, which, six plus will go to payoff, and going to a total refinance of the project with substantial additional funds, somewhere between 16 million more than the budget, that's a material fact. I mean, if I was an investor, anybody who was an investor, they would want to know that the project was now going to have to be refinanced and it's not going to go forward.

THE COURT: But wasn't this discussed amongst the EC for months? I mean, they had been in negotiations with Mosaic in November. Those individuals were clearly aware that that was one of the options, the total refi was one of the options, the mezz was another, a capital call was a third. Would you argue that having all of those options on the table is a dereliction of the duty of the management,

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That's a duty to tell Mr. Yount that Busick closed out the PPM.

Again, we have Mr. Radovan painting himself as a victim in this case. While they were able to put a million, Mr. Radovan and Mr. Criswell, their entities were able to put a million dollars in that, Mr. Yount is that out a million dollars. I don't see how they are the victims.

Again, this would have been so easy to avoid this whole trial. Mr. Radovan picks up the phone and says, hey, Stuart, guess what, Busick just closed out the PPM, but if you still want a share, I can sell you one of my shares. Is that okay with you? Can we agree to that? You want to sign a document or I'll confirm it in an e-mail? That never happened, your Honor. That never happened. I find that inexcusable.

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And then what makes it even worse is that they don't tell him at all.

THE COURT: Well, that's an interesting point that you bring up, Mr. Campbell, because the uncontroverted testimony is that Mr. Radovan thought Mr. Marriner told Mr. Yount, and Mr. Marriner thought Mr. Radovan told Mr. Yount. In fact, neither of them told Mr. Yount, but it doesn't seem to have any evidence in the record that either Mr. Marriner or Mr. Radovan got together and said, let's not

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Criswell and Mr. Radovan are individually liable in this case.

I'm going to move to the Mosaic loan issue.

THE COURT: We want to make sure that we give the other side sometime as well.

MR. CAMPBELL: I can wrap this up pretty quick, your Honor.

THE COURT: Go ahead.

MR. CAMPBELL: I think the Mosaic loan issue is a red herring. That happened way after the fact. There was no counterclaim against Mr. Yount for somehow derailing that loan and there's no evidence that he was involved in any discussions with Mosaic. Obviously, all the investors were concerned. We've got the e-mails. They're trying to work out a strategy. Mr. Yount has no -- what incentive would he have to undermine the Mosaic loan? Mr. Criswell tells him in exhibit --

THE COURT: Clearly none.

MR. CAMPBELL: 51.

THE COURT: I think everybody testified that Mosaic was the best option. Mr. Chaney said it as well. It was the best option to rescue the project.

MR. CAMPBELL: We have the best evidence in this case as to what happened with Mosaic, their own words in the

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e-mail, which are --

THE COURT: 124.

MR. CAMPBELL: The new one yesterday, the Mosaic termination letter that surprisingly wasn't produced.

THE COURT: February 24th.

MR. CAMPBELL: Very material to these facts. I think it is a sideshow. That doesn't apply to what happened in October 13th. There's no evidence that Mr. Yount interfered in that. Mr. Radovan says he thought he did and the loan would close. Even that tape recording yesterday or the message, Mr. Radovan tried to tell the Court that voice message said we can close at the end of the month. You heard it twice.

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THE COURT: At the end of the year.

MR. CAMPBELL: You heard it twice. It didn't say that. It said, we've got other things to do and we've got other deals to close, where are we on this deal? We haven't heard from you for a while. So it's a sideshow. It shouldn't at all be considered as to whether Mr. Yount was defrauded, whether his money was converted from him, whether there was a breach of duties. A total sideshow that I don't think is relevant to this case.

Same with Mr. Chaney's credibility. We spent a lot of time yesterday on his credibility. He came here

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to them. And they want to have you believe that it's lack of faith in Criswell Radovan. You heard the phone message. Does that sound like they had lack of faith in us? Absolutely not. Is it a mere coincidence that the very day that IMC meets with Mosaic, that they send a letter terminating the term sheet and completely backing out?

And if you want to believe their story that we love Mosaic, of course, why would we try to sink it? If Mosaic invited those people that they met with at IMC, let's go back and let's have more discussions. You heard the evidence. They didn't do that. They didn't want Mosaic. They wanted their own financing and they're responsible for where this project is, your Honor. And Mr. Yount was part of that. And to sit here and say he wasn't is disingenuous. It's in the documents.

And, your Honor, importantly, we pled -- we haven't sued him for a counterclaim, but we have pled affirmative defenses and whether you call it --

THE COURT: Unclean hands.

MR. LITTLE: Unclean hands, estoppel, waiver, contributory fault, it's all the same failure to mitigate damages, all roads lead to the same path. He put himself in the position he is now. He not only caused himself to lose potentially this $1 million, he's cost CR Cal Neva over

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Now, it has been argued hypothetically that it may not have been Mr. Yount's desire to buy the founders shares from CR, but from some other party, but it is no different than getting a Cadillac from Jones West Ford or a Cadillac from Don Weir. Mr. Yount ended up with a Cadillac. Therefore, he has not been able to prove damages in this case and the second cause of action is dismissed.

Third cause of action, fraud, all defendants with the exception of Powell, Coleman. This requires a high standard to prove, clear and convincing evidence. It is asserted against Mr. Criswell, Mr. Radovan, CR Cal Neva LLC, Criswell Radovan LLC, Cal Neva Lodge LLC, David Marriner Real Estate LLC, and New Cal Neva Lodge. The elements of fraud are a false representation. There has been no evidence presented here that any of the material facts were proven to be false or known to be false by any of the parties. In fact, the testimony is completely opposite.

Second claim is made with the knowledge or belief that it is false or without a sufficient basis of information. There's no evidence that anybody knew that this was false. He had the information provided by third parties, they were verified again by CPAs, by members on site, the architect, the construction manager. The third element is there's an intent to induce reliance on those false

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or fraudulent, and, therefore, the sixth cause of action is dismissed.

The seventh cause of action, securities fraud. First, under Exhibit 3, there's a disclaimer. Second, pursuant to NRS 90.530, this is not a security. Third, under Rule 4 A of the Securities and Exchange Act of 1933, this is a private placement agreement and not a security. And, therefore, the seventh cause of action is dismissed.

Because those actions have been dismissed against the defendant, the counterclaim by the defendant, David Marriner, against the other defendants must be dismissed as moot.

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The defendants' counterclaim is unclean hands. In determining whether a party's improper conduct bars relief, the Nevada Supreme Court applies a two-factor test. One, the egregiousness of the misconduct at issue; and, two, the seriousness of the harm caused by the misconduct against the granting of the requested relief. And that the District Court has broad discretion in awarding damages.

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In this case, but for the intentional interference with the contractual relations between Mosaic and Cal Neva LLC, this project would have succeeded. That is undisputed. Mr. Chaney agrees, Mr. Yount agrees, everybody agrees that money would have covered all the costs and the debts.

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This Court has documented dozens of e-mail exchanges between Mr. Yount and the IMC and their efforts to undermine the Mosaic loan and there is no more solid evidence of that than in Exhibit 124. That deal was done. That deal had been executed. That deal was in place. Mosaic had evidenced its enthusiasm to close this deal. And yet the day that individuals from the IMC went to the Mosaic offices without the knowledge of CR, that deal was dead. And the testimony is unequivocal, there was never an attempt by the IMC to resurrect it, despite the open invitation by Mosaic to reintroduce the loan.

This Court finds that it was the intent of the IMC to kill this loan, divest CR from its shares on the threat of legal, civil, criminal actions for their own benefit and not the benefit of the project.

Indeed, if you look at the e-mails from Molly Kingston afterwards, she's reaching out saying, who is going to manage this? What's plan B? We need CR in there until such time as we find some substitutes. They had no foresight in this. It's tragic. So the counterclaim from the defendants is granted.

It will be the order of the Court, Ms. Clerk, that judgment is in favor of all defendants. Damages awarded against the plaintiff on behalf of Mr. Radovan, Mr. Criswell

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STATE OF NEVADA)
) ss.
County of Washoe)

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on September 8, 2017, at the hour of 9:00 a.m., and took verbatim stenotype notes of the proceedings had upon the trial in the matter of GEORGE S. YOUNT, et al., Plaintiffs, vs. CRISWELL RADOVAN, et al., Defendants, Case No. CV16-00767, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 1142, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 13th day of October 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA,

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company; and DOES 1 through 10, Inclusive,

Defendants.

CASE NO.: CV16-00767

DEPT NO.: B7

DEFENDANTS' BRIEF REGARDING POST-TRIAL PROCEDURE BY SUCCESSOR JUDGE

Pursuant to the Court's instruction, Defendants Criswell Radovan, LLC (Criswell Radovan), CR Cal Neva, LLC ("CR Cal Neva"), Robert Radovan ("Radovan"), William Criswell ("Criswell"), and Powell, Coleman and Arnold LLP ("PCA") (collectively "Defendants"), hereby submit this brief outlining what still remains to be accomplished by the Court in light of Chief Judge Flanagan's untimely death.

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I.

BRIEF STATEMENT OF FACTS

This case involves the redevelopment of the historic Cal Neva Hotel in Lake Tahoe (the "Property"). Criswell Radovan acquired the Property in 2013 with the intent of re-opening it after a multi-million dollar renovation (the "Project"). The acquisition and renovation of the Project was to be funded through conventional financing and $20 million of equity, which equity shares were offered to investors beginning in 2014 (hereafter the "Founder Shares.").

The general contractor, Penta Building Group ("Penta") mobilized to the site in November 2014 and substantial completion was targeted for December 2015 – to be timed with an opening celebration on Frank Sinatra's 100th birthday. By July 2015, the Project was progressing and all but $1.5 Million of the Founder Shares had been sold. Around this time, the construction budget and schedule was being impacted by scope changes due to unforeseen construction issues, and it became necessary for the development team to sell the remaining $1.5 million of Founder Shares. This offering was put out to prospective investors through the Project's agent and broker, David Marriner ("Marriner") of Marriner Real Estate.

One of these prospective investors was Plaintiff George Yount ("Plaintiff" or "Mr. Yount") -- a sophisticated investor from Lake Tahoe who was originally approached in 2014 about investing but was not interested at the time. Plaintiff engaged in significant due diligence in late July and early August, but then went radio silent as he navigated how to pull $1 million out of his 401(k) to invest. Faced with deadlines, Radovan and Marriner pursued other investors and ultimately sold the last $1.5 million Founder Share to an existing investor, Les Busick, at the end of September 2015.[1]

[1] Notably, Les Busick was on the Executive Committee and invested this additional $1.5 Million after walking the Project with Penta's superintendent and going over all the scope changes impacting the budget.

Around the time Mr. Busick closed out the last of the Founder Shares, Plaintiff got his 401(k) approval to fund an anticipated $1 million investment in the Project. Excited to have Plaintiff part of the Project, Radovan and Marriner discussed selling Plaintiff one of CR Cal Neva's two Founder Shares.[2] Radovan assumed that Marriner had explained this to Plaintiff, and Marriner assumed that Radovan had told Plaintiff. Plaintiff contends, however, that he closed his purchase on October 12, 2015 believing that he was buying $1 million of the last $1.5 million Founder Share. Practically, there is no difference-- value or otherwise-- between the share Plaintiff thought he was purchasing and the share he purchased from CR Cal Neva. They are both Founder Shares and have the identical rights, obligations and value.

Although Plaintiff feigns outrage at learning he purchased one of CR Cal Neva's Founder Shares, instead of the last Founder Share purchased by Mr. Busick, this is no doubt a convenient reaction to the fact the Project subsequently fell into bankruptcy. Notably, from the moment Plaintiff bought his interest, he clearly considered himself as, and was treated by the Executive Committee as, a full founding investor. He attended Executive Committee meetings and involved himself actively in those meetings. Unfortunately, he also involved himself with a select group of investors who actively meddled in the financing efforts to try to supplant their own financing. In the spring of 2016, these investors (with Plaintiff's involvement) went behind Criswell Radovan's back and sabotaged the loan Criswell Radovan had lined up with Mosaic to fund the remaining construction. Without funding, the Project fell into bankruptcy and Plaintiff thereafter attempted to distance himself from his investment, including filing the instant lawsuit.

This matter came before the Honorable Patrick Flanagan for a bench trial on August 29, 2017. On September 8th, at the conclusion of the trial, Chief Judge Flanagan issued an oral decision on the record in open court lasting over two hours. A copy of the transcript of the issued decision is attached hereto as **Exhibit 1**. Significantly, in those findings, Chief

[2] CR Cal Neva is a limited liability company owned by Radovan and Criswell. It is a single purpose entity formed to develop the Project. CR Cal Neva owned $2 million of the original $20 million Founder Shares, and always planned to sell of one of its two shares.

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Judge Flanagan entered a sweeping defense verdict in favor of the Defendants, dismissing all of Mr. Yount's claims against the Defendants with prejudice. Chief Judge Flanagan then specifically found that Mr. Yount had colluded with another investor, IMC Investment Group ("IMC") to intentionally interfere with Criswell Radovan's refinancing efforts with Mosaic, which ultimately led to the demise of the Project.

> In this case, but for the intentional interference with the contractual relations between Mosaic and Cal-Neva, this Project would have succeeded. That is undisputed. . . .
>
> This Court has documented dozens of email exchanges between Mr. Yount and the IMC in their efforts to undermine the Mosaic loan and there is no more solid evidence of that than in Exhibit 124. That deal was done. That deal has been executed. That deal was in place. Mosaic had evidenced its enthusiasm to close this deal. And yet the day that individuals from the IMC went to the Mosaic offices without the knowledge of [Criswell Radovan], that deal was dead. The testimony is unequivocal, there was never an attempt by the IMC to resurrect it, despite the open invitation by Mosaic to reintroduce the loan.
>
> **This Court finds that it was the intent of the IMC to kill this loan, divest [Criswell Radovan] from it shares on the threat of legal, civil, criminal actions for their own benefit and not the benefit of the project.**

Id. at 52-53 (emphasis added). Chief Judge Flanagan then entered a multi-million dollar award against Mr. Yount and in favor of Defendants for this intentional interference. A week later, on September 15, 2017, he issued a separate Amended Order clarifying his damage award. *See* Amended Order, **Exhibit 2** hereto. Chief Judge Flanagan died before a final judgment could be entered.

II.

APPLICABLE LEGAL STANDARD WHERE A JUDGE IS UNABLE TO PROCEED

NRCP 63 addresses the "Inability of a Judge to Proceed" as follows:

> *If a trial or hearing has been commenced and the judge is unable to proceed*, any other judge *may proceed with it* upon certifying familiarity with the record and determining that the proceedings in the case may be completed without prejudice to the parties. In a hearing or trial without a jury, the successor judge shall at the request of a party recall any witness whose testimony is material and disputed

> and who is available to testify again without undue burden. The successor judge may also recall any other witnesses. But if such successor judge cannot perform those duties because the successor judge did not preside at the trial or for any other reason, the successor judge may, in that judge's discretion, grant a new trial. (Emphasis added.)

Although tangentially applicable, this Rule would be more applicable to a situation where Chief Judge Flanagan started the trial and then died before making a ruling. Indeed, the Rule starts out "[i]f a trial or hearing has been **commenced and the judge is unable to proceed**. . . ." Here, the trial was **completed** and Chief Judge Flanagan not only issued a 53-page decision with detailed findings of fact and conclusions of law, but a week after making his decision on the record, he issued a *sua sponte* Amended Order clarifying his damage award to the Defendants. The only act left to perform is the ministerial act of entering a judgment, which a successor judge has the authority to perform. *See e.g. City of Fort Smith v. France*, 465 S.W.2d 315 (Ark. 1971); *Leiserrson v. City of San Diego*, 184 Cal.App. 3d 41 (1986).

Accordingly, this is clearly not a situation where witnesses should be recalled or a new trial granted because of Chief Judge Flanagan's passing. *See Smith's Food King No. 1 v. Hornwood*, 108 Nev. 666, 836 P.2d 1241 (1992) (New trial or rehearing evidence necessary where original judge made no competent findings).

III.

THE COURT SIMPLY NEEDS TO ENTER A JUDGMENT IN ACCORDANCE WITH CHIEF JUDGE FLANAGAN'S DECISION AND LET PLAINTIFF'S APPEAL, OR POST-JUDGMENT PRACTICE MOVE FORWARD

Although Defendants anticipate that Plaintiff will try to complicate this matter, with the hope of unwinding all or part of the decision thoughtfully laid out by Chief Judge Flanagan, the reality is there is very little left for a successor Court to do at this time.

Prior to trial, both sides made competing motions for summary judgment, which were denied. The parties each submitted detailed trial statements and proposed findings of facts and conclusions of law. The case was tried to completion over a period of 7 days, and counsel

made their respective closing arguments. Chief Judge Flanagan took copious notes during trial and had an extensive colloquy with Plaintiff's counsel during his closing argument. Chief Judge Flanagan then took a lengthy recess and came back and made an exhaustive 2.5 hour decision from the bench -- where he made detailed evaluations of every witness and evidence that came before him. He entered a defense verdict, after explaining the basis for his dismissal of each of Plaintiff's causes of action. He then explained the basis for his damage award against Plaintiff and in favor of Defendants. The entire trial, including Chief Judge Flanagan's 53-page decision, was reported and transcripts have been produced and made a part of the record in this case.

In addition to making very detailed findings and conclusions from the bench, Chief Judge Flanagan adopted the findings of facts and conclusions of law previously submitted by Defendants and requested that Defendants' counsel prepare the order. *See*, September 8, 2017 transcript, pages 44:4-6 and 53:17-18. One week after ruling from the bench, Chief Judge Flanagan issued a *sua sponte* Amended Order clarifying his damage award to Defendants. See Exhibit 2. Before a final judgment could be entered, Chief Judge Flanagan passed away and then Plaintiff filed his appeal to the Nevada Supreme Court.

The question posed by this Court is what is left for the successor judge to do. The answer is simple -- enter a judgment in conformance with Chief Judge Flanagan's decision and let Plaintiff proceed with either post-judgment motions or his appeal. *See* NRCP 58.

Pursuant to NRCP 52(a), "[i]n all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specifically and separately state its conclusions of law thereon and judgment shall be entered pursuant to Rule 58." Importantly, Rule 52 goes on to state that "[i]t will be sufficient if the findings of facts and conclusions of law are stated orally and recorded in open court following the close of evidence or appear in an opinion or memorandum of decision filed by the court."

In light of this rule, there are two approaches this Court can take. The easiest is to simply let Chief Judge Flanagan's 53-page oral decision stand as the findings of fact and

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conclusions of law and enter a simple judgment in conformance therewith.[3]

The alternative approach is to enter Findings of Fact, Conclusions of Law, and Judgment in conformance with Chief Judge Flanagan's decision. In that regard, counsel for Defendants already submitted Findings of Fact, Conclusions of Law, and Judgment around the time of Chief Judge Flanagan's passing, but those have yet to be entered because of Chief Judge Flanagan's death. A copy of the Findings of Fact, Conclusions of Law, and Judgment are attached hereto as **Exhibit 3**. Importantly, Plaintiff's counsel had very few substantive objections to that document. A copy of Plaintiff's objections, and Defendants' response thereto, is attached hereto as **Exhibits 4 and 5**. Thus, if the Court is inclined to enter new Findings of Fact, Conclusions of Law, and Judgment-- instead of simply a Judgment -- it should not be a difficult task to focus in on the few objections that were raised by Plaintiff.

In short, regardless of which approach the successor Court decides is best, Chief Judge Flanagan already decided the outcome of this case and that decision needs to be carried out. Chief Judge Flanagan left only the ministerial act of entering a judgment, which a successor Court can easily do based upon his detailed decision and Amended Order. *See City of Fort Smith*, 465 S.W.2d at 322. (It appears that the case was fully developed before Chancellor Dunn, prior to his death, as evidenced by his findings of fact and conclusions of law. Chancellor Kimbrough had authority to enter the decree and we find no abuse of his discretion in doing so and in his refusal to reopen the case for a new trial.")

A. Attorneys' Fees And Costs Need To Be Decided After Entry Of Judgment

In his 53-page decision, which is clarified in the Amended Order, Chief Judge Flanagan found that Defendants are entitled to attorneys' fees by contract; specifically, the attorneys' fees provision in the Operating Agreement that was entered into by Plaintiff and Defendants. As prevailing parties, Defendants are also entitled to their costs of suit. Once a Judgment is entered, Defendants plan to file a memorandum of costs and a motion for

[3] As stated above, Chief Judge Flanagan also adopted the Findings of Fact and Conclusions of Law submitted by Defendants, which would also satisfy Rule 52.

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attorneys' fees to establish the amount of both. This does not require the Court's immediate attention as a judgment first needs to be entered.

B. Quantifying the Award of Lost Development and Management Fees to Defendants

In his Amended Order, Chief Judge Flanagan awarded Criswell and Radovan management fees and Criswell Radovan lost development fees. The basis for this award is already firmly established in the record, and only the amount of the subject fees needs to be determined. Defendants intend to do this by post-judgment motion, the same as will be done with the quantification of their attorneys' fee award. Again, the Court need not take immediate action with respect to this as a judgment first needs to be entered.

IV.

ANY ISSUES PLAINTIFF MAY HAVE WITH THE DECISION SHOULD BE TAKEN UP ON APPEAL OR BY POST-JUDGMENT MOTION

Plaintiff's pending appeal makes it clear that he takes issue with Chief Judge Flanagan's decision, most notably the award of damages to Defendants. However, the time and place to address any such issues is either in his current appeal, or by motion **after** judgment is entered. *See* NRCP 59 and 60 (which address remedies after judgment is entered).

Indeed, there is no sound basis for a successor judge to consider modifying Chief Judge Flanagan's decision before a final judgment is entered and without the benefit of a fully-briefed post-judgment motion. Chief Judge Flanagan was a sophisticated lawyer and trial judge. He had the benefit of hearing the dispositive motions and reviewing the pre-trial filings, including trial briefs and proposed findings of fact and conclusions of law. He took copious notes during trial and had the opportunity to watch witnesses testify live and weigh their credibility. There is a wealth of support for every decision he made, from giving a defense verdict to awarding damages to Defendants on Plaintiff's interference with the Mosaic Loan (which a significant portion of the trial centered around, and which Chief Judge Flanagan found caused the demise of the Project and significant damages to Defendants).

Although Plaintiff acts shocked and surprised by the award of damages to Defendants,

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the reality is there is ample justification in the civil rules for Chief Judge Flanagan's decision. Indeed, pursuant to NRCP 54(c), "[e]very other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." "The Nevada Supreme Court recognized the liberal nature of NRCP 54(c) by confirming 'Under the liberalized rules of pleading,' a final judgment must grant the relief a party is entitled to, even where the prayer for relief did not ask for such relief." *Magill v. Lewis*, 74 Nev. 381, 387-88, 333 P.2d 717, 720 (1958). *Magill* recognized that Rule 54(c) "implements the general principle of Rule 15(c), that in a contested case a judgment is to be based on what has been proved rather than what has been pleaded." *Magill*, 74 Nev. at 388.

Moreover, pursuant to NRCP 8(c), "[w]hen a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation." Here, Defendants plead, among other things, Plaintiff's unclean hands, estoppel, waiver, and Plaintiff's own fault as affirmative defenses and put on considerable evidence at trial of Plaintiff's involvement in the interference with the Mosaic loan, as well as Defendants' resulting damages.

Furthermore, pursuant to NRCP 15(b), "[w]hen issues not raised by pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause to them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues." Amendments to conform to proof are perfectly proper and courts should be liberal in allowing such amendments. *See Brean v. Nevada Motor Co.*, 269 P. 606, 606 (Nev. 1928) (citing *Miller v. Thompson*, 40 Nev. 35, 160 P. 775; *Ramezzano v. Avansino*, 44 Nev. 72, 189 P. 681).

In short, there is ample evidence in the record and justification in the civil rules to support Chief Judge Flanagan's decisions in this matter. The case was fully tried and Chief

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Judge Flanagan issued extremely detailed findings of fact and conclusions of law from the bench, along with an Amended Order clarifying his damage award. If Plaintiff has issues with this decision, he should address it as losing parties do in every other case -- either by post-judgment motion or appeal. He should not be allowed to use Chief Judge Flanagan's death to get a new judge to weigh in on the decision that has already been made.

DATED this 16 day of January 2018.

HOWARD & HOWARD ATTORNEYS PLLC

By: _____

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Alexander Villamar, Esq.
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Attorneys for Criswell Radovan, LLC, CR Cal Neva, LLC, Robert Radovan, William Criswell, Cal Neva Lodge, LLC

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SECOND JUDICIAL DISTRICT COURT
COUNTY OF WASHOE, STAT OF NEVADA

AFFIRMATION

X Document does not contain the social security number of any person

- OR -

_____ Document contains the social security number of a person as required by:

_____ A specific state or federal law, to wit:

_____
(State specific state or federal law)

- OR -

For the administration of a public program

- OR -

_____ For an application for a federal or state grant

- OR -

_____ Confidential Family Court Information Sheet
(NRS 125.130, NRS 125.230, and NRS 125B.055

Date: January 26, 2018

HOWARD & HOWARD ATTORNEYS, PLLC

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HOWARD & HOWARD ATTORNEYS PLLC
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CERTIFICATE OF SERVICE

I hereby certify that I am employed in the County of Clark, State of Nevada, am over the age of 18 years and not a party to this action. My business address is that of Howard & Howard Attorneys PLLC, 3800 Howard Hughes Parkway, Suite 1000, Las Vegas, Nevada, 89169.

On this day I served the foregoing **DEFENDANTS' BRIEF REGARDING POST-TRIAL PROCEDURE BY SUCCESSOR JUDGE** in this action or proceeding electronically with the Clerk of the Court via the E-File and Serve system, which will cause this document to be served upon the following counsel of record:

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I certify under penalty of perjury that the foregoing is true and correct, and that this Certificate of Service was executed by me on January 17, 2018 at Las Vegas, Nevada.

Agnes R. Wong

An Employee of HOWARD & HOWARD ATTORNEYS PLLC

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EXHIBIT LIST

		NO. OF PAGES
1.	Transcript of the Issued Decision	55
2.	Amended Order	4
3.	Defendants' Findings of Fact, Conclusions of Law, and Judgment	35
4.	Plaintiff's objections to Defendants' Findings of Fact, Conclusions of Law, and Judgment	4
5.	Defendants' response to Plaintiff's objections to Defendants' Findings of Fact, Conclusions of Law, and Judgment	6

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Clerk of the Court
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EXHIBIT 1

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STEPHANIE KOETTING

CCR #207

75 COURT STREET

RENO, NEVADA

IN THE SECOND JUDICIAL DISTRICT COURT

IN AND FOR THE COUNTY OF WASHOE

THE HONORABLE PATRICK FLANAGAN, DISTRICT JUDGE

--oOo--

GEORGE S. YOUNT, et al., Plaintiffs,	)	
vs.	)	Case No. CV16-00767
CRISWELL RADOVAN, et al., Defendants.	)	Department 7

PARTIAL TRANSCRIPT OF PROCEEDINGS

TRIAL

September 8, 2017

3:00 p.m.

Reno, Nevada

Reported by: STEPHANIE KOETTING, CCR #207, RPR
Computer-Aided Transcription

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APPEARANCES:

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Attorney at law
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Incline Village, Nevada

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RENO, NEVADA, September 8, 2017, 3:00 p.m.

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THE COURT: I apologize. Good lawyers give judges a lot to think about. This is an important case to all sides. So I wanted to make sure I viewed everything and pulled the Blanchard case, reviewed the cases cited by counsel, had an opportunity to listen to very good arguments by very good lawyers and the Court has listened to the testimony in this case.

Mr. Marriner testified first. He's a realtor and he met Mr. Radovan at the Fairwinds Estates sometime in February of 2014. He was hired on as a consultant to raise approximately $5 million to fund the development of the Cal Neva and that's Exhibit 1. He was not involved in the sale of securities. He invested in Cal Neva Lodge LLC. He never told any investor that he had investigated any representation in the operating agreement.

He met Mr. Yount in 1996 at a barbecue. He considered him a friend and that's not unusual up in a close community like Incline Village. They met at lunch sometime in June and Mr. Yount inquired, how is the project going? Mr. Marriner offered to take him on a tour of the Cal Neva site.

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He had told Mr. Yount that they were looking to open on December 12th, which was the 100th anniversary of Frank Sinatra's birthday. And he sent Mr. Yount the latest executive committee reports. Told Mr. Yount at that time that the opening date was still 12/12/2015. And he also told that there was 1.5 million, the last tranche available for investment under the PPM.

He forwarded Exhibit 3, which was the PPM, to Mr. Yount. He also sent the latest construction report, which was July, and Exhibit 8 to Mr. Yount. Again, he stated they were looking at a target date for opening of December 12th. This is sometime in June that these discussions and e-mails took place.

He sent Mr. Yount the term sheets through an e-mail, which is Exhibit 11. In those term sheets are disclaimers. Mr. Yount testified he read those. And on Exhibit 12, Mr. Marriner sent another e-mail to Mr. Yount asking if he had any questions. And Mr. Yount responded with some questions and they were directed to Mr. Radovan.

Exhibit 12 is the July status report, which contains the change orders and the impact those change orders had on the development of the project. Exhibit 14 is another e-mail from Mr. Marriner to Mr. Yount saying that Mr. Radovan will get back to Mr. Yount to answer all of those questions

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that he had raised. And Exhibit 18 is an e-mail from Mr. Radovan to Mr. Yount, which was cced to Mr. Marriner, which responded to the 11 questions asked by Mr. Yount. They discussed a $15 million mezzanine loan to cover the change orders, as well as potential upgrades and expanding the scope of construction.

Mr. Marriner was never involved in the financing of this project. He was not involved with the executive committee, the construction committee, and he was not privy to the figures being bantered about amongst those entities.

Mr. Marriner never gave Mr. Yount any specific numbers on the change orders. Mr. Marriner was never involved with Hall or the business discussions regarding potential financing by Hall. Mr. Marriner has a background in construction and clearly knows that unless you have capital, the project dies. Mr. Marriner never spoke to Mr. Yount regarding the destination of his $1 million investment.

Exhibit 29, which is the e-mail string from August to September 28th, Mr. Marriner was trying to be helpful in assisting Mr. Yount in moving money around. He sent an e-mail, which is Exhibit 30, which states that Robert hopes to close out the funding very soon.

Mr. Marriner never spoke to Mr. Yount regarding

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the Mosaic loan. Mr. Marriner testified that Hall still had $5 million to loan, that they were looking at a $15 million mezzanine loan, and that Mosaic loan was still in the works, and he believed the project was still on schedule.

He talked about a perfect storm, that is, simultaneous investments of Mr. Yount and Mr. Busick. However, he was informed by Mr. Radovan that CR still had another funding membership available under the PPM.

Two weeks afterwards, Mr. Yount invested in Cal Neva Lodge LLC. Mr. Marriner testified that there is no difference between the two shares, that is, the shares of Mr. Busick and the shares of CR Cal Neva. But he was told by Mr. Radovan that he would take -- that Mr. Radovan would take care of the plaintiff's investment.

Mr. Marriner was clear in his testimony that this is not a security. This was a real estate investment. Mr. Marriner knew that through -- that Mr. Radovan had an additional founding membership available for Mr. Yount.

Mr. Marriner knew that the Mosaic $50 million loan was the best solution for financing and taking this project to closure of construction.

After the December 12th meeting, Mr. Marriner testified that there was a general feeling among the investors for a need for more transparency and greater

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financial reports, more frequent financial reports. He knew that $8.6 million in cost overruns were there for work that had already been done and was proposed in the future.

On cross examination by Mr. Wolf, Mr. Marriner reiterated in an e-mail dated August 3rd, 2015, that Mr. Yount was dealing directly with Mr. Radovan and it was a hand-off from -- by Mr. Marriner of Mr. Yount to Mr. Radovan.

Mr. Marriner testified that Mr. Yount conducted due diligence between July 25th and August 3rd, spoke to Peter Grove, the architect, who coincidentally is or was the architect for Mr. Yount's personal residence. Mr. Marriner testified that the information provided to Mr. Yount was fair and was accurate.

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Mr. Marriner testified that Mr. Yount knew that Mr. Radovan needed more money and he attempted to help by engaging the Wittenbergs and Boulder Bay as potential investors. Mr. Marriner testified that there was no false information provided to Mr. Yount and he had sent all the executive committee reports to Mr. Yount and that he had no reason to doubt the veracity of the information contained therein. Exhibit 10, the construction summary was given to Mr. Yount before he invested and Mr. Yount was fully advised as to the status of the project.

Mr. Marriner testified as to Mr. Busick's site

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visit, and at that time, the tower was finished or approximately 95 percent done. Mr. Busick was on the executive committee. He was one of the original, if not the original investor in this project. He had a background in construction.

Mr. Marriner testified that there was a lot of activity on that site. That Mr. Busick appeared pleased with the progress with construction. That Mr. Busick felt they could make the opening. Lee Mason, a representative of Penta Construction, also appeared to be excited, as was Mr. Marriner. It looked as if the project was close to being finished. It appeared to be a very good job.

On September 30th, Mr. Marriner testified that there was no adverse information to be shared with Mr. Yount. That there was no indication of a problem at that time.

As to the CR share, Mr. Marriner testified that he was pleased to have a share available for Mr. Yount. That there was no indication that CR was, quote, bailing out, close quote, of the project. That the CR shares were part of the original 20 founding shares and there were no differences between the CR shares and the other shares.

Mr. Marriner testified he was very excited about this project. He labeled it as, quote, sensational, close quote, project. And he was devastated professionally and

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personally over the loss of this project, this lawsuit, his reputation, and his friends.

On cross examination by Mr. Little, he pointed out in Exhibit 3 that Exhibit 3 contained a disclosure that this was not a security and explained the risk of such a speculative investment.

Mr. Marriner pointed out his background in construction and testified that renovating old properties raise common problems, that this was a fluid project, and the monthly status reports, which is Exhibit 10, were prepared by third parties. And on page 16 of Exhibit 10 identifies the adverse impact some of these changes had, particularly the sewer, on the project's progress and that the information contained therein was accurate.

Exhibit 14 was identified as an e-mail, which demonstrated that Mr. Yount knew of the debt. Exhibit 13 was an e-mail from Mr. Yount's architect, Peter Grove, who termed the project to be very good. Mr. Yount's CPA reviewed the investment. The testimony is Mr. Yount never asked for any additional information.

Exhibit 27 is an e-mail from the -- from Mr. Yount to his CPA, which demonstrates that Mr. Yount knew that the opening was being pushed back to March. Exhibit 36 is an e-mail three days before Mr. Yount's investment, which

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demonstrates he knew the opening was for Father's Day.

Mr. Yount took a site visit with Mr. Lee Mason and questioned whether or not the change orders were necessary. There did not appear to be any red flags and Mr. Marriner felt optimistic about the project. Exhibit 37 is an e-mail dated October 10th, which introduced the new general manager and the chef to the investors.

Mr. Marriner testified to the deal with Starwood in which the Cal Neva Lodge would be added to the Starwood's luxury collection. And he testified that it certainly did not look like the project was about to fail.

Mr. Marriner found no improprieties by Criswell Radovan and that in fact Criswell Radovan was still in charge of this project. Mr. Marriner testified that there was no involvement by Mr. Criswell in Mr. Yount's investment.

Mr. Marriner testified that selling of the CR founders share was not taking money out of the company and the transfer was specifically authorized by Exhibit 5, section 12.1, 12.3, 12.4, and 12.6.2.

On redirect, Mr. Marriner again walked through the financials, Exhibit 4 and Exhibit 60, which was an e-mail by Mr. Marriner to all the investors.

Mr. Criswell testified, testified that he was a partner in CR LLC, which was a limited liability company used

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as conduit to move money into and out of a particular project. That he had a separate LLC for each project when the project was funded. And that CR Cal Neva LLC was the manager of an SPE.

He testified that they purchased the Cal Neva for $13 million in a joint venture with Canyon and walked through that transaction. He testified that CR had $2 million into the project.

He testified that the construction budget was prepared by third parties, Hal Thannisch, Penta Construction, and perhaps the architect. Nevertheless, it was outside sources.

Mr. Criswell testified that his daughter invested $220,000 to cover short-term debts. That CR was to receive a development fee of $60,000 a month with a cap of 2.2 million.

Mr. Criswell testified to a July 2015 executive committee meeting wherein the parties discussed the budget shortfall of 2.5 to 5 million. They discussed financing options. They discussed the Ladera loan. And in order to meet future and present needs, they discussed the mezzanine loan. And in August and September, the parties discussed a total refinance of the project.

Mr. Criswell testified on October 10th he became aware of the Busick investment and that Mr. Yount funded

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several days later. Mr. Criswell testified that Mr. Radovan asked for his consent to sell a CR founders share to Yount. Everyone, apparently, everybody wanted to have Mr. Yount participate in the Cal Neva project.

Exhibit 33 is from Heather Hill, an employee of CR, to Bruce Coleman, who is the general counsel for Criswell Development Corporation in the past. Mr. Criswell testified that he believed he never needed prior approval for the Yount transaction and that he had in fact prior approval for that transfer and that there was no discussion of securities fraud.

Mr. Criswell testified to the 12/12 executive committee meeting before the party, which meeting was expanded to include all the investors, who were told that the project was over budget due to cost overruns. Mr. Criswell wanted the executive committee's approval for the Mosaic loan with changes to at least get a conditional commitment.

The executive committee did not approve the Mosaic loan at that time. They asked Mr. Radovan to hold off to see if they couldn't explore other options.

Mr. Criswell testified that the cost overruns were discussed in July and the discussions in the December meeting centered on Mosaic's loan. Mr. Criswell testified that the IMC, Incline Men's Club, the largest investor at $6 million

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in this project disagreed with his approach. However, Mr. Criswell testified that those were the only dissidents and the rest of the investors -- the rest of the investors approved of their approach to Mosaic.

At that party, Mr. Criswell reached out to Mr. Yount and Mr. Criswell testified that Mr. Yount told him that he didn't know about all of these cost overruns and extra expenses and the financial condition of the project. Mr. Criswell testified that they probably could have done a better job reporting to investors about the financing and the status of the construction.

Mr. Criswell testified that the EC was provided monthly budget reports and they were prepared by Thannisch and Penta. Mr. Criswell testified he saw the cost overruns in the September report, which was before Mr. Yount invested in the project.

Mr. Criswell testified that they were looking at a December 12th substantial completion date. That they still had $9 million from Hall to complete or that they had the option to raise additional capital from the investors.

Exhibit 46 is an e-mail from Mr. Yount requesting the return of his $1 million investment. Ms. Clerk, can I have Exhibit 43?

Mr. Criswell testified that he told Mr. Yount that

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he would try and find someone to buy his share and that he felt this was going to be very easy to find other investors. However, Mr. Criswell testified that Mr. Yount had already been provided all of this information beforehand.

Mr. Criswell testified that CR had advanced $900,000 over time reflected in journal entries. And that Mr. Yount's money was spent paying past due bills on the Cal Neva, as well as other Criswell Radovan projects.

Exhibit 49 is an e-mail packet with material dated 12/17/15. It shows in big black bold title page, 35 million in debt, 20 million in equity, $55 million project. This is important, because throughout these proceedings there's been an allegation that these numbers were not shared and were misleading. The Court finds that these numbers provided by the defendants were remarkably accurate and it's spot on.

Mr. Criswell testified that afterwards he found out that Mr. Yount wanted a preferred share. However, he testified that is what he got, because the Criswell -- the CR share was a founders share.

On cross examination by Mr. Little, Mr. Criswell testified that Mr. Radovan told the executive committee of the cost overruns and a number of 9.3 million and that they needed financing. There was a number of 10.5 million discussed as well.

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Mr. Criswell testified that there's no difference between a CR share, founders share, and the share Mr. Busick purchased.

Mr. Criswell testified to his professional background in construction and hotel development, which is impressive. He had developed the Four Seasons Hotel in Dublin, wineries in Napa, other resorts that are award winning.

He testified to meeting Mr. Radovan while Mr. Criswell was serving in the Navy as a supervisor for the Navy Special Operations and Mr. Radovan was a United States Navy Seal. Impressive credentials for any individual.

Mr. Criswell testified he never met Mr. Yount before his investment and that the information provided to Mr. Yount was truthful and accurate. That CR was authorized to sell the two founders shares. And on redirect, when shown Exhibit 4 on page nine, demonstrated that there was an interest reserve for the loan and that the CR share was the same founders share as that bought by Mr. Busick.

That the information was given to the plaintiff was accurate and consistent with the information that Mr. Radovan gave to the executive committee and Mr. Yount, which included monthly reports, financial documents, and that the numbers were consistent.

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Mr. Criswell testified that the Ladera agreement required CR to keep $1 million in the project. Exhibit 150, page three, section five, showed that there was no prepayment penalty on the Ladera loan.

Mr. Criswell testified that Mr. Yount was not prevented from asking for any documents or information. And that Mr. Busick's $1.5 million investment went into the project and indeed was more advantageous than the investment by Mr. Yount, because it infused an additional half million dollars into the project.

Mr. Wolf cross-examined Mr. Criswell and demonstrated that the pro forma had projected a $51 million project, that the change orders were anticipated, and that the added scope included a new kitchen and the condo development.

Mr. Radovan testified as to Exhibit 5, Exhibit 4, the guaranteed maximum price contract, Exhibit 1, and stated that he was aware of Mr. Yount's interest in this project in July and he was aware that Mr. Yount had been given Exhibits 3, 4 and 5.

Mr. Radovan testified he knew the Hall loan was out of balance in July of 2015 and that he knew the opening would have to be pushed back because of the sewer pipe and other change orders and the requirements imposed by Starwood.

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He testified that he told Mr. Yount's CPA that the opening was pushed back because of the construction issues and he told Mr. Yount about the scheduled pushback. Exhibit 36, which is the e-mail of October 10th to Mr. Yount's architect, Peter Grove, and to his CPA regarding pushing back the dates of the opening. This was two days before Mr. Yount's investment.

Mr. Radovan testified he told Mr. Yount that they were raising $9 million because they knew more change orders were coming. Mr. Radovan testified to a conversation he had with Mr. Yount's CPA in August. That he doesn't know if Mr. Marriner knew of the pushback dates. In deposition, he did correct that testimony and stated that Mr. Marriner did know of the pushback dates.

Mr. Radovan testified to the Mosaic loan that was in the works as of -- in September of 2015. That they were looking at a high 40 million of dollars. The project was looking for different options for financing, including a capital call, which was discussed in April.

Mr. Radovan testified that the issues relating to the tower were 95 percent complete and the restaurant was 85 percent complete.

Mr. Radovan testified that the executive committee agreed to take the loan up in early November seeking an

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additional $16 million in debt.

Throughout this time, Mr. Radovan testified he was vaguely aware of Mr. Yount's interest in the project. Exhibit 29 is an e-mail between Mr. Yount and Mr. Marriner and there was no indication that the plaintiff would invest in the project. It had been three to four months of inactivity by Mr. Yount.

Mr. Yount was in the process of trying to extricate the money out of his 401K, but as everybody testified, there was radio silence between the parties during this time.

Mr. Radovan testified that he spoke to Mr. Busick after Labor Day, who expressed some interest in investing in the $1.5 million tranche, as well as, and this is important, three to four other potential investors. They had a meeting in Napa at the defendant's office in Napa with Mr. Busick's son. And, subsequently, on the 29th, the Busicks invested.

Mr. Radovan testified that the CR Cal Neva had as available a founders share under the PPM. That it was the same as the founders share Busick purchased.

In Exhibit 33, the assistant, which I believe is Ms. Hill, discussed a swap agreement, and Mr. Radovan wanted to know if there was anything required to properly effectuate the transfer of the CR founders share to Mr. Yount who was

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seeking to purchase a founders share.

It required under Exhibit 5, the operating agreement, which is article 12.2 and 12.3, one, that Mr. Yount sign the PPM; two, that the transfer be approved at the next meeting or annual meeting, or in writing; and, three, even if it was not approved, the buyer would keep the beneficial interest.

Mr. Coleman testified that he was counsel for Mr. Criswell back in 1982 and he had met Mr. Radovan in 2000. They had formed CR and worked on 20 projects. There were only two projects in litigation and two in bankruptcy back in the '80s. But most importantly, those were not CR projects.

Mr. Coleman testified that he was contacted regarding the Cal Neva project and with Brandon Iverson formed several LLCs and the operating agreement.

Exhibit 3, Exhibit 5 were discussed. Section 7.4 of Exhibit 5, demonstrates that CR put in $2 million into the project for two shares and there was a journal error of $480,000, which was subsequently reconciled.

Mr. Coleman testified that the subscription agreement advises the investors that this is not a security. It is a private placement memorandum. And that they must be a qualified investor. Mr. Coleman testified that there were no written escrow instructions.

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Exhibit 33 is an e-mail from Ms. Hill to Mr. Coleman discussing the transfer. Exhibit 33 is an e-mail dated October 2nd and he had said that -- excuse me -- Mr. Coleman had heard that Mr. Busick was interested in increasing his investment and that CR was selling one of their two shares.

Exhibit 42 is the e-mail regarding Mr. Yount's investment. Money came into Mr. Coleman's escrow account and went out the next day.

Mr. Coleman was questioned as to whether this was a swap, was this an assignment of the CR per the operating agreement? Mr. Coleman was emphatic, it was neither. It was simply CR selling their share. It was simply Mr. Yount buying a member's share and stepping into the shoes of CR and becoming a member.

The effective date was backdated so as to give Mr. Yount every day of interest he was due under the agreement.

On cross examination by Mr. Little, Mr. Coleman testified he was instructed to wire Mr. Yount's money to CR. He says this was simply a common transaction of one owner selling a share to a buyer. He testified under -- as to Exhibit 5, section 12.3, that the approval was at, quote, the next member meeting, close quote. 12.4 required approval,

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quote, after the transferee executes the documents, close quote. That there was no preapproval needed and that CR share is a founders share. And under 12.6.2, even if the transfer is not approved, that Mr. Yount would still have the economic benefit of the $1 million investment. That this was simply a personal, private transaction.

On redirect, Mr. Radovan was called back to the stand. He testified that he told Mr. Yount about the $9 million in change orders in July. He had a conversation with Mr. Yount regarding the change orders and Exhibit 18. He had a conversation regarding the transfer and sent documents to Mr. Yount. In October and November, the company was not out of money. The company was paying the contractors.

There was some testimony on cross examination -- excuse me -- direct examination that the general manager hadn't been paid, Thannisch hadn't been paid $90,000, Paul Dosick hadn't been paid $90,000, North Star Demo had a claim for asbestos removal of $96,000. However, Mr. Radovan explained that those changes came in after November. And up until that time, the company was paying its contractors. That this was not a failing operation.

Mr. Radovan testified the debt was disclosed to the members in the November meeting. The members were aware

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of the 9 to $10 million in cost overruns, the July report numbers were updated and the members were told of the $51 million Mosaic loan.

The members discussed financing for months. Mr. Radovan asked the EC for approval of the Mosaic loan. Mr. Radovan met with Mosaic in December. And, finally, the executive committee approved the Mosaic loan in December. They set up a meeting between Mosaic and CR.

Mr. Radovan testified that this was not a troubled project, that they had money, that it was staffed, that they had Starwood on aboard. That this should have been opened but for the interference of certain members of the executive committee with the loan with Mosaic.

Mr. Little cross-examined Mr. Radovan regarding Exhibit 3, stating that it was not updated because upon advice of securities counsel must have been the same document provided to all investors, and, again, the disclaimers were discussed.

Mr. Radovan testified that the answers and information given to Mr. Yount were truthful. That the opening was moved before Mr. Yount invested. That the project was not failing. They had 100 people on site. They had a chef, they had a general manager. And, in fact, Mr. Busick walked the project and invested more money.

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Mr. Radovan testified that everyone wanted Mr. Yount as a member. He was a neighbor, he was a community leader, a pillar of the community in one person. And there's nothing in the record that would contradict that description of Mr. Yount. Mr. Radovan was excited about the project and that the CR shares were no different than the founders shares.

Mr. Yount took the stand and he testified to his background, the fact that he had lived in Lake Tahoe for 20 years, attended UNR. He had worked with Peter Grove, the architect, for some 40 years.

He testified that in the spring of 2014, he spoke with Mr. Marriner regarding the Cal Neva project, but he was not interested at that time in investing. However, he testified in June of 2015, he became interested and reached out to Mr. Marriner because his 401K fund was available for investment.

Mr. Yount testified that he was in, quote, constant communication, close quote, with Mr. Marriner up until the time of the investment. That he walked the site with Mr. Marriner, who according to Mr. Yount appeared to be very knowledgeable about the project.

He received the e-mail, which is Exhibit 8 after the tour and was told that 1.5 million equity was still

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available under the PPM, which entitled him to certain priorities and to purchase a cabin. Mr. Yount testified he reviewed the PPM, which is Exhibit 3, reviewed the confidential offer memorandum, Exhibit 4, and signed the amended and restated operating agreement, which he read, which is Exhibit 5.

Exhibit 11 was the financial material e-mail from Mr. Marriner. Exhibit 12 was the e-mail from Mr. Marriner regarding questions. Mr. Yount testified that he thought that Mr. Marriner was trying to sell a founders share under the PPM and that he had questions about the project.

Exhibit 13 is an e-mail from Mr. Peter Groves rating the project's chances of success as very good. That he, being Peter Grove, was very impressed with the management team. In that e-mail, he was advised of cost overruns, which the parties were trying to -- which the developers were trying to get their arms around. Exhibit 15 is an e-mail stating that the cost overruns were $9 million in cost overruns. There was no information on the change of schedule and Exhibit 34 is an e-mail string regarding the 401K.

On October 3rd, Mr. Yount decided to make the investment. He testified in July, he did not know of the refinance and would not have invested had he did.

Mr. Marriner wanted Mr. Yount to reach out to

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Roger Wittenberg for refinance or investment. Mr. Wittenberg is not an investor, operated an investment vehicle called North Light. Mr. Yount testified that he was never told that the loan was out of balance.

Most importantly, Mr. Yount testified that had he been told the loan was out of balance he, quote, would have been concerned and would have inquired more, close quote. Not that he would pull the investment, not that he would refuse to invest, but that he would have inquired more and he would have been concerned.

A series of e-mails, Exhibits 35, 36, 38 recount the investment documents. Importantly was an e-mail sent by Mr. Yount's CFO. Ms. Clerk. I sent the wire instructions to both of you and Premier. They were very close -- excuse me -- they were very clear and they are attached again. I'm concerned with this round-about e-mail string about wire instructions, a great opportunity to send $1 million to the wrong person. Okay. Kreskin couldn't have called it better.

Exhibit 40 is Mr. Radovan's acceptance of Mr. Yount's $1 million for the founders shares. Mr. Yount testified that he would not have invested because the sale of this one share by CR was a clear indication, quote, that the project was going to die and the developer was trying to get out, close quote.

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Again, Mr. Yount testified about the 12/12 party. But I circle back to that comment Mr. Yount testified to about not willing to invest because of the sale of CR's share. It contradicts his e-mail to Mr. Radovan on December 13th when he demanded his $1 million investment to be returned. However, he said that once there was financial stability and faith in the management, that they, he and his wife, would reconsider investing again. There was some argument made that Mr. Yount was straddling the fence, wanted in, wanted out. I think this e-mail by Mr. Yount could support that characterization.

Mr. Yount testified that it would have been insane to undermine the Mosaic loan and that the Exhibits 47 -- excuse me -- the e-mail exhibits were simply to try to calm down the IMC. Mr. Yount testified he never spoke to Mosaic. That he wanted to get paid and he testified he still does. He still wants to get paid as do everybody.

Exhibit 50 is an e-mail from Mr. Criswell dated 12/16. Mr. Yount testified that he thought the Mosaic loan was imminent and he wanted the project to succeed. He described the executive committee meeting on December 12th as rousing. But there was a discussion about trying to get his money paid back or at least reflect his investment through a note, which never occurred, or at least this Court has no

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evidence of that.

Exhibit 58 is an e-mail from Mr. Yount to Molly Kingston regarding the bus going off the road or in the ditch and how they couldn't continue with the project with CR as developers.

59 is an e-mail dated January 25th to Paul Jamieson and he was aware of the CR share and the PPM share and called it a bait and switch. Exhibit 122 is an e-mail regarding the IMC meeting with the Mosaic in which Mr. Yount expressed some concern.

Exhibit 62 an e-mail from Mr. Yount to Mr. Marriner stating that he was not, quote, fully informed, close quote, about the financials. Mr. Yount testified to a meeting with Mr. Criswell in the Hyatt lobby on December 27th, where they discussed memorializing his investment with the note. Mr. Criswell testified that he assured Mr. Yount that they would buy his note back, buy his share back, once they had been made whole from the Cal Neva.

Mr. Yount testified that he never wanted to participate in the Cal Neva Lodge going forward. He just wanted to get his money back, and that's memorialized in Exhibit 69.

On cross examination by Mr. Little, Mr. Yount testified that he is the CEO of two corporations that are

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involved in acquisition and development, that he has built two homes and he has considerable experience with cost overruns and delays. That Mr. Yount considers himself to be a sophisticated investor. That he sits on several boards. He sits on the board of the TRPA. That he appreciates the risks in all investments and that he utilized a CFO and a CPA in evaluating this investment.

He was shown Exhibit 3 wherein the disclaimers clearly stated this was not a security, that there was a risk of insufficient funding, and there was a risk of losing the entire investment.

Exhibit 13 was the e-mail from his architect, Peter Grove, wherein they discuss the cost overruns, fundraising and the management and likelihood of success, which the e-mail -- which the architect indicated was pretty good. He was aware of the information given to the CPA who gave Mr. Yount a green light to invest.

He was aware of the compensation of the manager. On page 11 of the Exhibit 4, forward looking statements. Page three, subsection iii, he read and understood those provisions. Page 14 of the subscription agreement contained the documents, he was aware of those. He was and is an accredited investor. Under Exhibit 42, section B, he was aware that the founders share was not registered. He read

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and understood that. Section G, he read and understood that. Page three, he read and understood that section.

We move to the escrow instructions, and in Exhibit 4 and 5, he read and understood that, particularly the schedule 4.3. Exhibit 4, which is page eight, he realized that the time line for opening was off at the time of his investment.

He was in possession of Exhibit 10, the July construction status report. He saw other construction status reports. And he realized that Exhibit 10 was prepared by a third party.

He testified it was reasonable to rely upon the construction manager's reports. He testified he knew the budget was being adversely impacted at the time of his investment. He testified he never had any contact with William Criswell, just Mr. Radovan.

He testified that Mr. Radovan spoke to him regarding the delays. And there was an e-mail after Mr. Yount had toured the site. Mr. Yount testified that Mr. Marriner offered on a number of occasions to take him on another site tour and spoke to him about the delays, but Mr. Yount did not take up that offer.

Mr. Yount testified that he didn't have any questions of the defendants and that he never asked for

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anything that the defendants didn't give him.

He testified to Exhibit 13, which is the e-mail from Peter Grove, the architect, regarding the cost overruns and their attempts to get their arms around them. That Mr. Yount testified that he was open to get more information. And Exhibit 28 demonstrates Mr. Yount was aware of the change in opening, also demonstrated by his deposition on page 160.

Mr. Yount testified that the CPA gave him no pause or cause for not investing in the project. Mr. Yount testified that Les Busick is a friend, knew he was an investor, and he knew he sat on the executive committee. Mr. Yount received a list of the other investors and that the delay in funding his investment was because of the 401K.

Mr. Yount admitted that from September 1st to the date of his investment, there was only one e-mail between him and the developers. Exhibit 14, which is a July 19th, 2015 e-mail demonstrates that the parties were aware of at least $5 million in cost overruns. Exhibit 15, which is a July 22nd e-mail, again, restated the fact that there would be $5 million or more in overruns.

Exhibits 18 and 21 are Mr. Radovan's responses to Mr. Yount's questions and Mr. Yount's notes, which is Exhibit 21, which demonstrated that the developers had $2 million in founders shares and that the developers wanted

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to raise 10.5 million between the debt and equity. He admitted that it was told there was 5 to $6 million in cost overruns and maybe others, up to $3 million in contingency funds needed.

Exhibit 153, which is an e-mail dated July 27th, 2015, is a summary of the cost overruns. Exhibit 27 is an e-mail between the CPA and the Mr. Yount advising him that the opening had been pushed back. And Exhibit 21 was Mr. Yount's notes confirming that.

Mr. Yount testified after the break that the sale by Criswell Radovan of that founders share signals the project in trouble. But he admitted he was not a commercial developer. He never had any money in commercial developments. He was unaware that hotels often run two years in the red.

Exhibit 33 is an e-mail dated October 7th, 2015. When contrasted with Mr. Yount's deposition at page 93 and 105, he was asked, what about the difference in the shares? He couldn't point to any.

On page 222 of his deposition, Mr. Yount testified that the defendants never obstructed the plaintiffs due diligence. They provided the documents and information whenever asked. And that Mr. Yount admitted that he was not the only potential investigator for the $1.5 million share

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that was opened.

Exhibit Number 54, which is the second amended complaint served by Brandon Chaney during the course of some mediation. Mr. Yount testified that nobody told him to serve -- he did not tell Mr. Chaney to serve the complaint.

However, if you look at the complaint, page four, paragraph 15, contradiction, the evidence shows that the contractors were paid. Paragraph 18, the evidence shows that the project was over budget. Paragraph 20, there was a mistake in the -- it was a typographical mistake. In paragraph 21, Penta had been paid. And as to the scheduled opening, defendant knew it had been pushed back.

Mr. Yount testified he never wanted to participate in the Cal Neva project after the December meeting. And he had discussed replacing Criswell Radovan, but he was not part of the IMC or IMC's efforts to replace Criswell Radovan.

However, Exhibit 50, the e-mail with Paul Jamieson discussing our team. Exhibit 55 is an e-mail with Mr. Radovan regarding the IMC. Exhibit 58 is an e-mail from Molly Kingston from the IMC declaring a divorce. Exhibit 59 is an e-mail to Paul Jamieson for approval, asking Mr. Jamison's approval to send an e-mail to get Criswell Radovan out.

Exhibit 109 is an e-mail regarding a drop box for

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your eyes only. Exhibit 110 is an e-mail to Paul Jamieson specifically instructing it not to be shared with CR, discussing our team to which Mr. Radovan had never disavowed. Exhibit 114 is an e-mail demanding a meeting. Exhibit 115 is an e-mail discussing this with Robert -- regarding a discussion with Robert.

118 is an e-mail with Paul Jamieson regarding the infamous meeting with Mosaic. 119 is an e-mail to Busick with Paul Jamieson's meeting with -- with Paul Jamieson regarding a meeting with IMC. 120, 121, 122, all of these e-mails involve Mr. Yount and members of the IMC.

Mr. Yount testified that he didn't hold himself out as a member, that he distanced himself from the IMC, but, however, he attended executive committee meetings. He was considered by all to be a member, and certainly by the e-mail string was cahoots with this cabal involving certain members of the IMC, and that he testified he was not opposed to the removal of CR as manager of this project.

Exhibit 119 talks about talking points and using Mr. Yount's letter as leverage encouraging everybody to be a cohesive group and using Mr. Yount as the IMC's spokesperson, quote, unquote.

This is demonstrated as well on Exhibits 121, 125, 126, 127, 130, 131, 132, 133 in which members of the IMC --

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strike that -- in which I believe Ms. Molly Kingston is referred to as our hero by Mr. Yount and to keep it up.

Mr. Wolf cross-examined and talked about trust and verify, President Reagan's admonition with the Russians, I think it was the Salt Treaty. But in cross examination by Mr. Wolf, Mr. Yount testified that he has no evidence that CR doesn't have hotel experience. I'm going to resist -- strike that.

And despite the e-mail of 12/13 about the wheels were coming off the bus, there were a number of investors, that they were looking at a refinance of the mezzanine and a refinance of the entire project. And that the Mosaic loan was the only exit strategy, and this is Mr. Yount's testimony, was the only exit strategy to get their money back and that he was in favor of it.

However, Mr. Yount testified that he didn't mean to undermine the Mosaic loan, but that he was not interested -- strike that -- but simply monitoring it. He under cross examination of Mr. Wolf, he acknowledged the risk factors, the answers given by Mr. Radovan to the questions, and under Exhibit 153, the payment application and the numbers were close to what Mr. Radovan had told Mr. Yount. And he knew that other investors were looking at the investment in the Cal Neva.

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On cross examination by Mr. Little, Mr. Yount testified that CR Cal Neva had executed a term sheet of $47 million in late October, which was to close in 30 days, and that was true. And that Mr. Radovan's testimony regarding the executive committee and Mosaic was true. And Mr. Yount testified that those loans would cover all the debt and that the project would have been completed.

Mr. Yount testified he didn't torpedo the loan. He didn't want Mosaic, however, he never tried to resurrect the Mosaic loan.

Brandon Chaney testified. He was a member of the Incline Men's Club and met Mr. Marriner in 2014 regarding the Cal Neva. The Incline Men's Club is the largest investor in the project with $6 million collectively invested. His role was to represent the investors -- excuse me -- he testified that Mr. Marriner's role was to represent the investment, he vouched for the developers and told everyone the construction budget was on schedule. He assured the Incline Men's Club that this wouldn't go over budget.

He testified that Mr. Yount was on the executive committee -- excuse me -- the witness, Mr. Chaney, was on the executive committee, because it was the largest investor and the duties of the executive committee was to represent the members to guide the project.

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However, he also testified he did not regularly attend meetings of the executive committee. He testified to the July Fairwinds meeting where Mr. Radovan gave an overview to the EC.

There were several problematic aspects of Mr. Chaney's testimony. Mr. Chaney testified that the PPM was disorganized and it was clear that the managers were not knowledgeable about the money. He testified that Mr. Radovan had oversubscribed the PPM. Well, that was wrong. And he testified that Mr. Radovan had taken money from Busick and Mr. Yount. Well, the evidence shows that was wrong, too.

Mr. Chaney testified that he was concerned with the sale of the Radovan -- the CR share, because he wanted to have the defendants to have some skin in the game. Well, the evidence shows that they did. And they were concerned about the defendant's using the money to pay other debts. Well, the evidence shows that the money was sent to CR, who used it to pay not just other CR debts, but close to $300,000 in debts owed to the project.

He testified that he had heard of Mosaic from Mr. Radovan in October of 2015 and they were going to refinance the entire project. That Mr. Radovan had provided a term sheet, but that Mr. Chaney didn't know Mosaic.

In November of 2015, Mr. Chaney testified that

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Mosaic pushed back. Well, that's belied by the voicemail of Mr. Penner, CEO of Mosaic, which indicated in the end of November they were very anxious and enthusiastic about the loan.

Mr. Chaney testified that the entire executive committee met with Mosaic, who had asked for the meeting with Mr. Chaney and Mr. Busick and Mr. Jamieson and without CR. This was curious, because why would Mosaic reach out to Mr. Chaney, who claimed he didn't know anybody at Mosaic?

When asked who called him for this important meeting, Mr. Chaney could only remember the first name, didn't know the last name. Again, why would Mosaic, who had been involved with both Mr. Criswell and Mr. Radovan since September of 2014 in trying to get this loan in the works reach out to somebody who admittedly didn't know him to have a meeting without Mr. Criswell or Mr. Radovan present? I believe there was some testimony that there may have been a family connection or familiarity between Mr. Criswell and the Halls. It just did not make sense.

Mr. Tratner testified out of order, but he testified he looked at the investment on behalf of Mr. Yount. He was sent the updated financial projections, the profit and loss. He spoke to Mr. Radovan regarding forecasting prospective, the profit and loss.

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On cross examination from Mr. Little, he was shown Exhibit 19, and he testified that this was 1 million of a $60 million project, testified to the PPM, Mr. Yount's notes with the updated information. And that Mr. Radovan said, quote, please let me know if you need any more info, close quote. Mr. Little cross-examined him and said that the defendants answered all of his questions.

Mr. Chaney resumed the stand and testified about Exhibit 122. And despite the fact, this is another curious fact about Mr. Chaney's testimony, despite the fact that he realized that the Mosaic loan was the best chance for this project to go to completion and get everybody paid, they never pursued it. He claimed on his testimony that CR never pursued Mosaic. Well, that's wrong. And that's demonstrated by Mr. Penner's voicemail indicating that in November that Mosaic was still interested. As a matter of fact, Ms. Clerk, number two.

THE CLERK: Yes, your Honor.

THE COURT: Last paragraph, we also told them that for the better part of three months, we have not heard much from the team. They went on to explain a little of the history of the deal from their perspective, and to tell you the truth, there seems to be a little bit of a mess right now. Let's underline, underline these last two words. We

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are going to take a step back, tear up the executed term sheet, tear up the executed term sheet, the deal, the loan that would have saved this project. It had been executed. Give you and the ownership time to figure things out on your own, and at the right moment, if you desire, reintroduce the deal to Mosaic. That's all. Thank you, Ms. Clerk.

When confronted with the audit, Mr. Chaney testified, although the records appeared to be a mess, the auditor did not find any improprieties, although he did testify that this was phase one of the audit. However, most tellingly, he didn't want to do phase two, because it cost money. He could have, perhaps should have, but it cost money to do an audit on a deal worth almost $60 million.

He also testified that there were other options, Colombia Pacific, Langham. That they hired a broker to pitch the project, but there was a lack of confidence in CR.

They talked about the winery litigation between Mr. Radovan and himself, and it's clear he was bitter and it's clear he was prejudiced and it's clear he's biased against Mr. Radovan, and as Mr. Campbell rightly pointed out, perhaps he had every right to be. But that bias is there. That bitterness is there.

He has been found personally liable for tortious interference with a contract, with a verdict in the form of

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$6.4 million. He wasn't subpoenaed. He volunteered to testify here, because as he said, quote, I have a story to tell, close quote.

He testified that he did call David Marriner up, doesn't recall the exact words, but he told him to give back the commission or bad things would happen. And this was before his testimony at trial. Mr. Chaney testified he told Mr. Marriner to do the right thing, get on the right side. And as far as other members of the IMC calling Mr. Marriner, he testified that, quote, it could have happened, close quote. But all he wanted Mr. Marriner to do was open your eyes.

Mr. Chaney admitted that two years later, CR is still the manager of the Cal Neva. That although there were procedures and a process in place that could have removed them, no such move has been made to date. And that CR is still trying to finance the Cal Neva.

As far as Mr. Chaney and Mr. Radovan go back, Mr. Chaney testified that he had to buy out Mr. Radovan and he settled the lawsuit by paying Mr. Radovan for his share.

Also troubling in Mr. Chaney's testimony is the fact that he claims he was kept in the dark. He wasn't aware of these cost overruns and financials were kept from him. That the third parties Penta and Thannisch, their conclusions

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or reports were tarnished because they were paid by the defendant, which is not true.

However, he admitted that he used the CR offices in the summer of the 2015 and he was there about once every other week for two or three days and he had talked to Mr. Radovan all the time. But despite that, he was clueless as to the cost overruns and that Mr. Radovan never provided him with any answers to his questions.

Once again, he testified to the Mosaic telephone call by a Howard and he called Mr. Chaney for the first time and told him, are you aware that -- this is Howard, are you aware of the $1 million break-up fee? Why would somebody from Mosaic call, why would this Howard call Mr. Chaney to discuss a term of an agreement which was shared by Mr. Radovan sometime before in the term sheet? Mr. Chaney testified he didn't know Mosaic, he didn't know Howard. This is troubling.

Also, Exhibit 129, which is an e-mail, which outlines the reasons why Mosaic is backing away, curiously, they are identical to Mr. Chaney's issues with Criswell Radovan and this Court cannot find that is coincidental.

On cross examination by Mr. Wolf, Mr. Chaney admitted to calling Mr. Marriner up in late July to do the right thing. Mr. Marriner hung up on him. The telephone

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call with Mr. Radovan -- in his telephone call with Mr. Marriner, Mr. Chaney called the bankruptcy a disaster, demanded that Mr. Marriner give back all of his commissions.

Mr. Little took Mr. Chaney on cross examination, talked about the Straight Shot suit, spoliation of evidence, and to some extent this Court understands that Mr. Summer was perhaps a rogue employee left over from the prior company acquired by Teleconnex and he worked out of his home.

But he also testified that Mosaic called the executive committee, because Mr. Radovan had not called back. However, that's contradicted by the voicemail in November. Mr. Chaney testified that the break-up fee was news to him, although he had been provided the term sheet prior to this.

Also, Mr. Chaney made what can only be described as disturbing comment regarding the Washoe County Sheriff's Office. He testified that the Ladera loan was in default and that the IMC members were only aware of a sheriffs sale of their membership interest the day before the sheriff was to execute on the membership interest. However, the sheriff held off executing on that judgment, because the Incline Village people were very important people in this community. This Court finds that testimony incredible.

Finally, Mr. Radovan took the stand in rebuttal and talked about the $480,000 in development fees. He never

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told Bruce Chaney that he took $480,000 in fees and that he never took $480,000 until development fees, that that was a double entry, which was subsequently corrected.

That any disbursement had to be approved by Hall and that Hall paid 90 percent of the disbursements and that they needed Hall's approval for any disbursement, significant disbursement. Mr. Radovan testified that he pursued funding until the bankruptcy and that Criswell -- that under any of these circumstances, any of these scenarios, Criswell Radovan would not be involved in the project, but that no one has come up with an option. The entire reason for the refinancing was the cost overruns.

He played and this is Exhibit 217, the e-mail -- excuse me -- the voicemail of Ethan Penner dated November 19th at 2:55 p.m., in which he stated there's a lot of enthusiasm regarding the deal and please get back to me, close quote. That Mr. Radovan was not an impediment to the Mosaic deal. That Mr. Chaney had offices in or had an office in Mr. Radovan's and Mr. Criswell's office in Napa. That they are the debtor in possession and they have audited financials and all the members received audited financials and Paul Jamison and Busick has changed sides. This Court finds that really has no bearing on this case, this Court's decision.

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That Mosaic would have closed by year end and that all the parties would have been paid. The project would be up, operational, and a spectacular success.

All right. The Court adopts the findings of facts as set forth in the defendants' statements of Mr. Little and Mr. Wolf.

As to the first cause of action, breach of contract, Cal Neva LLC is in bankruptcy and under the protection of the bankruptcy court, therefore, the claim against Cal Neva Lodge LLC is dismissed.

Basic contracts principles on the breach of contract require for an enforceable contract, an offer and acceptance and a consideration. However, CR Cal Neva LLC and Criswell Radovan LLC are not parties to the contract of the subscription parties and you cannot enforce a contract or find a breach of a contract by a nonparty. First cause of action is dismissed.

Second cause of action, Powell, Coleman, Arnold, breach of fiduciary duty. Under the restatement second of torts, if a fiduciary duty exists between two persons when one of them is under a duty to act for or to give advice to or for the benefit of another upon matters within the scope of the relation.

The Nevada Supreme Court has stated that a breach

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of fiduciary duty claim seeks damages for injuries that result from the tortious conduct of one who owes a duty to another by virtue of the tortious -- seeks damages that result from a tortious conduct of one who has a duty to another by virtue of the fiduciary duty. In order to prevail on a claim for breach of fiduciary duty, the plaintiff must show the existence of a fiduciary duty, a breach of that duty, and that the breach proximately caused damages.

In this particular case, there may have been a mistake, but that certainly doesn't arise to fraud or a breach of the contract. In this case, this was a simple transaction, the purchase sale agreement, and most importantly, Mr. Yount got what he wanted, which was a founders share.

Now, it has been argued hypothetically that it may not have been Mr. Yount's desire to buy the founders shares from CR, but from some other party, but it is no different than getting a Cadillac from Jones West Ford or a Cadillac from Don Weir. Mr. Yount ended up with a Cadillac. Therefore, he has not been able to prove damages in this case and the second cause of action is dismissed.

Third cause of action, fraud, all defendants with the exception of Powell, Coleman. This requires a high standard to prove, clear and convincing evidence. It is

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asserted against Mr. Criswell, Mr. Radovan, CR Cal Neva LLC, Criswell Radovan LLC, Cal Neva Lodge LLC, David Marriner Real Estate LLC, and New Cal Neva Lodge. The elements of fraud are a false representation. There has been no evidence presented here that any of the material facts were proven to be false or known to be false by any of the parties. In fact, the testimony is completely opposite.

Second claim is made with the knowledge or belief that it is false or without a sufficient basis of information. There's no evidence that anybody knew that this was false. He had the information provided by third parties, they were verified again by CPAs, by members on site, the architect, the construction manager. The third element is there's an intent to induce reliance on those false statements.

In this case, the defendant had ample opportunities to inspect this and didn't have to rely on, indeed, didn't rely solely on the information provided by the defendants in this case. He gave the information to his CFO. He gave the information to his CPA. He asked his CPA if this was a good investment, whether to proceed, and the CPA gave him a green light he could.

And as far as damages is concerned, well, we go back to the fact that Mr. Yount owns a founders shares in the

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Cal Neva LLC and has not proven that he has suffered any damages. And the Nevada Supreme Court has also said that the false representation must have played a material and substantial part in leading the defendant to adopt his particular course.

Now, in this case, the allegations are that some of those false statements was the opening date moved back from December 12th to the spring. Well, that was known several days before Mr. Yount invested in it.

Also, that Mr. Yount was buying a founders share under the PPM. Well, the evidence shows that Mr. Yount holds a founders shares that was distributed under the $20 million PPM and constitutes a founders shares.

And that it played a material and substantial part in leading the defendant to adopt his present course. Well, it appears that Mr. Yount, a sophisticated investor, reached out, conducted due diligence, independent investigation, and decided to invest knowing full well under Exhibits 3, 4 and 5 that there were risks associated, which included losing his entire investment.

Now, the Blanchard case, I think this is dicta, because it really doesn't square with the facts of this case, states that if a defendant was unaware of the complaint of making an independent investigation will be charged with

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knowledge of facts, which reasonable diligence would have disclosed, such a plaintiff is deemed to have relied upon his own judgment and not on the defendant's representation.

That doesn't really apply in this particular case. I know the defense relies upon this. Because in that case, it was a husband and wife arguing over the dissolution of a marriage and the dissolution of the marital estate and the property settlement agreement.

The Court in that case denied the wife's motion -- actually, dismissed the lawsuit, Judge Lee Gates dismissed the lawsuit, finding that the wife couldn't prove that there was a misrepresentation, a false misrepresentation as to where the assets were.

The Nevada Supreme Court stated that the appellate's actions for intentional misrepresentation imposes a burden on the plaintiff to show the following elements, that the defendant made a false representation to him with knowledge and belief that the representations were false without a sufficient basis for making the representation. Further, the plaintiff must establish that the defendant intended to induce the plaintiff to act or refrain from acting on the representation and that the plaintiff justifiably relied on the representation. Finally, the plaintiff must establish that he was damaged as a result.

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In this case, the Nevada Supreme Court found that the husband had superior knowledge of the location of the assets and that the wife did not possess. That there were many assets, there were complex transactions, and that the wife should not bear the loss of the opportunity to prove that representation, because the husband had superior knowledge.

In this particular case, the defendant was just as knowledgeable as everybody else. He was a sophisticated investor, he was a contractor, well-aware of cost overruns, well-aware of the problems in rehabing an old development. Indeed, the testimony is that Mr. Yount has spent almost ten years in building a home on the shores of Lake Tahoe, which is an outstanding addition to the community. That he was operating from the same facts and circumstances everybody else was.

That he didn't just rely on the defendants, he relied on his CPA, he relied on his CFO, he relied on the architect, Mr. Grove. He took a tour. He had possession of the reports.

So the Court finds that Blanchard doesn't absolve -- doesn't provide a shield to the defendants, but that the plaintiff has not proven false statements or unjustifiable reliance. And, finally, as stated before,

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received just what he wanted, which was a founders share, and therefore has not proven damages.

The fourth cause of action, which was negligence against PCA contains the following elements, that the plaintiff must show that the defendant owed a duty of care to the plaintiff and that the breach of duty has caused plaintiff to suffer damages.

Now, in Nevada, the issues of negligence are factual issues decided by the trier of fact. But synthesized, it's simply that there's a duty, there's a breach, there's causation, there's legal causation, there's actual causation and there's damages.

In this case, negligence against PCA was a mistake and does not rise to the level of negligence. Also, once again, Mr. Yount received what he asked for, a founders share, which there is no damages shown. The fourth cause of action is dismissed.

Fifth cause of action, conversion. The Nevada Supreme Court has defined conversion as a distinct act of dominion wrongfully exerted over another's personal property in denial of or inconsistent with his title rights therein or in derogation, exclusion or defiance of such title or rights. Conversion is not an act of general intent. The determination of whether a conversion has occurred is a

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question of fact. In this particular case, the documents show the money went into the project to pay off the debts. Because of that, the fifth of the cause of action is dismissed.

The sixth cause of action, which is punitive damages. Well, punitive damages require a finding that the conduct of the party is outrageous and beyond the pale. The evidence must be convincing by clear and convincing evidence that the defendants have been engaged in oppression, fraud, malice, express or implied, and that the plaintiff in addition to compensatory damages may seek to recover damages as -- for the sake of an example in punishing the defendants.

There's no evidence whatsoever that the conduct of the defendants in this case was outrageous, beyond the pale, or fraudulent, and, therefore, the sixth cause of action is dismissed.

The seventh cause of action, securities fraud. First, under Exhibit 3, there's a disclaimer. Second, pursuant to NRS 90.530, this is not a security. Third, under Rule 4 A of the Securities and Exchange Act of 1933, this is a private placement agreement and not a security. And, therefore, the seventh cause of action is dismissed.

Because those actions have been dismissed against the defendant, the counterclaim by the defendant, David

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Marriner, against the other defendants must be dismissed as moot.

The defendants' counterclaim is unclean hands. In determining whether a party's improper conduct bars relief, the Nevada Supreme Court applies a two-factor test. One, the egregiousness of the misconduct at issue; and, two, the seriousness of the harm caused by the misconduct against the granting of the requested relief. And that the District Court has broad discretion in awarding damages.

In this case, but for the intentional interference with the contractual relations between Mosaic and Cal Neva LLC, this project would have succeeded. That is undisputed. Mr. Chaney agrees, Mr. Yount agrees, everybody agrees that money would have covered all the costs and the debts.

This Court has documented dozens of e-mail exchanges between Mr. Yount and the IMC and their efforts to undermine the Mosaic loan and there is no more solid evidence of that than in Exhibit 124. That deal was done. That deal had been executed. That deal was in place. Mosaic had evidenced its enthusiasm to close this deal. And yet the day that individuals from the IMC went to the Mosaic offices without the knowledge of CR, that deal was dead. And the testimony is unequivocal, there was never an attempt by the IMC to resurrect it, despite the open invitation by Mosaic to

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reintroduce the loan.

This Court finds that it was the intent of the IMC to kill this loan, divest CR from its shares on the threat of legal, civil, criminal actions for their own benefit and not the benefit of the project.

Indeed, if you look at the e-mails from Molly Kingston afterwards, she's reaching out saying, who is going to manage this? What's plan B? We need CR in there until such time as we find some substitutes. They had no foresight in this. It's tragic. So the counterclaim from the defendants is granted.

It will be the order of the Court, Ms. Clerk, that judgment is in favor of all defendants. Damages awarded against the plaintiff on behalf of Mr. Radovan, Mr. Criswell of $1.5 million each, two years' salary, management fees, lost wages, and pursuant to the contract, the operating agreement, all attorney's fees and costs. Mr. Little, Mr. Wolf, prepare the order. This Court's in recess.

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STATE OF NEVADA)
) ss.
County of Washoe)

I, STEPHANIE KOETTING, a Certified Court Reporter of the Second Judicial District Court of the State of Nevada, in and for the County of Washoe, do hereby certify;

That I was present in Department No. 7 of the above-entitled Court on September 8, 2017, at the hour of 3:00 p.m., and took verbatim stenotype notes of the proceedings had upon the trial in the matter of GEORGE S. YOUNT, et al., Plaintiffs, vs. CRISWELL RADOVAN, et al., Defendants, Case No. CV16-00767, and thereafter, by means of computer-aided transcription, transcribed them into typewriting as herein appears;

That the foregoing transcript, consisting of pages 1 through 54, both inclusive, contains a full, true and complete transcript of my said stenotype notes, and is a full, true and correct record of the proceedings had at said time and place.

DATED: At Reno, Nevada, this 15th day of September 2017.

S/s Stephanie Koetting
STEPHANIE KOETTING, CCR #207

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EXHIBIT 2

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Jacqueline Bryant
Clerk of the Court
Transaction # 6301767

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE YOUNT IRA,

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR CAL NEVA, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD, LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; and DOES 1-10,

Defendants.

Case No.: CV16-00767

Dept. No.: 7

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AMENDED ORDER

On September 8, 2017, after hearing testimony and taking evidence in a seven-day bench trial, this Court dismissed Plaintiff's Second Amended Complaint, dismissed the crossclaims by Defendants David Marriner and Marriner Real Estate, LLC as moot and entered judgment against Plaintiff and in favor of Defendants. In its oral ruling, the Court awarded damages on Defendants' counterclaim.

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Upon further consideration, the Court is concerned that its oral recitation of damages maybe subject to misinterpretation and thus hereby amends its previous *Order* as follows:

1. WILLIAM CRISWELL ("Criswell"), is awarded $1.5 million in compensatory damages, two years' salary, management fees (if applicable), attorney's fees and costs of suit;
2. ROBERT RADOVAN ("Radovan"), is awarded $1.5 million in compensatory damages, two years' salary, management fees (if applicable), attorney's fees and costs of suit;
3. DAVID MARRINER; is awarded $1.5 million in compensatory damages[1], attorney's fees and costs of suit;
4. POWELL, COLEMAN AND ARNOLD, LLP ("PCA"), is awarded its attorney's fees and costs of suit;[2]
5. CRISWELL RADOVAN, LLC (Criswell Radovan), is awarded its lost Development Fees,[3] attorney's fees and costs of suit;
6. CR CAL NEVA, LLC ("CR Cal Neva"), is awarded its lost Development Fees,[4] attorney's fees, and costs of suit;
7. CAL NEVA LODGE, LLC, is awarded its attorney's fees and costs of suit; [5]
8. MARRINER REAL ESTATE, LLC, is awarded its attorney's fees, and costs.[6]

IT IS SO ORDERED this 15 day of September, 2017.

Patrick Flanagan
PATRICK FLANAGAN
District Judge

[1] These damages include both lost commissions (Ex. 1) and loss of business good will.
[2] There was no testimony or evidence of damages to PCA produced at trial.
[3] Less that which has been earned and paid up to $1.2 million in the aggregate. (Ex. 3, p. 8)
[4] Less that which has been earned and paid up to $1.2 million in the aggregate. (Ex. 3, p.8)
[5] There were no damages sought on behalf of this project development entity.
[6] Only to the extent that they are not duplicative of any award or fees to David Marriner individually.

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 15 day of September, 2017, I electronically filed the following with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

Richard G. Campbell, Jr., Esq., attorney for Plaintiff George Stuart Yount;

Andrew N. Wolf, Esq., Attorney for Defendants David Marriner and Marriner Real Estate, LLC; and

Martin A. Little, Esq., attorney for Defendants Criswell Radovan, LLC; CR Cal Neva, LLC; Robert Radovan; William Criswell; Cal Neva Lodge, LLC; Powell, Coleman, and Arnold, LLP.

Judicial Assistant

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Clerk of the Court
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EXHIBIT 3

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IN THE SECOND JUDICIAL DISTRICT COURT OF

THE STATE OF NEVADA IN AND FOR THE

COUNTY OF WASHOE

GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA,

Plaintiff,

vs.

CRISWELL RADOVAN, LLC, a Nevada limited liability company; CR Cal Neva, LLC, a Nevada limited liability company; ROBERT RADOVAN; WILLIAM CRISWELL; CAL NEVA LODGE, LLC, a Nevada limited liability company; POWELL, COLEMAN and ARNOLD LLP; DAVID MARRINER; MARRINER REAL ESTATE, LLC, a Nevada limited liability company; NEW CAL-NEVA LODGE, LLC, a Nevada limited liability company; and DOES 1 through 10, Inclusive,

Defendants.

CASE NO.: CV16-00767

DEPT NO.: B7

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND JUDGMENT

This matter came before the Court for a bench trial on August 29, 2017 through September 8, 2017, the Honorable Patrick Flanagan presiding. Plaintiff George Stuart Yount, individually and in his capacity as owner of George Stuart Yount IRA, appeared by and through his counsel of record, Richard G. Campbell, Jr., Esq. Defendants Criswell Radovan,

LLC, CR Cal Neva, LLC, Robert Radovan, William Criswell, and Powell, Coleman and Arnold, LLP, appeared by and through their counsel Martin A. Little, Esq., of Howard & Howard Attorneys PLLC. Defendants David Marriner and Marriner Real Estate, LLC, appeared by and through their counsel of record, Andrew N. Wolf, Esq., of Incline Law Group, LLP.

On September 8, 2017, at the conclusion of the trial, the Court, ruling from the bench, issued its decision on the record in open court.

On September 15, 2017, a partial transcript of the trial was filed, containing the Court's ruling from the bench. On September 15, 2017, the same day, the Court issued its *AMENDED ORDER* clarifying its award of damages to the Defendants.

The Court, having reviewed the trial statements and other pleadings on file herein, having heard and reviewed all of the evidence presented, as well as arguments of counsel, being fully advised in the premises, and good cause appearing, sets forth its Findings of Fact, Conclusions of Law and Judgment of the Court as follows:

I.

FINDINGS OF FACT

1. Criswell Radovan, LLC ("Criswell Radovan") is a real estate development firm with decades of experience developing large commercial projects, such as the Four Seasons Hotel in Dublin, the Ritz Carlton in San Francisco, the Calistoga Ranch in Napa Valley, and other award winning commercial properties. Criswell Radovan is managed by Defendants William Criswell ("Criswell") and Robert Radovan ("Radovan").

2. Criswell Radovan acquired the legendary Cal Neva Hotel in Lake Tahoe (the "Cal Neva Hotel") in April 2013 with the intent of reopening it after a multi-million dollar renovation (hereinafter the "Project").

3. Criswell Radovan formed Cal Neva Lodge, LLC ("Cal Neva Lodge") to own and reposition the Cal Neva Hotel and act as the investment entity for the Project's investors,

and New Cal Neva Lodge, LLC ("New Cal Neva") to hold title to all of the real and personal property of the Cal Neva Hotel. Cal Neva Lodge and New Cal Neva were named in this lawsuit as Defendants by Plaintiff Stuart Yount, individually and in his capacity as owner of George Stuart Yount IRA ("Plaintiff"); however, both entities filed for Chapter 11 Bankruptcy protection in the Federal Bankruptcy Court in Nevada, and, therefore, are subject to the automatic stay. Plaintiff did not seek relief from stay to pursue either entity in this litigation. On October 7, 2016, Plaintiff filed a notice of the two bankruptcy cases and therein notified the Court of his intent to proceed against the other (non-debtor) Defendants notwithstanding the pendency of the two bankruptcies.

4. Criswell Radovan also formed CR Cal Neva, LLC ("CR Cal Neva") to manage the Cal Neva Lodge and acquire and own its equity membership interest therein.

5. The Cal Neva Hotel, founded in 1926, is the oldest licensed casino in the United States and saw its hey day in the 1960's when it was owned by Frank Sinatra and became a popular destination among the Hollywood and political elite.

6. The Project was to be funded through commercial construction loan financing and $20 Million of equity (the "Founders' Shares").

7. The initial budget for the Project was developed with the assistance of the Project's general contractor, Penta Building Group ("Penta"), third party project managers Case Development Services and Thannisch Development Services, the Project's Architect, Peter Grove of Collaborative Design Studio, and Starwood Hotels ("Starwood").

8. Based on the initial budget, in 2014, Cal Neva Lodge acquired a $29.5 Million construction loan with Hall Financial ("Hall"), and a $6,000,000.00 mezzanine loan with Ladera Development, LLC ("Ladera"). CR Cal Neva also began offering Founder's Shares to prospective equity investors.

9. On February 13, 2014, David Marriner ("Marriner"), on behalf of Marriner Real Estate, LLC ("Marriner Real Estate"), entered into a Real Estate Consulting Agreement

with Cal Neva Lodge to, among other things, "manage all aspects of the sales of five Founding Memberships, and 28 condominiums approved on the site plan." The majority of the agreement relates to Marriner's anticipated role in planning, pricing, marketing and sales of the 28 condos. *See* Trial Exhibit 1. Marriner also personally invested in the Project by waiving his commission, although his investment was not part of the Founders' Shares. This agreement extended to selling additional Founder's Shares.

10. On or about February 18, 2014, Marriner first contacted Plaintiff about investing in the Project, but Plaintiff advised Marriner that he had no interest in investing at that time.

11. Between February 18, 2014 and June 17, 2015, there were no communications between Marriner and Plaintiff regarding the Project.

12. Construction began on the Project in 2014 and substantial completion was initially targeted for December 2015 -- to be timed with an opening celebration on Frank Sinatra's 100th birthday.

13. By July 2015, the Project was progressing and all but $1.5 Million of the Founders' Shares had been sold.

14. Around this time, the construction budget and schedule were being adversely impacted by scope changes, some of which were a result of value engineering exercises, as well as unforeseen construction issues, like code upgrades that became apparent after construction conditions were exposed during construction. Additionally, Starwood -- which had a contract with Cal Neva Lodge to join its Luxury Collection of hotels -- also required some changes be made to the Project in order to be included in Starwood's Luxury Collection.

15. Because of the cost impacts to the budget, it became necessary to sell the remaining $1.5 Million in Founders' Shares to help balance the Project's loan with Hall.

16. This offering was put out to a number of prospective investors with the assistance of Marriner beginning in June 2015.

17. One of the prospective investors was Plaintiff.

18. On June 17, 2015, 16 months after the initial contact, Plaintiff contacted Marriner by email expressing possible interest in the Project. *See* Trial Exhibit 7.

19. On July 12, 2015, Marriner invited Plaintiff to attend a tour of the Project. *Id.*

20. Plaintiff considers himself a sophisticated and "accredited investor" within the meaning of Regulation D promulgated under the Securities Act of 1933, as amended. In fact, he has been qualified as such for other investments.

21. Plaintiff is the CEO of Fortifiber Corporation, a company that manufactures and supplies construction black paper that goes behind stucco walls. He is also the CEO of Stanwall, which is a real estate company that has built and owns factories for Fortifiber. Those companies do sales well into the eight figures (meaning $10,000,000 or more per year).

22. Over his career, Plaintiff has been involved in the acquisition and development of a number of factories and large residential projects. He has experience and is familiar with cost overruns and schedule impacts on construction projects.

23. Plaintiff understands how to review and analyze financial statements and to assess risk when it comes to making an investment in a company or real estate.

24. Plaintiff surrounds himself with a team of advisors when he is doing due diligence and considering whether to make an investment, including seeking guidance from his company's Chief Financial Officer, his Los Angeles-based CPA, and sometimes his attorney.

25. On July 14, 2015, Plaintiff toured the Project with Marriner and a representative of Penta. *See* Trial Exhibit 8. The tour lasted approximately two hours.

26. Following the tour, on July 14, 2015, Marriner forwarded Plaintiff the Confidential Private Placement Memorandum (the "PPM," Trial Exhibit 3) and the Confidential Offering Memorandum (the "COM," Trial exhibit 4). *See* Trial Exhibit 8. These documents were prepared by expert securities law counsel for Cal Neva Lodge.

27. Plaintiff was also provided the Amended and Restated Operating Agreement of Cal Neva Lodge (the "Operating Agreement," Trial Exhibit 5), and a copy of the Subscription Agreement (Trial Exhibit 42). These documents were likewise prepared by expert securities law counsel for Cal Neva Lodge. Hereinafter, the PPM, the COM, the Operating Agreement, the Subscription Agreement, and the various attachments and schedules thereto are collectively called "the Investment Documents."

28. Plaintiff read and understood the Investment Documents before investing and had the opportunity to have his attorney and accountant review the same. Yount was specific in his testimony that he had read and understood all of the fine print in the Investment Documents before investing.

29. Under the PPM, Plaintiff read and understood the opportunity being offered to invest in the Project was being sold in reliance on exemptions from registration requirements of federal and state securities laws.

30. Plaintiff also read and understood that this investment was speculative and contained certain risks, including all risks inherent in the creation of a new business.

31. Plaintiff also read and understood that the Project could be delayed or impeded by budgetary and costs overruns which may require additional capital. In fact, this was the state of the Project when he was considering investing during the time period of July to October, 2015.

32. Plaintiff understood that if Cal Neva Lodge was unable to raise sufficient funding or equity for the Project, he could lose his entire investment.

33. In addition to these offering documents, Plaintiff was provided other financial statements, Executive Committee reports and construction progress reports.

34. One of these construction progress reports, dated July 2015 (Trial Exhibit 10) was provided to Plaintiff on July 22, 2015. *See* Trial Exhibit 15. The July 2015 Construction Progress Report was prepared by third parties, Case Development Services and Thannisch

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Development Services. *Id.*

35. Page 16 of this report contains a "Construction Summary" which listed 16 separate items that were adversely impacting the original budget. The July 2015 Monthly Status Report was the most up-to-date information available to share with Plaintiff regarding the Project's construction.

36. During his due diligence, Plaintiff spoke with the Project's Architect, Peter Grove, who was also the architect for a lakefront cottage added to Plaintiff's lakefront estate at Lake Tahoe.

37. On July 15, 2015, Plaintiff asked Peter Grove "[w]hat do you rate the Project's chances of success?" *See* Trial Exhibit 13.

38. Peter Grove responded as follows:

> I'm going to say pretty good . . .
>
> Short term they are in a fund raising mode. Construction costs are exceeding the budget and they/we are trying to get our arms around it . . . . and keep it in check.
>
> Long range, I'm a believer in the Cal Neva, the vision and direction the design is going . . . and simply the name recognition. The rooms will be very nice, I like the idea of bringing up the level of food service in restaurants. The North Shore is so lacking in quality food. They are putting an emphasis on the entertainment also which I like.
>
> I really like the ownership team. Quality guys.
>
> Glad you guys got the tour . . . and I'm sure the full court press on jumping from an investment standpoint. I'll continue to keep you guys posted with pics as things progress.

See Trial Exhibit 13.

39. Plaintiff believed Peter Grove was always honest with him and would not misrepresent facts about the Project's costs or schedule.

40. On July 15, 2015, Plaintiff submitted a list of questions to Marriner, which Marriner forwarded to Radovan for response. *See* Trial Exhibit 12.

41. On July 19, 2015, before Plaintiff first spoke to Radovan about the Project, he asked some additional questions of Marriner, including:

> As I understand it, you're over-budget by more than $5m so far. Where will that, and likely more, funding needs come from?

See Trial Exhibit 13.

42. On July 25, 2015, Radovan followed up on a telephone conference he had with Plaintiff by further answering the questions that Plaintiff had raised in Trial Exhibit 12. *See* Trial Exhibit 18.

43. Among other things, Radovan informed Plaintiff via e-mail that an additional $1.5 million of Founders' Shares was being offered and that Cal Neva was seeking to replace its existing $6 million mezzanine loan with a larger but less costly $15 million mezzanine loan. Radovan further explained that of the $15 million, $6 million was to be used to refinance the existing $6 million mezzanine loan and the $9 million in new additional funding would be used to cover the added cost of regulatory and code requirements which changed or were added by the two counties and TRPA, plus costs for design upgrades within the project and pre-development of the condo units. *Id.* Radovan, also explained to Plaintiff some of the financial terms of each of the loans. *Id.*; Trial Exhibit 20.

44. Plaintiff took extensive notes of his due diligence. *See* Trial Exhibit 21. These notes confirm, among other things, his understanding that CR Cal Neva owned $2 Million of Founders' Shares. *Id.*

45. His notes also confirmed that he understood CR Cal Neva was raising an additional $1.5 Million of equity, and seeking to refinance the mezzanine loan to obtain an additional $9 Million in lender financing (i.e., a total of $10.5 Million in additional debt and equity), to cover the anticipated cost impacts to the construction budget. *Id.* Plaintiff also understood, as of late July, 2015, that the Project intended to have a soft opening by December 12, 2015, for Frank Sinatra's 100th birthday party, but that the full opening was pushed back

until April, 2016. *Id.*

46. Plaintiff not only knew and understood the Project was seeking additional financing to cover cost overruns, but he attempted to help by engaging Roger Wittenburg and Boulder Bay as potential financing sources.

47. Plaintiff sent his notes, and all of the investment-related material he had received from Radovan and Marriner, to his Los Angeles-based CPA, Ken Tratner, for advice and counsel. *See* Trial Exhibit 19. He also had his CFO evaluating this investment on his behalf. *See* Trial Exhibits 23 - 25.

48. Mr. Tratner spoke directly with Radovan and acknowledged that Radovan answered all of his questions and provided all of the information he was seeking to evaluate the investment for Plaintiff.

49. In addition to seeking advice and counsel from Ken Tratner, Peter Grove and his CFO, Plaintiff had a collegial relationship with one of the Project's investors, Les Busick. Plaintiff was impressed by the fact that Mr. Busick was an investor and member of the Project's Executive Committee. Although Plaintiff claims that he never spoke with Mr. Busick (or any of the other investors) during his due diligence, he admitted nothing prevented him from doing so.

50. Plaintiff conducted most of his due diligence in July and the beginning of August, 2015. Thereafter, he largely went "radio silent" during which time he was seeking to fund his potential investment through his 401(k), which admittedly took several months to process. During this time, Defendants did not know whether Plaintiff was going to invest or not.

51. During this time, in August 2015, Plaintiff was told by Radovan that the soft opening was being pushed back even further, to March 1, 2016, with a Grand Opening on Father's Day weekend, June 17, 2016. *See* Trial Exhibit 27. After this conversation, Plaintiff asked Peter Grove whether the Project could "REALLY be ready for a full opening in December on Sinatra's 100th." *See* Trial Exhibit 28. Plaintiff does not recall what Peter Grove

told him, but admits Peter Grove did not tell him anything during any of these communications to dissuade him from investing.

52. In August, September, and even on October 10, 2015 -- just a few days before Plaintiff invested, Marriner offered to take Plaintiff on additional tours to show him the progress of the Project. *See* Trial Exhibits 22, 29, 30, 37 and 105. Plaintiff did not take Marriner up on any of these offers.

53. Additionally, during the same time period, Marriner and Radovan asked Plaintiff if he had any additional questions or required additional information or documents. *See* Trial Exhibits 22, 25, 29, 30, 35, 37 and 104. The only additional information Plaintiff asked for came by e-mail on October 10, 2015, where he asked Radovan how the Project's schedule was holding up, to which Radovan responded: "Looking good. Soft opening in spring, with Grand Opening on Father's Day. Just brought in our General Manager and Chef." *See* Trial Exhibit 36.

54. Plaintiff admitted there was nothing he asked for that he was not provided. And nothing prevented Plaintiff from asking more questions of Defendants or their construction team.

55. Given the demands of the Project, and the fact Plaintiff could not commit to investing, CR Cal Neva continued to hold discussions with several other potential investors. One of these was Les Busick, who had been on the Executive Committee from its inception and was familiar with the Project's construction and financing status. Knowing those facts, Mr. Bucsick decided to purchase the last $1.5 million Founders Share at the end of September, 2015, just two weeks before Plaintiff's purchase of his interest. Notably, Mr. Busick made this significant additional investment after walking the Project with Marriner and Penta's superintendent, Lee Mason, and going over all of the actual and anticipated cost over-runs.

56. Mr. Busick's $1.5 Million investment went directly into the Project and indeed was more advantageous to the Project than an investment by Plaintiff, because it infused an

additional $500,000 into the Project ($1.5 Million versus $1 Million).

57. Shortly before Mr. Busick closed out the $20 Million subscription, and as Marriner was readying himself to leave town, Marriner asked Radovan what they would do if Plaintiff and Mr. Busick both wanted to invest at the same time. Radovan informed Marriner that CR Cal Neva could sell one of its two Founders' Shares if this hypothetical came to fruition.

58. In fact, it is undisputed that CR Cal Neva always had the authority and planned to sell one of its two Founders' Shares. *See,* e.g. Trial Exhibits 3, p. 8, fn 1, 101 and 150, § 22.

59. By the time Plaintiff expressed a willingness and ability to close, Mr. Busick had already purchased the last $1.5 Million in Founders' Shares under the PPM. At this time, CR Cal Neva decided to sell Plaintiff one of its $1 Million Founders' Shares since he was a pillar of the local community and it was expected that he would be a tremendous asset to the Project. Radovan believed Marriner informed Plaintiff of this fact, but Marriner believed that Radovan informed Plaintiff of this fact. The Court finds that Radovan and Marriner did not collude to conceal this fact from Plaintiff.

60. Indeed, the evidence was unequivocal that CR Cal Neva's Founders' Share has the identical rights, obligations and value as the Founders' Share Plaintiff says he thought he was purchasing. Plaintiff could not point to any material difference between the CR Cal Neva Founders' Share and the Founders' Share ultimately purchased by Mr. Busick. Plaintiff offered no expert witness opinion testimony to show that the CR Cal Neva Founders' Share purchased by Plaintiff and the Founders' Shares purchased by Mr. Busick and the other investors were materially different in value or other attributes.

61. On October 1, 2015, Plaintiff sent an e-mail to Radovan saying he was "getting very close" and asked Radovan to "send instructions as to how Premier is to make the $1 Million check and where to mail it." *See* Trial Exhibit 32.

62. Marriner responded the same day by saying: "I believe Robert will want you to use the following address: Criswell Radovan, LLC, 1336 Oak Street, Suite D, St. Helena, CA 94574." *See* Trial Exhibit 32. Plaintiff was sent wiring instructions for Criswell Radovan, LLC's bank account. *See* Trial Exhibit 107.

63. On October 2, 2015, Radovan's assistant, Heather Hill, sent an e-mail to CR Cal Neva's attorney, Bruce Coleman ("Coleman") of Powell, Coleman and Arnold, LLP ("PCA"), indicating that they had identified an investor (Plaintiff) to purchase one of CR Cal Neva's Founders' Shares. *See* Trial Exhibit 33. Ms. Hill asked whether Plaintiff would need to sign any other documentation "above and beyond the typical documentation."

64. On October 3, 2015, Plaintiff sent an e-mail to Radovan asking him to confirm that his check was to be mailed to the Criswell Radovan address Marriner had suggested. *See* Trial Exhibit 34. Radovan responded that the funds should be wired to their attorneys' Trust account, and that Heather Hill would send the wire instructions. *Id.*

65. On October 5, 2015, Plaintiff's CFO, Doug Driver, sent an e-mail to Plaintiff expressing concern "with this roundabout e-mail string about wiring instructions -- a great opportunity to send $1 Million to the wrong person." *See* Trial Exhibit 34.

66. On October 6, 2015, Coleman responded to Ms. Hill advising her that "Section 12.2 [of the Operating Agreement] provides that no Member may sell all or any part of its Interest unless approved in writing by Members holding at least 67% of the Percentage Interests in the Company." *See* Trial Exhibit 33. However, Coleman testified, and Sections 12.3 and 12.6 of the Operating Agreement confirmed, that approval can be obtained after the sale at the Company's next annual meeting. *See* Trial Exhibit 5. In fact, Section 12.6.1 says a proposed transfer requiring Member approval will be submitted to the Members after "the transferee has executed [the Operating Agreement] and any other documents and instruments as the Company may require." *Id.* Section 12.6 of the Operating Agreement provides that, "Even if the sale is not approved at the annual meeting, the buyer would still keep the

economic benefits of the interest.

67. Coleman was only told that Plaintiff was going to purchase one of the CR Cal Neva's Founders' Shares, and that CR Cal Neva wanted to use his firm's trust account to process the transaction, a service that he had been asked to do for other clients in third party purchase and sell transactions. *See* Trial Exhibit 33.

68. Coleman was never provided a copy of the Subscription Agreement or Escrow Instructions filled out and executed by Plaintiff (*See* Trial Exhibit 42).

69. On October 12, 2015, Ms. Hill sent an e-mail to Cheri Montgomery with Premier Trust, who was acting as Plaintiff' agent for this transaction. Among other things, she sent "wire instructions to our Corp. Account for Criswell-Radovan, LLC." *See* Trial Exhibit 38.

70. On October 13, 2015, Cheri Montgomery sent an e-mail to Ms. Hill attaching the signed documents on behalf of Plaintiff. *See* Trial Exhibit 42.

71. On October 13, 2015, Radovan signed the Acceptance of Subscription representing Plaintiff's purchase of one Founders' Share in Cal Neva Lodge. *See* Trial Exhibit 40.

72. Thereafter, Coleman followed the only instructions he had been given and sent the funds to Criswell Radovan, to repay a loan that Criswell Radovan had advanced to CR Cal Neva.

73. There was no evidence presented that, as of the date Plaintiff invested, Defendants knew the "financial wheels were coming off the bus" or that CR Cal Neva was attempting to bail out by selling Plaintiff one of its Founders' Shares. To the contrary, the evidence showed that:

- Mr. Busick had recently decided to invest another $1.5 Million after walking the Project with Marriner and Penta's Lee Mason to discuss the actual and proposed changes affecting the Project's budget and schedule;

- Penta and its subcontractors were working and being paid;
- There was an additional $9 Million left for construction costs under Hall's loan;
- Cal Neva Lodge had just hired and brought its General Manager and his family over from the Bahamas, and had also hired its Executive Chef;
- The cost impacts to the budget were in line with what Radovan had represented to Plaintiff that he and the construction team believed they would be (*See* Trial Exhibits 43 and 153);
- Three days before Plaintiff invested, Marriner was still inviting Plaintiff to tour the Project to see the progress with his own eyes and ears, which belies the argument by Plaintiff that Defendants believed the Project was tanking;
- Criswell Radovan, despite having no obligation to do so, made hundreds of thousands of dollars in cash advances of its own funds directly to Cal Neva and/or to its creditors in situations where there was insufficient cash on hand to pay Cal Neva's obligations or opportunities (such as the Mosaic loan term sheet) when due. This also belies the argument that Defendants believed the Project was tanking;
- Although they wanted to try to avoid having to do so, Cal Neva Lodge still had the option to raise additional capital from the investors through a capital call; and
- Perhaps most importantly, CR Cal Neva had been negotiating extensively, and was optimistic about securing a complete loan refinancing with a lender named Mosaic, which loan would have taken out Hall and Ladera in the time frame represented to Plaintiff and the other investors.

74. Indeed, a phone message left for Radovan by Ethan Penner -- the CEO of Mosaic -- on November 19, 2015, replayed in the courtroom on record, clearly evidences

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that both CR Cal Neva and Mosaic had been working hard on the loan and Mosaic was enthusiastic about getting it closed before the end of the year. *See* Trial Ex 217.

75. In an email exchange with Marriner on August 3, 2015, in response to Marriner asking Yount if he had any further questions or needed more information, Plaintiff advised Marriner that he was getting his information directly from Robert Radovan and that his CPA, Ken Tratner, would be getting more information directly from Radovan. (Trial Exhibit 200.) Thereafter, from August 3, 2015, until the date of his investment on October 13, 2015, Plaintiff did not request any further information from Marriner. Moreover, Marriner had no involvement in Plaintiff's execution or delivery of his investment documents. Nor did he have any involvement in Plaintiff's delivery of funds to or from PCA. None of the Investment Documents or Project Monthly Status Reports were prepared by Marriner.

76. Defendants did not object or interfere with Plaintiff's due diligence. Plaintiff and his CPA, Ken Tratner, both admitted being provided everything they asked for. Neither had evidence that any of the information provided by Defendants was knowingly false when provided. Plaintiff testified Ken Tratner gave him no pause or concern about investing in the Project.

77. Plaintiff had no communications whatsoever with Criswell prior to investing, and had only had a few phone calls and e-mails with Radovan before investing.

78. After making his investment, Plaintiff was treated by Cal Neva Lodge as a full founding member with the identical rights as every other investor holding a Founders' Share. Plaintiff could not point to any difference between his Founders' Share that came from CR Cal Neva and the Founders' shares held by any of other founding members.

79. Plaintiff attended membership meetings and involved himself actively in those meetings.

80. On October 23, 2015, ten days after making his investment, Plaintiff toured

the Project with Marriner. *See* Trial Exhibit 41. Plaintiff understood that CR Cal Neva had executed a term sheet with Mosaic for a $47 Million loan in late October.

81. By November 19, 2015, CR Cal Neva and Mosaic had both already expended a lot of time putting together a loan to pay off Hall and Ladera and secure the additional financing needed to pay Penta and the other contractors to timely complete the Project. The evidence shows that CR Cal Neva had an executed term sheet for a $47 Million loan to Cal Neva Lodge, that it had paid approximately $50,000.00 on behalf of Cal Neva Lodge for costs associated with this loan, and that both parties were enthusiastic about closing that loan before year's end. *See* Trial Exhibit 217.

82. At the Executive Committee meeting held on November 19 2015, certain members expressed reservations about the Mosaic loan and instructed Radovan to try to renegotiate those terms while they looked at other financing options. The Executive Committee refused to approve the Mosaic loan at this time, the biggest opponent being the Incline Men's Club ("IMC"), a group of investors who had collectively invested as a unit through IMC Group CNR Cal Neva, LLC, acting through their representative Brandon Cheney.

83. At a December 12, 2015 investor meeting, investors in attendance were told about the current budgetary issues and that CR Cal Neva was seeking the Executive Committee's approval for the Mosaic loan.

84. By the end of December, 2015, the Executive Committee had still not authorized CR Cal Neva to close the Mosaic loan, and Hall was refusing to fund additional construction draws. Consequently, Penta was not being paid and threatened to stop work on the Project. *See* Trial Exhibit 111.

85. On December 13, 2015, Plaintiff sent Criswell an e-mail demanding that his $1 Million investment be returned based on his **mistaken** belief that the "financial wheels were coming off the Cal Neva bus" at the time he invested. *See* Trial Exhibit 46. Notably,

Plaintiff stated that if his "faith in the management, financial stability and future profitability of the Project is restored, we will consider reinvesting." *Id.*

86. Plaintiff claimed in this e-mail he had been told by other Founding members that they had been admonished "by Criswell Radovan just before they toured the Project with Plaintiff in October not to say anything about the alleged financial fiasco that was about to burst open." *Id.* This allegation came from members of the IMC, whose largest investor is Brandon Cheney, a witness called by Plaintiff at trial. As the largest investor of IMC, Mr. Cheney was a member of the Executive Committee. The Court finds no evidence that such a conversation occurred or that such an instruction was given by Criswell Radovan. In fact, for the reasons articulated by this Court on the record on September 8, 2017, the Court finds much of Mr. Cheney's testimony at trial to be highly suspect, biased and not credible.

87. The Court finds the source of Plaintiff's misinformation about the financial status of the Project to have come from Brandon Cheney and other members of IMC, who the evidence shows intended to torpedo the Mosaic loan and remove CR Cal Neva as Manager of Cal Neva Lodge, divest it of its shares (including its 20% Sponsor Shares in Cal Neva Lodge) and turn over to IMC the Management Agreement for the property – all of this under threat of civil and criminal actions for IMC's own benefit and not for the benefit of the Project. Contrary to Mr. Cheney's testimony, the Court finds Radovan and CR Cal Neva were not an impediment to the Mosaic loan closing.

88. In late 2015 and 2016, Mr. Cheney and IMC accused Defendants of all sorts of financial improprieties. Mr. Cheney even called Marriner a few weeks before this trial demanding Marriner get on the "right side" and return his commission or "bad things" would happen to him. Despite these allegations of financial impropriety, the financial audit that IMC solicited through its representation on the Cal Neva Lodge Executive Committee did not find any financial improprieties by CR Cal Neva, and IMC chose not to spend any additional money on a further audit. Notably, although there are procedures in the Operating Agreement

to remove CR Cal Neva as Manager with or without cause, CR Cal Neva remains the Manager of Cal Neva Lodge as of the conclusion of this trial.

89. The testimony at trial is undisputed that the Executive Committee finally approved moving forward with the Mosaic loan at its January 27, 2016 meeting, after which Radovan set up a meeting with Mosaic for February 1, 2016 to finalize the loan. Before that meeting took place, however, certain members of the Executive Committee, led by IMC, secretly went to Mosaic's offices without the knowledge or consent of CR Cal Neva and killed that loan.

90. There is no more solid evidence of this interference than in Trial Exhibit 124, which is an e-mail sent to Radovan by Mosaic on February 1, 2016 -- the very day IMC secretly met with Mosaic without CR Cal Neva's knowledge or consent. In that e-mail, Mosaic explains that as a result of its meeting, it was tearing up the executed term sheet for the loan, and indicated there was no reason to meet with CR Cal Neva later that day as previously scheduled by Mosaic and Radovan. Not coincidentally, the reasons Mosaic gave for backing out (Trial Ex. 129) were verbatim the issues IMC had with CR Cal Neva.

91. The Court finds that Plaintiff got exactly what he bargained for -- a Founders' Share in Cal Neva Lodge --but then caused damage to himself, Defendants and every other investor in the Project by colluding with IMC and Molly Kingston (another Project investor) to undermine the Mosaic loan, remove CR Cal Neva as manager, and divest it of its interest in Cal Neva Lodge. *See* Trial Exhibits 50, 55, 58-59, 109, 110, 112, 115 – 116, 118 – 122, 124 – 133, 136, 139 – 142, 145 – 146.

92. But for IMC, Plaintiff, and Molly Kingston's intentional interference with the contractual relations between Mosaic and Cal Neva Lodge, the Court finds the Mosaic loan would have closed and funded the Project to successful and timely completion.

93. Although Plaintiff and Mr. Cheney claimed to be supportive of the Mosaic loan, the testimony was unequivocal that there was never an attempt by IMC or Plaintiff to

try to resurrect the Mosaic loan, despite the open invitation by Mosaic to do so.

94. Because of the intentional interference by IMC, Plaintiff and Kingston, the Project tragically fell into Bankruptcy, and Criswell, Radovan and their entities have suffered significant compensatory damages, including loss of their investment and projected investment returns, loss of management fees, and loss of development fees.

95. In terms of development fees, CR Cal Neva was paid $720,000.00 of the $1.2 Million aggregate to which it was entitled (*See* Ex. 3, p. 8). The remainder, $480,000.00, was accrued and not yet paid.

96. Similarly, Marriner and his entity suffered significant compensatory damages, including loss of his investment and projected returns, lost commissions on the 28 planned condominiums under his Real Estate Consulting Agreement, and loss of business good will.

97. After his wrongful interference, and the resulting demise of the Project, Plaintiff attempted to distance himself from IMC and his investment, including filing of the instant lawsuit seeking the return of his investment before approval of his sale could be obtained at the next annual meeting.

98. The Court also finds that Plaintiff straddled the fence when it came to his investment -- wanting to keep it when he thought it benefitted him -- then wanting out when he thought it did not.

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II.

CONCLUSIONS OF LAW

A.

DAMAGES

1. The thrust of Plaintiff's lawsuit is that he thought he was buying $1 Million of the last $1.5 Million in Founders' Shares available under the PPM, but instead was allegedly

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duped by Defendants into buying one of CR Cal Neva's two Founders' Shares.

2. In his Second Amended Complaint, Plaintiff asserted causes of action for breach of contract, breach of fiduciary duty, fraud, negligence, conversion, punitive damages and securities fraud. Fundamental to each of these causes of action is causation and damages; namely, that some conduct on the part of Defendants caused Plaintiff to suffer damages.

3. Plaintiff cannot prove that he suffered damages by Defendants' conduct since he got exactly what he bargained for -- a Founders' Share in Cal Neva Lodge. Indeed, the testimony was unequivocal that the Founders' Share he purchased from CR Cal Neva has the identical rights, obligations and value as the Founders' Share he claims he thought he was purchasing. They are both Founders' Shares.

4. This is no different than getting a Cadillac from Jones West instead of from Don Weir. Plaintiff ended up with a Cadillac. Indeed, Plaintiff is in the same position now than he would have been had he beat Les Busick to purchase $1 Million of the remaining $1.5 Million in Founders' Shares.

5. Thus, Plaintiff is not able to prove damages in this case, which is fatal to each of his seven causes of action.

6. Furthermore, even assuming for the sake of argument that Plaintiff suffered any damages, for the reasons stated above, such damages were caused by his intentional interference with the Mosaic loan, which caused the demise of the Project.

7. For these reasons, each of Plaintiff's seven causes of action are dismissed.

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B.

PLAINTIFF'S FIRST CAUSE OF ACTION (FOR BREACH OF CONTRACT)

8. Plaintiff claims that Criswell Radovan, CR Cal Neva, Cal Neva Lodge, and New Cal Neva Lodge breached the Subscription Agreement because his $1 Million was not deposited into the account of Cal Neva Lodge or returned to him.

9. Cal Neva Lodge and New Cal Neva Lodge are in bankruptcy and the automatic stay applies to them. Plaintiff did not seek relief from stay to pursue either entity in this litigation. On October 7, 2016, Plaintiff filed a notice of the two bankruptcy cases and notified the Court of his intent to proceed against the other (non-debtor) Defendants notwithstanding the pendency of the two bankruptcy cases.

10. In Nevada, a breach of contract requires that plaintiff and defendant enter into a valid and existing contract; plaintiff performed or was excused from performance; defendant breached the contract; and plaintiff sustained damages as a result of the breach. *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000).

11. In addition to his inability to prove damages, Plaintiff's breach of contract action fails against CR Cal Neva and Criswell Radovan because they are not parties to the Subscription Agreement, and, therefore, cannot be said to have legally breached said contract. Indeed, Plaintiff has admitted, and the Subscription Agreement demonstrates, that his contract was with Cal Neva Lodge – an entity that is currently subject to Chapter 11 protections.

12. Plaintiff has failed to carry his burden of proof under the first cause of action. For this additional reason, Plaintiff's first cause of action is without merit and is accordingly dismissed.

C.

PLAINTIFF'S SECOND CAUSE OF ACTION (FOR BREACH OF DUTY)

13. Plaintiff contends PCA breached its duties to him by releasing his funds to Criswell Radovan.

14. Specifically, Plaintiff claims that PCA had a fiduciary duty to comply with all provisions of the Subscription Agreement and ensure that his $1 Million was wired to Cal Neva Lodge only upon specific instructions from him.

15. Under the Restatement of the Law (Second) of Torts, § 874, "One standing in a fiduciary relation with another is subject to liability for harm resulting from a breach of duty

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imposed by the relation." Thus, in order to prevail on a claim for breach of fiduciary duty, the plaintiff must show the existence of a fiduciary duty, a breach of that duty, and that the breach proximately caused damages.

16. Aside from Plaintiff's inability to prove damages, this claim fails because PCA owed no duty to Plaintiff. In fact, it is undisputed that PCA did not have the escrow instructions that Plaintiff claims were breached, and did not consider itself to be an escrow holder. Instead, PCA reasonably believed that its client, CR Cal Neva, was selling one of its Founders' Shares to a third party, and PCA followed the only instructions it had, which was to send the money to Criswell Radovan for the purchase of one of CR Cal Neva's Founders' Shares.

17. Plaintiff has failed to carry his burden of proof under the second cause of action. For these reasons, Plaintiff's second cause of action is without merit and is accordingly dismissed.

D.

PLAINTIFF'S THIRD CAUSE OF ACTION (FOR FRAUD)

18. Plaintiff's third cause of action for fraud is plead against all of the Defendants except PCA.

19. As stated above, Cal Neva Lodge and New Cal Neva Lodge are subject to Chapter 11 Bankruptcy protection.

20. In Nevada, fraud requires that a plaintiff prove that the defendant made a false representation of material fact; that the defendant knew or believed that his or her representation was false, or defendant had an insufficient basis or information for making the representation; defendant intended to induce plaintiff to act or refrain from acting upon the misrepresentation; plaintiff justifiably relied upon defendant's representation; and plaintiff sustained damages as a result. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382 (1998); *Blanchard v. Blanchard*, 108 Nev. 908, 839 P.2d, 1320 (1992). The suppression or

omission of a material fact which a party is bound in good faith to disclose is equivalent to a false representation, since that constitutes an indirect representation that such fact does not exist. *Nelson v. Heer*, 123 Nev. 26, 163 P.3d 420 (2007). Plaintiff has the burden of proving each and every element of the fraud claim by clear and convincing evidence.

21. As stated above, Plaintiff has failed to prove that he sustained damages as a result of any of Defendants' conduct. Therefore, his fraud claim fails for this reason alone.

22. Plaintiff's fraud claim fails against Criswell for the additional reason that Plaintiff admitted that he never met, spoke to or communicated with Criswell prior to making his investment. Thus, Criswell did not make any false representations to Plaintiff upon which he justifiably relied.

23. Plaintiff's fraud claim against Defendants fails for the additional reason that he has not proven any of these fraud elements by the heightened clear and convincing evidence standard. Indeed, when asked what evidence or proof he had to support his fraud claims, Plaintiff stated only his own personal supposition and belief, which falls far short of meeting his burden of proof.

24. Plaintiff's fraud claim against Defendants fails for the additional reason that he has not met his burden of proving that Defendants intended to induce his reliance or that he justifiably relied upon any representations made by Defendants. As stated above, Plaintiff is a sophisticated investor who performed his own due diligence and relied upon the advice and counsel of his CFO, CPA Ken Tratner and the Project's Architect (Peter Grove) in deciding to invest. Plaintiff and his team of advisors were admittedly given everything they asked for and he was repeatedly asked if he needed additional information or wanted to tour the Project to see its progress, including three days before investing. Nothing prevented Plaintiff or his advisors from touring the Project and seeing the progress with their own eyes or asking more questions of Defendants or their construction team. In fact, Plaintiff was encouraged to do so yet refused. Plaintiff also read and understood all of the operative legal

documents and disclaimers and decided to invest knowing the Project was over budget, delayed and in need of financing. He invested knowing this was a speculative, risky investment and that he could lose his entire investment if funding was not secured for the cost overruns.

25. Plaintiff's fraud claim against Defendants fails for the additional reason that there has been no evidence presented that Defendants misrepresented or omitted to disclose any material facts that were known to be false by the Defendants. In fact, the testimony was completely opposite.

26. Plaintiff claims he was misled about the date the Project would open. Yet, two days before he invested, Radovan told him by e-mail the soft opening was in spring and the Grand Opening Father's Day, 2016. Plaintiff admittedly has no evidence to believe this statement was false when made.

27. Plaintiff also contends he was defrauded because the Project was allegedly more over-budget than represented by Marriner and Radovan. Specifically, Plaintiff testified he was led to believe the Project was only $5 Million - $6 Million over-budget. Plaintiff's own testimony and notes, however, show he knew the Project was anticipated to be over-budget by $10 Million, which is entirely consistent with the status of cost overruns when he invested. Plaintiff has no evidence the Project was more over-budget than this when he made his investment, or that when these representations were made to him that Defendants knew or believed that information to be false.

28. Moreover, there is no evidence Defendants intended to conceal any information about the cost overruns from him. In fact, he was repeatedly being asked if he had additional questions or wanted to visit the site to see the status of construction himself.

29. Plaintiff also contends Defendants knew and misrepresented the financial health of the Project when he invested. The evidence presented at trial does not support this contention. In fact, the evidence shows Plaintiff knew from multiple sources the Project was

in fundraising mode -- meaning he knew financing was not in place for the additional cost impacts. Although prompted to ask if he needed additional information, Plaintiff never asked for any updates on the status of the Project's financing before he invested. Had he done so, he would have discovered that CR Cal Neva and Mosaic had been working hard on a loan and were enthusiastic about closing it.

30. Moreover, the evidence does not support that Defendants knew the Project was failing when Plaintiff invested. To the contrary, Mr. Busick had only recently walked the Project with Penta and Marriner and decided to invest an additional $1.5 Million after being satisfied with the status of construction. The evidence also shows that: (1) CR Cal Neva was enthusiastic about its ability to close a loan with Mosaic that would have insured the successful completion of the Project; (2) Penta and the other contractors were being paid; (3) there was $9 Million left on the Hall loan to pay Penta and its subcontractors; (4) Cal Neva Lodge had just hired its General Manager and Executive Chef, and was moving forward making the Project a Starwood Luxury brand; and (5) Criswell Radovan was putting money back into the Project when Plaintiff invested. All of this evidence points to the fact that the Project was reasonably believed by Defendants to be on track when Plaintiff invested. There simply is no evidence the Project was failing, or that CR Cal Neva sold Plaintiff one of its Founders' Shares because it believed the Project was failing. In fact, the evidence was undisputed that CR Cal Neva had the right and always planned sell one of its two shares, and there is nothing fraudulent about its intent to sell one of its Founders' Shares to a highly influential member of the Lake Tahoe community.

31. Plaintiff has failed to carry his burden of proof under the third cause of action. For all of these reasons, Plaintiff's third cause is without merit and is accordingly dismissed.

E.

PLAINTIFF'S FOURTH CAUSE OF ACTION (FOR NEGLIGENCE)

32. Plaintiff's fourth cause of action for negligence is plead against PCA.

33. Like his Second Cause of Action, this claim requires proof of a duty, breach, causation and damages.

34. This cause of action fails for the same reasons stated above with respect to his second cause of action, namely PCA did not owe or breach any duty to Plaintiff. Additionally, at most, this was a mistake situation which does not rise to the level of negligence.

35. Plaintiff has failed to carry his burden of proof under the fourth cause of action. Accordingly, Plaintiff's fourth cause of action is without merit and is accordingly dismissed.

F.

PLAINTIFF'S FIFTH CAUSE OF ACTION (FOR CONVERSION)

36. Plaintiff has asserted a conversion claim against CR Cal Neva, Criswell, Radovan, Criswell Radovan and New Cal Neva.

37. As stated above, New Cal Neva is subject to Chapter 11 Bankruptcy protection.

38. A claim for conversion requires a showing that Defendant committed a distinct act of dominion wrongfully exerted over Plaintiff's property; that the act was in denial of, or inconsistent with, Plaintiff's title or rights therein; or the act was in derogation, exclusion or defiance of Plaintiff's title or rights in the personal property. *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, P.3d 1043 (2000); *Ferreira v. P.C. Age, Inc.*, 105 Nev. 305, 775 P.2d 1041 (1989). Conversion is generally limited to those severe, major, and important interferences with the right to control personal property that justify requiring the actor to pay the property's full value. *Edward v. Emperor's Garden Restaurant*, 122 Nev. 317, 130 P.3d 1280 (2006).

39. As stated above, Plaintiff desired to purchase a Founders Share in Cal Neva Lodge. When the last authorized but unsold Founders Shares in Cal Neva Lodge were purchased by Les Busick, and therefore were no longer available for sale to Plaintiff, CR Cal Neva agreed to sell one of the two Founders Shares it owned to Plaintiff, and it so advised Marriner. There was no difference in value or otherwise between a Founders Share in Cal Neva Lodge purchased from Cal Neva Lodge and a Founders Share in Cal Neva Lodge

purchased from CR Cal Neva. And because of the preceding sale to Les Busick of all of the remaining authorized shares which could be sold by Cal Neva Lodge itself, Cal Neva Lodge had already received its full authorized capitalization. Plaintiff voluntarily wired the $1,000,000 purchase price for a Founder Share in Cal Neva Lodge to PCA, as requested by CR Cal Neva, the seller of the share, and in exchange he became the owner of the Founder Share in Cal Neva Lodge that he wished to purchase. This transaction was a sale, not conversion.

40. Moreover, Plaintiff got exactly what he bargained for, a Founders' Share in Cal Neva Lodge. Although Plaintiff may have been mistaken as to the source of that Founders' share, he still received a Founders' Share in Cal Neva Lodge, which does not rise to the level of an intentional tort of conversion.

41. Plaintiff has failed to carry his burden of proof under the fifth cause of action. For these reasons, as well as the fact that Plaintiff has not suffered damages, Plaintiff's fifth cause of action is without merit and is accordingly dismissed.

G.

PLAINTIFF'S SIXTH CAUSE OF ACTION (FOR PUNITIVE DAMAGES)

42. Plaintiff's seeks punitive damages against all Defendants.

43. This cause of action fails for the same reasons his fraud claim fails.

44. In Nevada, "in an action for the breach of an obligation not arising from contract, where it is proven by clear and convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or implied, the Plaintiff, in addition to the compensatory damages, may recover damages for the sake of example and by way of punishing the defendant." *See* NRS 42.005. Pursuant to NRS 42.001, "fraud" means an intentional misrepresentation, deception or concealment of a material fact known to the person with intent to deprive another person of his or her rights or property or to otherwise injure another person. "Malice, express or implied," means conduct which is intended to injure a

person or despicable conduct which is engaged in with a conscious disregard of the rights or safety of others. "Oppression" means despicable conduct that subjects a person to cruel and unusual hardship with conscious disregard of the rights of the person.

45. Plaintiff has failed to carry his burden of proof under the sixth cause of action. There is no evidence whatsoever that the conduct of any of the Defendants in this case was fraudulent, malicious or oppressive, and, therefore the sixth cause of action for punitive damages is without merit and accordingly, is dismissed.

H.

PLAINTIFF'S SEVENTH CAUSE OF ACTION (FOR FRAUD UNDER NRS 90.570)

46. Lastly, Plaintiff has asserted a claim for securities fraud under NRS 90.570.

47. As a result of the interplay between NRS 90.660 and NRS 90.570, to prevail on a private cause of action for securities fraud under NRS 90.570, Plaintiff must establish "Either: (a) an untrue statement of a material fact or (b) the failure to state a material fact necessary to make other statements made not misleading in the light of the circumstances under which they are made.

48. The Court finds this is not a securities fraud case, and NRS 90.570 has no applicability.

49. NRS 90.530 provides a list of transaction that are exempt from the registration requirements of Nevada's Uniform Securities Act.

50. Section 90.530.10 provides that "An offer to sell or the sale of a security to a financial or "institutional investor" is an exempt transaction.

51. The regulations further specify that an institutional investor includes an "accredited investor" as defined under Rule 501 of Regulation D.

52. In this case, the PPM and Subscription Agreement are clear this was a private offering open only to accredited investors, which are exempt from federal and state securities laws.

53. Aside from the fact this sale is not subject to the provisions of NRS 90.570, this fraud claim would fail for the same reasons Plaintiff's third cause of action for fraud fails. Specifically, Plaintiff has failed to establish "either: (a) an untrue statement of a material fact or (b) the failure to state a material fact necessary to make other statements made not misleading in the light of the circumstances under which they are made…"

54. In light of the above, Plaintiff has failed to carry his burden of proof under the seventh cause of action. For these reasons, as well as the fact that Plaintiff has not suffered damages, Plaintiff's seventh cause of action is without merit and is accordingly dismissed.

I.

CROSS-CLAIM BY MARRINER AND MARRINER REAL ESTATE

Marriner and Marriner Real Estate's Cross-claim for indemnity/contribution against the other Defendants is dismissed as moot.

J.

COUNTERCLAIM

1. In this case, the Court finds that Plaintiff wrongfully colluded with IMC's principals and Molly Kingston to intentionally interfere with the contractual relations between Mosaic and Cal Neva Lodge, which interference caused Mosaic to rescind ("tear up") its executed term sheet. But for the intentional interference, this Project would have succeeded.

2. This Court has documented dozens of e-mail exchanges between Plaintiff and IMC and their efforts to undermine the Mosaic loan and there is no more solid evidence of that than in Trial Exhibit 124. That proposed loan was done and in place. Mosaic had evidenced its enthusiasm to close the loan. And yet the day the individuals from IMC went to Mosaic's offices without the knowledge of CR Cal Neva, that loan was dead. And the testimony is unequivocal that there was never an attempt by Plaintiff or IMC to resurrect it, despite the open invitation by Mosaic to reintroduce the loan.

3. This Court finds that it was the intent of Plaintiff, IMC, and Molly Kingston

to kill this loan, and divest CR Cal Neva from its equity interest under the threat of civil and criminal actions for their own benefit and not the benefit of the Project. It is tragic.

4. Although Defendants did not formally plead a counterclaim against Plaintiff, the Court finds that, by consent of all parties, including Plaintiff, a significant portion of this trial centered around Plaintiff's collusion with IMC and Molly Kingston to interfere with the Mosaic loan, which caused the demise of the Project and significant damages to Defendants and the other investors.

5. Pursuant to NRCP 15(b), "[w]hen issues not raised by pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. Such amendment of the pleadings as may be necessary to cause to them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment; but failure so to amend does not affect the result of the trial of these issues." Amendments to conform to proof are perfectly proper and courts should be liberal in allowing such amendments. *See Brean v. Nevada Motor Co.*, 269 P. 606, 606 (Nev. 1928) (citing *Miller v. Thompson*, 40 Nev. 35, 160 P. 775; *Ramezzano v. Avansino*, 44 Nev. 72, 189 P. 681).

6. Pursuant to NRCP 8(c), "[w]hen a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation." Here, Defendants plead, among other things, Plaintiff's unclean hands, estoppel, waiver, and Plaintiff's own fault as affirmative defenses and put on considerable evidence at trial of Plaintiff's involvement in the interference with the Mosaic loan, as well as Defendants' resulting damages.

7. Furthermore, pursuant to NRCP 54(c), "[e]very other final judgment should grant the relief to which each party is entitled, even if the party has not demanded that relief in its pleadings." "The Nevada Supreme Court recognized the liberal nature of NRCP 54(c) by confirming 'Under the liberalized rules of pleading,' a final judgment must grant the relief

a party is entitled to, even where the prayer for relief did not ask for such relief." *Magill v. Lewis*, 74 Nev. 381, 387-88, 333 P.2d 717, 720 (1958). *Magill* recognized that Rule 54(c) "implements the general principle of Rule 15(c), that in a contested case a judgment is to be based on what has been proved rather than what has been pleaded." *Magill*, 74 Nev. at 388.

8. In this case, justice requires that judgment be entered in favor of Defendants and against Plaintiff for his intentional interference with the contractual relations between Mosaic and Cal Neva Lodge, which interference caused Mosaic to tear up its executed term sheet and led to the demise of the Project without privilege or justification and for his own interest and not in the interest of the Project or its other investors. Plaintiff knew a prospective contractual relationship existed between Cal Neva Lodge and Mosaic. Along with IMC and Molly Kingston, he intended to harm and disrupt this relationship without privilege or justification. And his conduct resulted in significant harm to Defendants and to the other investors.

9. As a result of Plaintiff's intentional interference, Criswell has been damaged and is awarded $1.5 Million in compensatory damages, plus two years' salary, and management fees (if applicable). Criswell is also awarded his attorneys' fees and costs of suit.

10. As a result of Plaintiff's intentional interference, Radovan has been damaged and is awarded $1.5 Million in compensatory damages, plus two years' salary, and management fees (if applicable). Criswell Radovan and CR Cal Neva are also awarded their attorneys' fees and costs of suit.

11. As a result of Plaintiff's intentional interference, CR Cal Neva has been damaged and is awarded its lost development fees $480,000.00. CR Cal Neva is also awarded its attorneys' fees and costs of suit.

12. As a result of Plaintiff's intentional interference, Criswell Radovan is awarded its attorneys' fees and cost of suit.

13. As a result of Plaintiff's intentional interference, Marriner has been damaged and is awarded $1.5 Million in compensatory damages. These damages include both lost commissions (Trial Exhibit 1) and loss of business goodwill.

14. Marriner Real Estate is awarded its attorneys' fees and costs of suit.

15. PCA is awarded its attorneys' fees and costs of suit.

III.

JUDGMENT

Based upon the foregoing Findings of Fact and Conclusions of Law, and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Plaintiff's Second Amended Complaint, and each of the causes of action stated therein, are dismissed with prejudice as to all Defendants.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Marriner's and Marriner Real Estate's crossclaim is moot and is dismissed with prejudice.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay William Criswell the sum of $1.5 Million in compensatory damages, plus two years' salary, management fees (if applicable), attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Robert Radovan the sum of $1.5 Million in compensatory damages, plus two years' salary, management fees (if applicable), attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay CR Cal Neva, LLC its lost development fee of $480,000.00, attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Criswell Radovan, LLC its attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay DAVID MARRINER the sum of $1.5 Million in compensatory damages, attorneys' fees and costs of suit.

IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Marriner Real Estate its attorneys' fees and costs of suit.

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IT IS HEREBY FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff GEORGE STUART YOUNT, Individually and in his Capacity as Owner of GEORGE STUART YOUNT IRA, shall pay Powell Coleman Arnold, LLP its attorneys' fees and costs of suit.

DATED this ____ day of _____ 2017.

_____
DISTRICT COURT JUDGE

Jointly Submitted by:

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EXHIBIT 4

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THE LAW OFFICE OF
RICHARD G. CAMPBELL JR. INC.

October 24, 2017

VIA E-MAIL;MAL@H2LAW.COM; ANWOLF@INCLINELAW.COM

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RE: Objections to Proposed Findings of Fact

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Dear Mr. Little and Mr. Wolf,

The following are my comments and objections to your proposed findings of fact, conclusions of law and judgment.

I. FINDINGS OF FACTS

Paragraph 59. There was evidence that Radovan told Marriner not to tell Mr. Yount that he was purchasing one of the CR shares instead of a share under the Private Placement memo.

Paragraph 60. Under the Operating Agreement if the other shareholders did not approve the transfer of the share from CR to Mr. Yount, then the founders share was materially different in that voting rights did not attach to the share and a shareholder was only entitled to receive the economic benefits, if any, from the share.

Paragraph 74. The recorded voice mail from Pender to Radovan did not clearly evidence that both Cal Neva and Mosaic had been working hard on the loan and that mosaic was enthusiastic about getting it closed before the end of the year.

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Paragraph 83. There was no evidence that at the December 12, 2015 meeting that CR was seeking executive committee approval for the Mosaic loan.

Paragraph 89. There was no testimony at trial that the Executive Committee approved the Mosaic loan in a January 27, 2016 meeting

Paragraph 92. Every witness at trial did not testify that the Mosaic loan would have covered the Project's debt and expenses to completion

Paragraph 95. Exhibit 3 does not support that CR Cal Neva was only paid a portion of the development fees it was due under the operating agreement.

Paragraph 96. There was no evidence presented that proved that Marriner suffered significant compensatory damages.

II. CONCLUSIONS OF LAW

Paragraph 3. Since the other shareholders did not approve the transfer of the CR share to Mr. Yount he does not have the same share as other shareholders.

Paragraph 4. There is a difference between what Mr. Yount agreed to buy, as set forth above, regarding Mr. Yount's being in the same position as if he had bought a share under the PPM

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III. COUNTERCLAIM

Paragraph 4. The Court never found or ever discussed that by consent of the parties that the trial centered around Plaintiff's collusion with IMC and Molly Kingston to interfere with the Mosaic loan.

Paragraph 6. There was no evidence that defendants mistakenly plead a counterclaim as affirmative defenses, nor was there ever a finding by the Court that the affirmative defenses should have been treated as a counterclaim.

Paragraphs 9, 10 and 11. There was no evidence quantifying any specific dollar amounts to either Mr. Criswell or Mr. Radovan as to any type of damages accruing to them individually or as to them being entitled to a salary, nor was there evidence that CR Cal Neva was entitled to $480,000 of development fees.

Paragraph 13. There was no evidence at trial that quantified any damages sustained to Marriner Real Estate or Mr. Marriner.

Paragraphs 14 and 15. There is no statutory or contractual basis to aware Marriner or Powell Coleman its attorney fees and costs.

Very truly yours,

The Law Office of Richard G. Campbell, Jr. Inc.

Richard G. Campbell, Jr.

RGC/dlb

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EXHIBIT 5

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