

IN THE SUPREME COURT, STATE OF NEVADA

<p>JAMES A. BOESIGER, an individual; MARIA S. BOESIGER, an individual,</p> <p>APPELLANTS</p> <p>vs.</p> <p>DESERT APPRAISALS, LLC, a Nevada Limited-Liability Company; TRAVIS T. GLIKO, an individual,</p> <p>APPELLEES.</p>	<p>Electronically Filed Aug 09 2018 03:27 p.m. Elizabeth A. Brown Clerk of Supreme Court</p> <p>Supreme Court No.: 75198</p> <p>Case No. A-15-725567-C</p> <p>Department XXIV</p>
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2	Answer (Bates No. 10-25)	3/21/2016
3	Defendant's Motion to Strike Plaintiff's Designated Expert Craig Jui (Bates No. 26-37)	5/16/2017
4	Plaintiff's Withdraw of Designation of Expert Witness Craig Jui (Bates No. 38-39)	5/22/2017
5	Defendant's Motion for Summary Judgment (Bates No. 40-195)	10/25/2017

6	Notice of Plaintiff's Non-Opposition to Defendants' Motion for Summary Judgment (Bates No. 196-198)	11/17/2017
7	Plaintiff's Opposition to Motion for Summary Judgment (Bates No. 199-236)	11/17/2017
8	Defendant's Affidavit in Support of Motion for Summary Judgment (Bates No. 237-239)	11/17/2017
9	Defendants' Reply in Support of Motion for Summary Judgment (Bates No. 240-255)	12/01/2017
10	Order and Notice of Entry of Order Granting Defendant's Motion for Summary Judgment (Bates No. 256-266)	1/19/2018 1/25/2018
11	Notice of Appeal (Bates No. 267-268)	2/16/2018
12	Notice of Cost Bond (Bates No. 269-271)	3/06/2018
13	Plaintiff's Statement of Evidence (Bates No. 272-277)	4/26/2018
14	Defendants' Objection to Plaintiff's Statement of Evidence; and Defendants' Statement of the Proceedings (Bates No. 278-284)	5/09/2018

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an individual;
MARIA S. BOESIGER, an individual,

Case No.: A-15-725567-C
Dept. No.: XXIV

Plaintiffs,

vs.

**NOTICE OF PLAINTIFFS' NON-
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI-XX, inclusive.

Date: 12/05/17
Time: 9:00 a.m.

Defendants.

Defendants Dessert Appraisals, LLC and Travis T. Gliko, by and through their attorneys of record LIPSON NEILSON, COLE, SELTZER & GARIN, P.C. hereby submit this Notice of Plaintiffs' Non-Opposition to Defendants' Motion for Summary Judgment.

On October 25, 2017, Defendants filed their Motion for Summary Judgment. Plaintiffs' Opposition to Defendants' Motion for Summary Judgment was due on November 13, 2017. Plaintiffs did not file an Opposition to Defendants' Motion for Summary Judgment.

Eighth Judicial District Court Local Rule 2.20(e) states that "[f]ailure of the opposing party to serve and file written opposition may be construed as an admission that the motion and/or joinder is meritorious and a consent to granting the same." Thus,

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1 pursuant to Rule 2.20(e), because Plaintiffs did not file an Opposition, this Court should
2 grant Defendants' Motion for Summary Judgment.

3 Dated this 17th day of November, 2017.

4 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

5 /s/ Eric N. Tran

6 By:

7 JOSEPH P. GARIN, ESQ. (Bar No. 6653)
8 ERIC N. TRAN, ESQ. (Bar No. 11876)
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11 Attorneys for Defendants
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 17th day of November, 2017, I electronically served the foregoing **NOTICE OF PLAINTIFFS' NON-OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** to the following parties utilizing the Court's E-File/ServeNV System:

David J. Winterton, Esq.
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/s/ Kim Glad

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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 JAMES A. BOESIGER, an individual,
14 MARIA S. BOESIGER, an individual,
15
16 Plaintiffs,

Case No. A-15-725567-C
Dept. No. 24

17 vs.

18 DESERT APPRAISALS, LLC, a Nevada
19 Limited-Liability Company; TRAVIS T.
20 GLIKO, an individual; DOES I-X, inclusive;
21 ROE CORPORATIONS XI through XX,
22 inclusive

Date: December 5, 2017
Time: 9:00 a.m.

23 Defendants.

[Arbitration Exempt]

24 **OPPOSITION TO DEFENDANTS DESERT APPRAISALS, LLC AND TRAVIS T.**

25 **GILKO'S MOTION FOR SUMMARY JUDGMENT**

26 COMES NOW, JAMES A. BOESIGER AND MARIA S. BOESIGER (hereinafter
27 "Plaintiffs") by and through their counsel DAVID J. WINTERTON & ASSOCIATES, LTD.,
hereby file this Opposition to the Motion for Summary Judgment (hereinafter "Opposition").

Desert Appraisals, Inc. argues a motion for summary judgment should be granted
based upon Plaintiffs not disclosing an expert witness to establish the duty of care and breach
of that duty in the appraiser's actions for the elements of the professional negligence cause of
action, along with the first, third and fourth causes of action that rely on the same duty and
breach. They also argue that breach of third-party beneficiary contract claim be summarily be

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1 denied because the plaintiffs are not intended third-party beneficiaries of the appraisal report.
2 On all arguments, the Nevada case law is clear that summary judgment must be denied. The
3 Motion must be denied for the reasons stated below:

- 4 (1) The Nevada Supreme Court ruled expressly in 2013 that expert testimony is not
5 required for professional negligence claims with the exception of certain medical
6 professions that are inapplicable here. The court felt so strongly about this ruling
7 that it broke with stare decisis to reach this holding.
- 8 (2) Appraisers owe a duty of care to borrowers under circumstances when they
9 supply false information that buyers rely on, even when the loan company hired
10 the appraiser. Therefore, summary judgment is not appropriate to squash third
11 party beneficiary claims by borrowers against appraisers.

12 This Opposition is made pursuant to the Nevada Revised Statutes, the Nevada Rules of
13 Civil Procedure and the Eighth Judicial District Rules of Procedure. This Opposition is also
14 based upon the attached Memorandum of Points and Authorities, the pleadings and papers on
15 file, and the oral arguments to be presented by counsel.

16 Respectfully submitted this 17th day of November, 2017.

17 DAVID J. WINTERTON & ASSOCIATES, LTD.

18 By: 

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MEMORANDUM OF POINTS AND AUTHORITIES

COMES NOW, JAMES A. BOESIGER AND MARIA S. BOESIGER (hereinafter "Plaintiffs"), by and through their counsel, DAVID J. WINTERTON & ASSOCIATES, LTD., hereby files this Memorandum of Points and Authorities in support of their Opposition.

I.

STATEMENT OF DISPUTED FACTS REGARDING THE BOESIGERS

Summary Judgment cannot be granted based upon the disputed facts that create a genuine issue of fact for the jury to decide in this case.

A. Disputed Facts.

1. James and Maria Boesiger (hereafter The Boesigers) entered a loan to purchase 5015 Adrian Fog Ave., Las Vegas, NV 89141. But for the appraiser's error in square footage in the appraisal of the home, the Boesigers would not have qualified for such a high loan amount to purchase the home at the actual purchase price. See Maria's Deposition, 64:9-66:7 and Exhibit A the Residential Purchase Agreement in Defendants Motion for Summary Judgment on p.1 "Section C" that states the purchase is contingent on the buyer qualifying for a new loan in the amount of \$325,205.
2. At the time the Boesiger's purchased the home, the builder was selling the same model for \$257,000. Id. 89:6-11.
3. If the square footage had been correct on the appraisal report, Maria would have done one of two things. (1) She would have terminated the purchase agreement. Id. at p89:1-22. (2) Alternately, she would have told the seller that based on the smaller square footage of the house she would pay a maximum of \$257,000. Id. at 93:1-19.
4. The sale could not have closed at the higher price because the Boesigers would not have qualified for the loan if the appraisal included the correct square footage. Id. at 89:22- 90:2; 93:22 -94:3.
5. Based on comparable properties in the neighborhood and the price of new construction

1 homes in the same neighborhood, the Boesigers would not have qualified for the larger
2 loan amount for \$325,205 to allow the purchase price of \$370,000. Rather, the actual
3 value of the home based on comparable properties and new construction rates was
4 around \$279,000. Id. at 67:1-12 (new construction comparison); 72:6-23 (comparables
5 and lower estimate of property value); 80:4 -87:22; 91:24-92:11. See Id. at 122 -131
6 for an explanation of Mrs. Boesiger's basis for the \$280,000 valuation.

7 6. Mrs. Boesiger personally reviewed numerous comparables in the neighborhood to
8 confirm that the valuation of her property based on the appraiser's inaccurate square
9 footage did not add up. See Id. at 72-88.

10 7. The Boesigers' tax liability for Clark County indicated an appraisal value of \$40,000
11 to 50,000 higher than the initial appraisal on their home. Id. at p.70:12-17.

12 8. Mrs. Boesiger contested the higher valuation on the tax assessment based on the
13 second appraisal conducted for refinance application. Id. at p.70:17-19.

14 9. Clark County sent an appraiser to the property at issue. Mrs. Boesiger stated at her
15 deposition under oath that the County-affiliated appraiser said the house was listed as
16 the wrong model. Id. at 70:22-25.

17 10. Clark County Assessor's office changed the square footage on the MLS and dropped
18 the value of the home in the tax assessment. Mrs. Boesiger spoke with Bill Houston at
19 the County Assessor's office and he told her that the house in question was a different
20 model with different square footage. Id. at 71:4-5; 76:6-24.

21 11. Mrs. Boesiger reviewed the appraisal report prior to closing of the property. Id. at 78:
22 24 -79:5.

23 12. Mrs. Boesiger attempted to refinance the property a year after the purchase to qualify
24 for a conventional loan which would lower her monthly payment by eliminating the
25 mortgage insurance premium required with FHA loans which is almost \$400 a month.
26 Id. at 94:12- 95:2.
27

- 1 13. The conventional loan application was denied because Travis Gliko conducted a
2 second appraisal in front of Mrs. Boesiger. Id. at 95-97. The loan officer Becca
3 Greene told Mrs. Boesiger by phone that the house appraised too low for a refinance
4 and so the appraiser agreed to waive the fee for the appraisal. Id. at 69:19-70:11.
- 5 14. Mrs. Boesiger learned of the mistake in the initial appraisal in December of 2014 when
6 the Clark County Assessor sent the appraiser to her house who informed of her of the
7 error. Id. at 100:3-8.
- 8 15. Upon discovering the error, Mrs. Boesiger contacted the mortgage company and Becca
9 Greene, but they would not do anything to help correct the mistake with the loan. Id. at
10 100:9-21. She also could not get a copy of the second appraisal from Desert Appraisal
11 or Travis Gilko. Id. at 100:22-101:1.
- 12 16. Mrs. Boesiger's property taxes and homeowner's insurance were inflated for her
13 property value so she overpaid on taxes and insurance for approximately one year. Id.
14 at 102-105.
- 15 17. The appraiser, Travis Gliko, admitted he did not use any of the builder models on the
16 market in his comparable properties in appraising 5015 Adrian Fog Ave. See
17 Deposition of Travis Gliko, 30:9-19. Moreover, Gliko did not know what the models
18 were selling for. Id.
- 19 18. James Boesiger was working and not present when Mr. Gliko attempted to conduct the
20 second appraisal. See the attached Affidavit of Maria S. Boesiger. Moreover, he had
21 no communications with Mr. Gliko about the appraisal in contrast to the testimony of
22 Mr. Gliko in his deposition. Id.

23 **II.**

24 **STANDARD OF LAW**

25 Summary Judgment is proper if the pleadings, depositions, answers to interrogatories,
26 admissions on file and other matters presented to the court, together with affidavits, if any,
27

1 show that there is no genuine issue of material fact and that the movant is entitled to a
2 judgment as a matter of law. *Celotex Corp. V. Catrett*, 477 U.S. 317, 106 S.Ct. 2548, 91
3 L.Ed.2d 265 (1986); *Anderson v. Liberty Lobby Inc.*, 477 U.S. 242, 106 S.Ct. 2502, 91
4 L.Ed.2d 202 (1986); *Washington v. Armstrong World Industries Inc.*, 839 F.2d 1121 (5th Cir.
5 1988); *Hopkins v. Andaya*, 958 F.2d 881, 884 (9th Cir. 1992). *Shepard v. Harrison*, 100 Nev.
6 178, 678 P.2d. 670 (1984); *Pacific Pools Constr. Co. V. McClain's Concrete, Inc.* 101 Nev.
7 557, 706 P.2d 849 (1985). *Bird v. Casa Royale W.*, 97 Nev. 67, 624 P.2d 17, 1981);
8 *Montgomery v. Ponderosa Constr., Inc.*, 101 Nev. 416, 705 P.2d 652 (1985). On a summary
9 judgment motion, the inferences to be drawn from the underlying facts are to be in a light
10 most favorable to the non-moving party. *Anderson*, 477 U.S. at 255, 106 S.Ct. at 2513-14.
11 *Butler v. Bogdanovich*, 101 Nev. 449, 705 P.2d 662 (1985). A factual dispute bars summary
12 judgment only when the disputed fact is determinative under governing law. *Anderson*, 477
13 U.S. at 250, 106 S.Ct. at 2511.

14 The movant bears the initial burden of articulating the basis for its motion and
15 identifying evidence which show that there is no genuine issue of material fact. *Celotex*, 477
16 U.S. at 322, 106 S.Ct. at 2552. *Butler v. Bogdanovich*, 101 Nev. 449, 705 P.2d 662 (1985);
17 *Intermountain Veterinary Medical Ass'n v. Kiesling-Hess Finishing Co.*, 101 Nev 489, 706
18 P.2d 137 (1985); *Pacific Pools Constr. Co. V. McClain's Concrete, Inc.*, 101 Nev. 557, 706
19 P.2d 849 (1985). The non-movant may not rest on the mere allegation or denial in its pleading
20 but must set forth specific facts showing that there is a genuine issue for trial. *Matsushita, v.*
21 *Zenith Radio Corp.*, 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). *Hickman v.*
22 *Meadow Wood Reno*, 96 Nev. 782, 617 P.2d 871 (1980). *Maine v. Stewart*, 109 Nev. 721, 857
23 P.2d 755 (1993). The court must determine the governing law. When the record is taken as a
24 whole and with inferences viewed in the light most favorable to the non-movant and
25 determined under governing law, summary judgment is appropriate.

26 The Nevada Supreme Court has done away with the slightest doubt standard. The mere
27

1 existence of some alleged factual dispute between the parties will not defeat an otherwise
2 properly supported motion for summary judgment, the requirement is that there be no genuine
3 issue of *material fact*. 121 Nev. 724, 121 P.3d 1026 (2005).

4 **III.**

5 **LEGAL SUPPORT AND ANALYSIS**

6 Defendant's Motion for Summary Judgment must fail for the following two reasons:

7 **(1) As a matter of law, no expert testimony is required** for the causes of action, including
8 professional negligence. **The Nevada Supreme Court ruled expressly in 2013 that expert**
9 **testimony is not required for professional negligence claims** with the exception of certain
10 medical professions that are inapplicable here. Egan v. Chambers, 299 P.3d 364, 365 and 367.
11 **The court felt so strongly about this ruling that it broke with stare decisis to reach this**
12 **holding. Id.**

13 **(2) Appraisers owe a duty of care to borrowers under circumstances when they supply**
14 **false information that buyers rely on, even when the loan company hired the appraiser.**
15 **Therefore, summary judgment is not appropriate to squash third party beneficiary**
16 **claims by borrowers against appraisers. See Stremmel Motors Inc. v. First Nat'l Bank of**
17 **Nev., 94 Nev. 131 (adopting Restatement (Second) of Torts Section 552) and the unpublished**
18 **case of Copper Sands Homeowners Ass'n, 2012 U.S. Dist. LEXIS 38054, 11-12, (applying the**
19 **same rule to appraiser negligence and its impact on borrowers).**

20 **1. NO EXPERT TESTIMONY IS REQUIRED TO ESTABLISH PROFESSIONAL**
21 **NEGLIGENCE BY APPRAISERS.**

22 The primary argument for Defendant's Motion for Summary Judgment is that
23 Plaintiff's failure to disclose an expert witness is fatal to the claim for professional negligence
24 because an expert witness is required to establish the elements of duty of care and breach. The
25 Nevada Supreme Court clearly disagrees. In Egan v. Chambers, the Court held that no expert
26 testimony is required to establish duty of care and breach in professional negligence cases
27 except in certain, statutorily-defined healthcare professions outline in Nevada Revised Statute

1 section 41A.071. 299 P.3d 364, 365 and 367.

2 The Court clearly explains the limited scope of the statute that requires expert
3 testimony to show duty and breach for certain professions. Id. at It delineates that the
4 requirement for an affidavit of merit from an expert witness is only statutorily required in
5 specified medical malpractice actions and not to causes of action for professional negligence
6 as a whole. Id. It overruled the Eighth Judicial District Court's decision to dismiss the
7 complaint of professional negligence against a podiatrist for the lack of a supporting affidavit
8 of merit from an expert witness. Id. at 367.

9 The Court explained: "The plain language of NRS 41A.071 makes no mention of
10 professional negligence. NRS 41A.071 refers expressly to 'medical malpractice,' which in
11 turn is defined as pertaining to physicians, hospitals and hospital employees. 'Physician' is
12 defined as a person licensed under NRS Chapters 630 or 633. NRS 41A.013. Podiatrists are
13 not licensed pursuant NRS Chapters 630 or 633; rather they are licensed pursuant to NRS
14 Chapter 635. As such, NRS 41A.071 does not, by its plain terms, apply to Egan's claims
15 against her podiatrist." Id.

16 As shown, Egan involved a profession more closely related to the statute (podiatry is
17 related to medical care) requiring expert testimony than the profession in question here (real
18 estate appraisal). Podiatry is within the realm of healthcare but the Nevada Supreme Court
19 still held it is too far outside the language of the statute to require an expert testimony to prove
20 the standard of care as a matter of law. Here, the case involves an appraiser who clearly does
21 not meet the definition of "physician" under the statute. Like podiatry, appraisers are skilled,
22 licensed professions and like podiatrists they are not "physicians" under the statute and they
23 do not require affidavits-of-merit or expert testimony to survive summary judgment for
24 professional negligence.

25 Defendant claims expert testimony is required based on six cases in other states that
26 are not controlling law in this case, including (1) Redden v. SCI Colo. Funeral Servs., Inc. 38
27 P.3d 75 (Colo.2001), (2) Hice v. Lott, 223 P.3d 139 (Colo App. 2009), (3) Tommy L. Griffin

1 Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 351 S.C. 459 (S.C. Ct.App.2002),
2 (4) Am. Family Mut. Ins. Co. v. Allen, 102 P.3d 333 (Colo.2004), (5) White v. Jungbauer, 128
3 P.3d 263 (Colo.App.2005), and (6) Brown v. Interbay Funding, LLC, 417 F.Supp.2s 573
4 (D.Del. 2006). None of these cases are controlling. Furthermore, none of these cases are
5 relevant in light of the Nevada Supreme Court case directly on point holding that affidavit-of-
6 merit by an expert witness are not required for professional negligence causes of action except
7 for limited medical malpractice cases. Egan v. Chambers, 299 P.3d 364, 365 and 367.

8 Defendant only cites one Nevada case for the point that expert testimony should be
9 required in this case, Daniel, Mann, Johnson & Mendenhall v. Hilton Hotels Corp. 98 Nev.
10 113 (1982). However, this case predates Egan by thirty-one years and the Daniel case also
11 supports our opposition to Defendant's request for summary judgment. Daniel held that
12 expert testimony was NOT required in causes of action against a surveyor who misplaced
13 drill holes for foundational support. The court concluded: "We also disagree with appellant's
14 contention that expert testimony is required to prove the breach of duty (by the
15 surveyor)...Where, as in the instant case, the service rendered does not involve esoteric
16 knowledge or uncertainty that calls for the professional's judgment, it is not beyond the
17 knowledge of the jury to determine the adequacy of the performance." Daniel, Mann,
18 Johnson & Mendenhall v. Hilton Hotels Corp. 98 Nev. 113, 115.

19 Here, the negligence of the appraisal is not beyond the knowledge of the jury to
20 determine. A layperson can understand that the actual square footage of the house based on
21 the assessor's correction does not match the appraisal report. Furthermore, this is not the
22 applicable standard in light of Egan. *Supra*.

23 The Daniel case does quote another case, Bialer, for the proposition that it is well
24 settled that expert testimony is needed where the standard of care is not in common
25 knowledge. Bialer v. St. Mary's Hospital, 83 Nev. 241 (1967). However, Bialer is forty-six
26 years before Egan. Moreover, the facts here are similar to Daniel and distinguishable from
27 Bialer. Where an appraiser misrepresents the square footage by over 600 feet, as established

1 by the County Assessor sending an appraiser and changing the assessed square footage, it is
2 comparable to the surveyor placing holes in the wrong place in the foundation in Daniel.
3 While the jury may not understand how to measure the house or where the holes should be
4 drilled in the foundation, they are able to determine from the evidence that the drill marks do
5 not match up and the appraisal report does not match the county assessor's appraisal.

6 In contrast, Bialer required expert testimony to show the standard of care because the
7 case involved adverse reactions to a medical injection that could have numerous causes and
8 explanations that a layperson could not differentiate. Furthermore, the case involved a res
9 ipsa loquitor theory and the court held that the factors were too complicated to show
10 negligent causation. The court explained: "Unforeseen and undesirable reactions from an
11 injection can result from a number of causes other than negligence; for example, the emotions
12 and allergies of the patient, the manner in which the injection was given (though not
13 amounting to negligence), the internal condition of the patient before or after an operation,
14 and perhaps others." Bialer v. St. Mary's Hosp., 83 Nev. 241, 244.

15 Therefore, the controlling law is clear that an expert witness is not required to show
16 the negligence of the appraiser in this case as a matter of law.

17 **2. SUMMARY JUDGMENT SHOULD BE DENIED BECAUSE PLAINTIFF IS NOT**
18 **REQUIRED TO DISCLOSE AN EXPERT WITNESS ON ANY OF THE CAUSES OF**
19 **ACTIONS.**

20 **1) Plaintiff's First Cause of Action for Professional Negligence Does Not Require**
21 **an Expert Witness to Establish the Existence of the Duty of Care and Breach of that**
22 **Duty.**

23 As discussed above, it is established law in Nevada that expert testimony is not
24 required to prove professional negligence. In Egan v. Chambers, the Court held that no
25 expert testimony is required to establish duty of care and breach in professional negligence
26 cases except in certain, statutorily-defined healthcare professions outline in Nevada Revised
27 Statute section 41A.071. 299 P.3d 364, 365 and 367. Any contrary case law cited in

1 Defendant's Motion for Summary Judgment is either from other jurisdictions or predates the
2 holding by the Egan decision by the Nevada Supreme Court holding that affidavits from
3 expert witnesses are not required to show duty and breach in professional negligence actions
4 outside of limited medical malpractice exceptions defined by statute. Id.

5 **2) Plaintiff Mrs. Boesiger Can Testify as a Lay Person and Need Not Qualify as**
6 **an Expert.**

7 The negligence of the appraiser in this case is indicated by Mrs. Boesiger's deposition
8 testimony, suspicious markings in the appraisal report, the subsequent knowledge of the error
9 by the Clark County Assessor's Office, and circumstantial evidence from the first appraisal
10 and the attempted second appraisal. All of this evidence creates genuine issues of fact on the
11 record for showing breach of duty of care by the appraiser to survive summary judgment. No
12 expert witness is required and thus Mrs. Boesiger's status as an expert is not necessary or
13 dispositive of the ruling on this motion.

14 **3) Plaintiff's Third Cause of Action for Negligent Misrepresentation and Fourth**
15 **Cause of Action for Breach of Statutory Duty to Disclose Material Facts Contain**
16 **Genuine Issues of Material Fact and Do Not Require An Expert Witness To Proceed.**

17 As detailed above, no expert witness is required to proceed on these causes of actions.
18 Thus, Defendant's argument that the causes of action for negligent misrepresentation and
19 breach of the statutory duty to disclose material facts remain. Defendant provides no other
20 argument for dismissing these causes of action except for the failure to disclose an expert
21 witness for the professional negligence cause of action.

22 **D. THE BOESINGERS ARE THIRD-PARTY BENEFICIARIES TO THE**
23 **APPRAISAL REPORT SO SUMMARY JUDGMENT MUST BE DENIED ON THE**
24 **BREACH OF THIRD-PART BENEFICIARY CONTRACT CLAIM.**

25 Nevada established that an appraiser could owe a duty of care to borrowers when it
26 adopted Restatement (Second) of Torts Section 552. See Stremmel Motors Inc. V. First Nat'l
27 Bank of Nev., 94 Nev. 131 (1978). Restatement Section 552 provides:

1 “(1) One who, in the course of his business, profession, or employment, or in any
2 other transaction in which he has a pecuniary interest, supplies false information for
3 the guidance of others in their business transactions, is subject to liability for
4 pecuniary loss caused to them by their justifiable reliance upon the information, if he
5 fails to exercise reasonable care or competence in obtaining or communicating the
6 information.”

7 In an unpublished decision in 2012, the U.S. District Court for the District of Nevada
8 applied this Restatement to appraiser negligence. See Copper Sands Homeowners Ass’n v.
9 Copper Sands Realty, LLC, 2012 U.S. Dist. LEXIS 38054. Like the Boesigers, the Copper
10 Sands case involved home buyers who sought negligence claims against an appraiser hired by
11 the mortgage company and not the buyers. The court held “Nevada courts have not
12 specifically dealt claims brought by a borrower against an appraiser that was hired by the
13 lender...Nevada has adopted Restatement (Second) of Torts Section 552. (Citation omitted).
14 Therefore, **this Court finds that it would be proper to apply the Restatement to the facts**
15 **of this case. Accordingly, in some circumstances appraisers could owe a duty of care to**
16 **borrowers.”** Copper Sands Realty, LLC, 2012 U.S. Dist. LEXIS 38054, 11-12.

17 Here, the elements in Restatement Section 552 are met. First, the appraiser, Travis
18 Gliko, was working in the course of his business and profession. It was also a transaction for
19 his pecuniary interest. He explained in his deposition that he was personally hired by Solidifi
20 to provide the appraisal that is the basis for the third-party beneficiary claim by the Boesigers.
21 See **Exhibit B**-Deposition of Travis Gliko at 11:13-23. Solidifi coordinates the appraisal
22 with the mortgage company used by the Boesigers to qualify for the loan for the purchase of
23 the home. Id. at 11:21-12:16. Mr. Gliko was paid a fee for his services. Id. at 11:14-13:8.,
24 16:5-12. Defendants’ also provided a copy of the Order Report in Exhibit B of their Motion
25 for Summary Judgment at DA000001 where Guild Mortgage hired Mr. Gilko to appraise the
26 property. See Defendants’ Motion for Summary Judgment, Exhibit B Order Report at
27 DA000000. Mr. Gliko is the co-owner of Defendant Desert Appraisals, LLC. Id. at 9:14-22.

 Second, Defendant Gliko supplied false information for the guidance of others in
 their business transactions. Mr. Gliko testified in his deposition that he relied on the square

1 footage of the assessor's record and the MLS listing. Id. at 19:10-20:7. The designated
2 square footage in both the assessor's record and the MLS listing turned out to be wrong. Id. at
3 46:11-47:3. Also see Deposition of Maria Boesiger, Exhibit F in Defendant's Motion for
4 Summary Judgment 70:12-71:21. He also testified that he pulled the builder's plan based on
5 the wrong model because he pulled the building plan based on the wrong square footage. See
6 **Exhibit B** -Deposition of Travis Gliko 19:10-20:7.

7 The appraiser also used comparables that were too distinguished from the property to
8 provide proper valuation. Mrs. Boesiger testified at length in her deposition that the
9 comparable properties used in the appraisal report were too different from 5015 Adrian Fog
10 Ave to show the true value of the property. See Deposition of Maria Boesiger, Exhibit F in
11 Defendant's Motion for Summary Judgment , 80-87, 109:19-115:19. As a result, Ms.
12 Boesiger testified that she overpaid for the property by \$50,000-81,000. Id. at 122:15-125:18,
13 128:13-129:13.

14 Third, Mr. Gliko and Desert Appraisals, LLC. are subject to liability to the Boesigers
15 for pecuniary loss caused to them by the Boesigers' justifiable reliance upon the information
16 in the faulty appraisal. Mrs. Boesiger Boesiger testified at her deposition: "[W]ith the proper
17 appraisal, the purchase price would have been different, Now, I would have had to tell the
18 seller, your property is only worth 250- let's pick a number, the builder- 256, 257. That's all
19 I'm willing to pay....[T]he loan would not have been approved on that size of a property for
20 that amount, because that's not what it was worth at the time." Id. at 93:5-19.

21 Fourth, Mr. Gliko and Desert Appraisals, LLC failed to exercise reasonable care or
22 competence in obtaining or communicating the information in the appraisal report. As
23 discussed above, Mr. Gliko relied on the square footage in the Assesor's Report and the MLS
24 listing for 5015 Adrian Fog Ave. that turned out to be off by over 500 square feet. Supra.
25 Furthermore, as discussed above, Mr. Gliko used properties for his comparables in his
26 appraisal that were vastly different from the property at hand. Supra.

27 **III.**

DAVID J. WINTERTON & ASSOCIATES, LTD
1140 No. Town Center Drive, Suite 120
Las Vegas, Nevada 89144
(702) 363-0317

CONCLUSION

Summary Judgment should be denied for the following reasons:

- (1) The Nevada Supreme Court ruled expressly in 2013 that expert testimony is not required for professional negligence claims with the exception of certain medical professions that are inapplicable here. The court felt so strongly about this ruling that it broke with stare decisis to reach this holding.
- (2) Appraisers owe a duty of care to borrowers under circumstances when they supply false information that buyers rely on, even when the loan company hired the appraiser. Therefore, summary judgment is not appropriate to squash third party beneficiary claims by borrowers against appraisers.

Respectfully submitted this 17th day of November, 2017,

DAVID J. WINTERTON & ASSOCIATES, LTD.

By: /s/ David J. Winterton
David J. Winterton, Esq.
Nevada Bar No. 4142
1140 No. Town Center Drive, Suite 120
Las Vegas, Nevada 89144
Attorneys for Plaintiffs

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of David J. Winterton & Associates
and that on the 17th day of November, 2017, I served a true and correct copy of the foregoing
Opposition to Motion for Summary Judgment addressed as follows:

Eric Tran, Esq.
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
Nevada Bar N. 011876
9900 Covington Cross Drive, Ste. 120
Las Vegas, Nevada 89144



Employee of DAVID J. WINTERTON & ASSOC., LTD.

EXHIBIT A

DAVID J. WINTERTON & ASSOCIATES, LTD
1140 No. Town Center Drive, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 363-0317

AFF

DAVID J. WINTERTON, ESQ.
Nevada Bar No. 004142
DAVID J. WINTERTON & ASSOCIATES, LTD.
1140 N. Town Center Drive, Suite 120
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Phone: (702) 363-0317
Facsimile: (702) 363-1630
david@davidwinterton.com
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES A. BOESIGER, an individual,
MARIA S. BOESIGER, an individual,

Plaintiffs,

vs.

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI through XX,
inclusive

Defendants.

Case No. A-15-725567-C
Dept. No. 24

Date: December 5, 2017
Time: 9:00 a.m.

[Arbitration Exempt]

**AFFIDAVIT IN SUPPORT OF THE PLAINTIFF'S OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT**

STATE OF NEVADA)

COUNTY OF CLARK)

1. I am one of the homeowners of 5015 Adrian Fog Avenue, Las Vegas, Nevada 89141. I am over the age of eighteen (18) and I am competent to testify. I have personal knowledge to testify to the facts contained herein.
2. On September 26, 2013, I entered into a Purchase Agreement with my husband, James A. Boesiger, to purchase a house at 5015 Adrian Fog Avenue, Las Vegas, Nevada 89141 for \$337,000.

3. The offer was expressly contingent on us obtaining a loan in the amount of \$325,205 from the lender, Guild Mortgage.
4. I relied on the appraisal report ordered by Guild Mortgage to determine the home was worth the offer price.
5. I believe I would not have qualified for the loan amount and met the contingency of the sale but for the appraisal report affirming the valuation met or exceeded the purchase price.
6. Approximately one year after we purchased the home, we tried to refinance for lower monthly payments. We were previously advised by the mortgage company that we would probably have enough equity in one year to refinance the loan from the existing FHA loan to a less expensive conventional loan.
7. While we were trying to refinance, Guild Mortgage sent Travis Gliko to appraise our home for the refinance application.
8. I alone was present on the day Travis Gliko came to my house for the second appraisal. I did not see him take any measurements when he came for the second appraisal.
9. On the day Travis Gliko came to do the second appraisal, I was the only person at my house, 5015 Adrian Fog Avenue. My husband was not at the house. Rather, my husband was working at the urgent care for a shift from 8:00 am to 9:00 pm. To the best of my knowledge, my husband never interacted or communicate with Mr. Gliko prior to the proceedings commencing in this case.
10. After Mr. Gliko's visit for the second appraisal, Becca Green, the woman in charge of my loan at Guild Mortgage, called me to follow up.
11. Ms. Green from Guild Mortgage told me by phone that she had good news and bad news. She said the bad news is the property did not go up enough in value for you to get a conventional loan. The good news is the appraiser felt bad and he's not going to charge you the fee forth appraisal, which normally costs \$450.

12. In response, I asked Ms. Green how it was possible the home had not increased in value when the builder had raised prices over the year and the neighboring property values had gone up over the year. She replied she didn't know.

13. Subsequently, the Clark County tax assessment on my home led to the discovery that the actual square footage of the house was significantly smaller than the amount listed in the assessor's record at the time I purchased the house. It was subsequently revised by the county to reflect the true square footage.

14. The appraiser from Clark County came to my house and said it was the wrong model and not the one they have on file. He looked very confused by it. Clark County has since changed the assessment to reflect the lower square footage.

15. I was unable to refinance my house and qualify for a less expensive conventional loan because of the overvaluation of the house in the initial appraisal by Travis Gliko before I finalized the purchase of my home.

Affiant Saith Nothing further

I swear under penalty of perjury under the laws of the state of Nevada that the above information is true and correct.


Maria S. Boesiger, Plaintiff

SUBSCRIBED and SWORN to before me
this 17 day of November 2017.


NOTARY PUBLIC

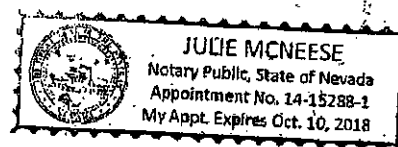


EXHIBIT B

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DISTRICT COURT

CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an)
individual; MARIA S. BOESIGER, an)
individual,)

Plaintiffs,)

vs.)

CASE NO. A-15-725567-C
DEPT NO. IX

DESERT APPRAISALS, LLC, a Nevada)
limited liability company; TRAVIS)
T. GLIKO, an individual; DOES)
I-X, inclusive; ROE CORPORATIONS)
XI-XX, inclusive,)

Defendants.)

**CONDENSED
TRANSCRIPT**

DEPOSITION OF TRAVIS GLIKO

Taken on Wednesday, October 4, 2017

At 1:30 p.m.

At David J. Winterton & Associates, LTD

1140 N Town Center Drive

Suite 120

Las Vegas, Nevada

REPORTED BY: SHIFRA MOSCOVITZ, CCR NO. 938

Travis Gliko ~ October 4, 2017

2 (Pages 2 to 5)

Page 2		Page 4	
1	APPEARANCES:	1	LAS VEGAS, NEVADA; OCTOBER 4, 2017
2	For James A. Boesiger and Maria S. Boesiger:	2	1:30 P.M.
3	DAVID WINTERTON, ESQ.	3	-oOo-
4	DAVID J. WINTERTON & ASSOCIATES, LTD	4	(NRCF Rule 30(b)(4) waived by the parties prior to the
5	1140 N Town Center Drive	5	commencement of the deposition.)
6	Suite 120	6	(FRCP Rule 30(b)(5) waived by the parties prior to the
7	Las Vegas, Nevada 89144	7	commencement of the deposition.)
8	(702)363-0317	8	Thereupon--
9	For Travis Gliko:	9	TRAVIS GLIKO,
10	ERIC N. TRAN, ESQ.	10	was called as a witness, and having been first duly sworn,
11	LIPSON NELSON COLE SELTZER & GARIN, P.C.	11	was examined and testified as follows:
12	9900 Covington Cross Drive	12	EXAMINATION
13	Suite 120	13	BY MR. WINTERTON:
14	Las Vegas, Nevada 89144	14	Q. Okay. Could you state your name for the
15	(702)382-1500	15	record?
16		16	A. Travis Gliko.
17		17	Q. What is your business address?
18		18	A. 2595 East Chandler, Suite 17, Las Vegas,
19		19	Nevada 89120.
20		20	Q. And what I would like to do is first off,
21		21	have you ever had your deposition taken before?
22		22	A. No.
23		23	Q. What I will do is let me go through some
24		24	of the instructions or the rules and go with the
25		25	deposition. First off, you were given an oath by
Page 3		Page 5	
1	EXAMINATION	1	the court reporter. That oath is the same oath that
2	WITNESS:	2	is given in the courtroom of law. So you are bound
3	Travis Gliko	3	by the same rules of perjury and being truthful and
4		4	honest as if you were in a courtroom of law. The
5	Examination by	5	seconds thing is, as you notice she is taking
6	Mr. Winterton	6	everything down. So it's important that only one
7		7	person speaks at a time. So I will try to wait
8		8	until you finish your answer and then I will ask the
9		9	next question, wait until I finish the question. If
10	EXHIBITS	10	at any point in time your attorney raises an
11	EXHIBIT	11	objection, stop speaking and let him put his
12	1 Residential Purchase Agreement	12	objection on the record. That way one person is
13	2 Appraisal	13	speaking at a time.
14	3 Comparables	14	A. Okay.
15	4 Comparables	15	Q. Then, follow his direction whether or not
16	5 Comparables	16	if he objects, he may tell you, you have to respond
17	6 Comparables	17	or not respond.
18	7 Comparables	18	A. Okay.
19	8 Comparables	19	Q. You are doing a good job because you need
20	9 Comparables	20	to answer audibly. If you shake your head yes or
21	10 Comparables	21	no, obviously, she can't put it down?
22	11 Appraisal	22	A. Correct, yes.
23	12 Appraisal	23	Q. Also, if you do not hear a question or
24		24	understand a question, please ask me to repeat it?
25		25	A. Okay.

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<p style="text-align: right;">Page 6</p> <p>1 Q. Otherwise it will be assumed you heard and 2 understand it. If at any point in time you want to 3 take a break, you can take a break, but if there is 4 a question pending, we would ask, you know, let's at 5 least get through the question. Okay. The other 6 thing too is after the deposition you will have an 7 opportunity to review the deposition. If you make 8 any changes or comments then we have a right to 9 comment about those changes that you make? 10 A. Okay. 11 Q. Any questions? 12 A. No. 13 Q. A couple of questions that I am going to 14 ask, we ask all the deponents this, so I don't mean 15 to be personal, but are you on any medication that 16 would affect your ability to give clear and concise 17 answers to the questions? 18 A. No. 19 Q. Number two, have you ever committed a 20 felony? 21 A. No. 22 Q. And I didn't think you would because you 23 wouldn't have a license? 24 A. Right. 25 Q. Okay. I wonder if I could get a little</p>	<p style="text-align: right;">Page 8</p> <p>1 opportunity than in Montana for employment. 2 Q. Any college experience? 3 A. Just one year. 4 Q. Where did you go to college, oh, that was 5 the Montana State? 6 A. Yes. 7 Q. Okay. When you got here what was your 8 employment history since you came to Vegas? 9 A. Let's see, I worked for a credit card 10 company just for a little household bank, just for a 11 few months, and then I wanted to get in the mortgage 12 business. My brother-in-law was a loan officer and 13 so I was his assistant for a while, for just a 14 while. He kind of showed me the ropes and then I 15 went to work for a company called Freedom Mortgage 16 Company, as a loan officer, for about a 17 year-and-a-half. And then about '95, let's see, I 18 am sorry, I worked there for about a year-and-a-half 19 or so and then in '97 is when I got into the 20 appraisal business. 21 Q. Just as it started getting busy? 22 A. That's right. 23 Q. Okay. Who did you work for when you 24 started getting involved? 25 A. Regional Appraisal Services.</p>
<p style="text-align: right;">Page 7</p> <p>1 bit about your educational background, where you 2 went to high school? 3 A. Correct. 4 Q. Where did you go? 5 A. Belt High School in Belt, Montana. 6 Q. Oh wow, where is that? 7 A. It's central, it's about 20 miles north of 8 Great Falls, 9 Q. Up towards the Canadian border? 10 A. Ycs. 11 Q. After high school, where did you go to 12 school? 13 A. Eastern Montana College, which is now 14 Montana State University Billings, I went for one 15 year. 16 Q. Where did you go after that? 17 A. After that, I stayed there for a little 18 while and then I came down to Vegas. 19 Q. Okay. What year did you come to Las 20 Vegas? 21 A. Ninety-four, late '94. 22 Q. Okay. Why did you come to Las Vegas? 23 A. My older sister lived here. 24 Q. Was it for employment? 25 A. Yes, I just wanted a little more</p>	<p style="text-align: right;">Page 9</p> <p>1 Q. Are they a local company? 2 A. Yes, they are no longer operating. 3 Q. After Regional Appraisals, how long were 4 you there? 5 A. I was there for about seven years. 6 Q. And where did you go after that? 7 A. I started my own company. 8 Q. Okay. What is the name of the company? 9 A. Legacy Appraisals. 10 Q. And what happened at Legacy Appraisals? 11 A. I just got so busy doing it by myself, so 12 I trained a gentleman working at Regional. He 13 actually started his company before me and he was 14 extremely busy at the time, so we decided to become 15 partners and start Desert Appraisals, which is now 16 our company. 17 Q. Who is your partner? 18 A. Steven Protheroe. 19 Q. How do you spell that? 20 A. P-R-O-T-H-E-R-O-E. 21 Q. When did you start Desert Appraisals? 22 A. '06. 23 Q. So you weathered the storm? 24 A. We did, we did. 25 Q. What type of licenses do you hold,</p>

Page 10	Page 12
<p>1 probably a driver's license, but that doesn't count?</p> <p>2 A. Certified residential appraiser.</p> <p>3 Q. Any other certifications?</p> <p>4 A. No.</p> <p>5 Q. Who sponsors the certified residential?</p> <p>6 A. State of Nevada.</p> <p>7 Q. Do you have to take classes to keep?</p> <p>8 A. Every two years, 30 hours and I have to</p> <p>9 apply for a new license every two years.</p> <p>10 Q. Worse than attorneys?</p> <p>11 A. Yes, a lot of education that we have to</p> <p>12 take.</p> <p>13 Q. Okay. How did you get hooked up to do</p> <p>14 work for Guild Mortgage?</p> <p>15 A. Through an appraisal management company</p> <p>16 called Solidifi.</p> <p>17 Q. Okay. How are you affiliated or know of</p> <p>18 Solidifi?</p> <p>19 A. Well, we kind of, right after the crash we</p> <p>20 could no longer have dealings directly with mortgage</p> <p>21 companies. So all these appraisal management</p> <p>22 companies came into play. So we had to just apply</p> <p>23 online and kind of just hope that we got on their</p> <p>24 panel. And we are on a lot of them. Over the years</p> <p>25 we have accumulated quite a few AMC's that we are a</p>	<p>1 Mortgage?</p> <p>2 A. No.</p> <p>3 Q. How do you know who to give it to?</p> <p>4 A. The contact for?</p> <p>5 Q. When the appraisal is done, you give to</p> <p>6 Solidifi?</p> <p>7 A. I give to Solidifi, everything is directed</p> <p>8 to Solidifi.</p> <p>9 Q. And does Solidifi, they get their</p> <p>10 information from Guild?</p> <p>11 A. They get all the information, the</p> <p>12 contract, everything from Guild, and then they send</p> <p>13 it directly to me.</p> <p>14 Q. So you got this purchase agreement and you</p> <p>15 were told to do an appraisal?</p> <p>16 A. Correct.</p> <p>17 Q. Do you have a set price that you deal with</p> <p>18 when you deal with Solidifi?</p> <p>19 A. It varies on the property, depending if</p> <p>20 it's, things likes that.</p> <p>21 Q. And in 2013 what would be a charge for</p> <p>22 this, if you know?</p> <p>23 A. I don't recall, they are probably \$300.</p> <p>24 Q. And what else do you receive beyond this</p> <p>25 residential purchase agreement?</p>
Page 11	Page 13
<p>1 part of so they send us the work. You are put on a</p> <p>2 rotation as an appraiser when you are dealing with</p> <p>3 an appraisal management company.</p> <p>4 Q. I would like to go ahead and mark this as</p> <p>5 Exhibit Number 1.</p> <p>6 (Exhibit 1 was marked for</p> <p>7 identification.)</p> <p>8 What this case is about, it deals</p> <p>9 with a piece of property at 5015 Adrian Fog Avenue,</p> <p>10 have you seen this residential purchase agreement?</p> <p>11 A. Yes, I have.</p> <p>12 Q. Now, when you did your appraisal, strike.</p> <p>13 How did you come about to do the appraisal for this</p> <p>14 property?</p> <p>15 A. Solidifi contacted me and wanted me to go</p> <p>16 out and do the appraisal.</p> <p>17 Q. Who contacted you at Solidifi, do you</p> <p>18 know?</p> <p>19 A. It's just done through e-mail, we have,</p> <p>20 it's just a random, it's not anybody in particular.</p> <p>21 Q. Okay. So Guild gets hold of Solidifi,</p> <p>22 they then get hold of you?</p> <p>23 A. Correct.</p> <p>24 Q. And after you get the notice, do you have</p> <p>25 a contact person that you speak to at Guild.</p>	<p>1 A. An engagement letter, showing the mortgage</p> <p>2 company's name, the buyer's name, the seller's name,</p> <p>3 just basically the information about the property,</p> <p>4 the address, things like that.</p> <p>5 Q. And who sends that, Solidifi?</p> <p>6 A. Yes, correct.</p> <p>7 Q. Now who pays you?</p> <p>8 A. Solidifi.</p> <p>9 Q. Now, when did you this appraisal, you got</p> <p>10 the packet from Solidifi, what did you do next?</p> <p>11 A. I then contacted, actually, yes, I</p> <p>12 contacted, this was vacant at the time. So I</p> <p>13 contacted the real estate agent, which was the</p> <p>14 contact on the engagement letter, and then went out</p> <p>15 to the property, I believe the property was on lock</p> <p>16 box.</p> <p>17 Q. To the best of your knowledge, it's got a</p> <p>18 lock box, you went out to look at it, what did you</p> <p>19 do when you went out to look at it?</p> <p>20 A. When I went to look at the property first</p> <p>21 thing I do is I pull up, I take a pictures of the</p> <p>22 front of the property, I start making a sketch of</p> <p>23 the property, and start measuring the outside.</p> <p>24 Q. Okay. And do you attach your sketches or</p> <p>25 your drawings?</p>

<p style="text-align: right;">Page 14</p> <p>1 A. Absolutely. 2 Q. Okay. So you attach it to your appraisal? 3 A. Yes, I do. 4 Q. Then after, what else do you do at the 5 property, besides measure, take pictures? 6 A. Measure, take pictures of all the rooms, 7 take notes. This was an FHA, so therefore I have to 8 do a little more inspecting, I have to go up to the 9 attic, take a picture of the attic. We call them 10 scuttle, take pictures of that, any external 11 obsolescence, which was the power lines that were 12 there behind, I took a pictures of that, just take 13 note of any upgrades, any features. That way I can 14 go back to the office and incorporate that all into 15 my appraisal. 16 Q. Okay. What I am going to do is, we will 17 mark this as Exhibit Number 2, which is the 18 appraisal. You are shaking your head? 19 (Exhibit 2 was marked for 20 identification.) 21 A. This is not the full appraisal. 22 Q. This was is what was given to you, so is 23 there further documentation? 24 A. Yes, there is. 25 Q. Did you give the full documentation to</p>	<p style="text-align: right;">Page 16</p> <p>1 A. Correct, yes. 2 Q. You put it down for Guild Mortgage, 3 correct? 4 A. Yes. 5 Q. Do you know, was Guild Mortgage paying for 6 it or do you know? 7 A. That's up to them, but I get paid from the 8 AMC, so I don't know if they have it with them. 9 Q. Do you actually sign a contract with AMC? 10 A. No. 11 Q. Do you sign a contract with anybody? 12 A. No. 13 Q. Let's go ahead and let's go over this 14 appraisal a little bit? 15 A. Okay. 16 Q. So you have got here, you have got the 17 potential borrower. So you knew this was for a FHA 18 loan going in? 19 A. Correct. 20 Q. Did you know how much money they were 21 seeking to obtain for the loan? 22 A. No. 23 Q. How do you get the assessor's parcel 24 number? 25 A. From the assessor, from the assessor's</p>
<p style="text-align: right;">Page 15</p> <p>1 your attorney? 2 A. Yes, I believe so. 3 MR. TRAN: What is missing? 4 A. The pictures, the sketch. 5 MR. TRAN: It's all part of our initial 6 disclosure. Yes, it's disclosed as part of our 7 initial disclosures, you don't have it here, 8 David, and it's in your initial disclosures. 9 MR. WINTERTON: Okay. I will take a 10 minute and pull that out. 11 MR. TRAN: Sure. 12 MR. WINTERTON: This is what you had 13 given? 14 MR. TRAN: That's what I used for my 15 deposition, that doesn't mean that... 16 MR. WINTERTON: So you didn't use the full 17 appraisal for the deposition? 18 MR. TRAN: I don't remember what I used 19 now, but this is. I may have just used the 20 relevant portion that I was going to ask about. 21 Q. Well, we will get, we will pull up the 22 full copy then. But at least we will go through 23 this for right now. Okay. This report, you put the 24 address on the first page, so that's what you are 25 looking at, first page?</p>	<p style="text-align: right;">Page 17</p> <p>1 website. 2 Q. Okay. And it's the assessor's website, do 3 they have a floor plan there? 4 A. No. 5 Q. Now, here it says that the subject was 6 listed for 353,000 as of 5/14/2014. How did you 7 know that? 8 A. Because that's on the MLS data, Multiple 9 Listing Of Greater Las Vegas. 10 Q. So you got on the MLS? 11 A. Yes, that's how I find out most of my 12 information. 13 Q. Okay. 14 A. And the comps and everything. 15 Q. And you then you found out that it was 16 reduced down to 343? 17 A. Correct, there is a history, when you go 18 down to the MLS on each property showing the 19 history. 20 Q. And it says the subject is currently in 21 contingent status as of 9/27/13, do you know what 22 the contingency is? 23 A. No, it was just says contingent status on 24 there. 25 Q. And it says here, I did analyze the</p>

<p style="text-align: right;">Page 18</p> <p>1 contract for sale for the subject purchase 2 transaction, explain the results and analyst of the 3 contract for sale or why the analyst was not 4 performed. So it says arm length sale, analyst of 5 the contract of sale revealed a sale price of 337, 6 which was agreed upon. The contract revealed no 7 sale contribution toward the borrower's closing 8 costs? 9 A. Yes. 10 Q. So you knew they were trying to do no 11 money down and be subject? 12 A. I don't deal at all with the money down or 13 anything like that. With the mortgage company you 14 mean? 15 Q. Yes. 16 A. That doesn't have anything to do with me. 17 MR. TRAN: I am going to object, calls for 18 speculation, misleads the testimony, lacks 19 foundation. 20 Q. Where did you get this part of the, I see 21 the seller wasn't going to contribute. The market 22 condition you are saying that was strong? 23 A. Correct. 24 Q. Okay. Let's go down towards the bottom, 25 and it says here, the subject is considered to be of</p>	<p style="text-align: right;">Page 20</p> <p>1 assessor's record and the MLS listing. 2 Q. Say that again? 3 A. Square footage of the MLS and the 4 assessor's record. 5 Q. Was the MLS and the assessor's record 6 matched? 7 A. Yes, they matched. 8 Q. Now, it talks about the subject. Okay, I 9 am going to go over to the next page, and I am going 10 to go to, well, let me go through the subject 11 property, so the sale price was \$337,000? 12 MR. TRAN: Where are you at right now? 13 MR. WINTERTON: On the third page, 14 subject, turn the page, there you go, at the 15 top. 16 Q. And so you type in the square footage? 17 A. My sketch program. 18 Q. Or the price? 19 A. Oh, the price, yes, that carries over from 20 Page 1. 21 Q. Right. Oh, so your program just 22 automatically dumps in there? 23 A. Yes. 24 Q. And then the sales price or excuse me, you 25 have the sales price, gross living area?</p>
<p style="text-align: right;">Page 19</p> <p>1 ample quality construction, no functional 2 inadequacies observed at the time of the inspection 3 except to any item that may be noted with the 4 supplemental addendum. I am going to skip over and 5 it says the floor plan is adequate. So what did you 6 do to determine the floor plan was adequate? 7 A. I inspected it. 8 Q. So you walked through the place? 9 A. Correct. 10 Q. Did you ever see any pictures, diagrams, 11 of the floor plan at all? 12 A. I took out a builders floor plan when I 13 went out to the property, and that's when I realized 14 it was incorrect square footage, when walking the 15 property. 16 Q. So where did you get the builders floor 17 plan? 18 A. From American West website. 19 Q. Okay. Do you recall the name of that 20 floor plan? 21 A. No, I don't go off of names, I go off of 22 square footage. 23 Q. How do you know what floor plan to look 24 for? 25 A. Because of the square footage on the</p>	<p style="text-align: right;">Page 21</p> <p>1 A. Yes. 2 Q. It's \$112.26 per square foot? 3 A. Correct. 4 Q. Okay. And here you have got the sides, 5 it's 4,356 square feet? 6 A. Correct. 7 Q. And you put down there that the gross 8 living area is 3,002? 9 A. Correct. 10 Q. And how did you calculate the 3,002? 11 A. From my sketch, from my measurements and 12 my sketch when I was out of the property. 13 Q. So your measurement, how do you measure 14 the outside? 15 A. With a tape, clip board, tape. I 16 literally draw it out when I don't have a builder 17 floor plan, I draw out every house by hand and I 18 sketch it, I will throw my tape down and walk the 19 walls and everything. 20 Q. Okay. And you go all the way around the 21 house? 22 A. Yes. 23 Q. Okay. Then, how do you figure the gross 24 living area? 25 A. That's automatically, that's in our sketch</p>

1 program so each floor is, I don't have a copy of my
2 sketch here.
3 Q. Now, let's go farther down, and it talks
4 about summary of sales comparisons approach, and you
5 said the subjects' design size, age, and maintenance
6 level is compatible with the neighborhood?
7 A. Correct.
8 Q. And why did you say that?
9 A. Because it is.
10 Q. Okay. A lot of other models, same models
11 out there?
12 A. Yes, well that -- no, the subject design
13 site and maintenance level is compatible with the
14 whole neighborhood, as they are all built by the
15 same builder. They maintain the similar, have
16 similar building materials, things like that.
17 Q. Now, it says the close sales display in
18 the analyst were considered to be the most
19 comparable to the subject and the best indicator of
20 value for the subject?
21 A. Correct.
22 Q. So you are saying that the comparisons
23 that we are going to go through were the most
24 compatible that you can find?
25 A. They were the most comparable at the time

1 of inspection, correct, that were available to me
2 through the market.
3 Q. They are considered reasonable purchase
4 alternatives, what does that mean, I know what it
5 means, but just for the record, I want to have it
6 clear?
7 A. That if a buyer was looking in that
8 neighborhood and they were looking around for a
9 similar size home they would probably be looking at
10 that, maybe different floor plans. When somebody
11 goes to a builder they look at all the floor plans
12 and they decide which one they like. They are
13 usually very comparable.
14 Q. Now, I am skipping down a little bit, it
15 say dollars amounts are estimated reflecting the
16 market reaction to the difference in the product,
17 not necessarily the cost of the difference. I
18 wonder if you could explain that?
19 A. Absolutely, the cost of, let's say, a
20 patio or a pool does not necessarily reflect how
21 much the market reacts to that dollar figure. So if
22 you are putting in a \$70,000 pool, you might get
23 \$20,000 for that. Just depends on what homes are
24 selling for with and without that particular item.
25 So you look at what the market is reacting to that

1 particular item, and not the cost.
2 Q. Now, farther down it says in estimating
3 market value each comparable was given equal
4 consideration after the market recognized the
5 adjustments were made. I wonder if you can explain
6 what that means?
7 A. That means, after all my adjustments on my
8 grid, I take a look at what those values are coming
9 in at and I take each one into consideration, and
10 that's how I come up with my value.
11 Q. Okay. Now, here, you have three
12 approaches you can take and you just used the cost
13 approach and market comparison?
14 A. Correct.
15 Q. Okay. And what did you determine was the
16 sales comparison?
17 A. I am sorry, I don't understand?
18 Q. What was the value that you determined?
19 A. \$340,000.
20 Q. And the cost approach, you said is 378?
21 A. Right.
22 Q. What would make the difference?
23 A. That was just with what they had for
24 upgrades, what it would cost to build that property,
25 if you were to rebuild it exactly the way it sits

1 and where we get that figure from is the Marshall
2 and Swift Residential Cost handbook. So the
3 building material sometimes, it costs a little bit
4 more.
5 Q. Now, let's go over to the next page, and
6 this is where you broke it down a little bit, of the
7 cost approach?
8 A. Correct.
9 Q. Okay. And you are saying the lot is worth
10 \$350,000?
11 A. Correct.
12 Q. How did you come up with that figure?
13 A. By using the abstraction method, which
14 means once I come up with all my figures here, I
15 usually subtract what I think the cost of the lot
16 would be to what the building materials are
17 together.
18 Q. I am not sure I understand that?
19 A. Well, so you come up with a figure and
20 then usually the difference is the lot. So the
21 difference of all my figures here is going to be the
22 difference of the lot and it's usually a rough
23 estimate, it's not an exact estimate.
24 Q. Let me see if I understand right. So for
25 example you say it's 3,002 square feet?

1 A. Right.
2 Q. And then you go with \$89.56 to build it?
3 A. Right.
4 Q. How did you come with the \$89.56?
5 A. Through the Marshall and Swift Cost
6 handbook.
7 Q. And then you come up with 268?
8 A. Yes.
9 Q. How do you determine the lot value?
10 A. That is determined through the abstract
11 method, which is the total gross amount that you are
12 coming up with, the figures that you have, and
13 estimating to build the property, what the market
14 value of the other properties are and you subtract
15 that, and that's what usually gives you your lot.
16 Q. So you actually come up with a bottom
17 figure, 378,298, subtract what the cost to build is
18 and that's how you determine, I am trying to see if
19 I understand?
20 A. Yes, it's done through the, I would have
21 to look at my figures to see what I did on this one,
22 but the abstraction method just means you are using
23 the sales in the neighborhood and what it costs to
24 build this, and you are subtracting the sales price
25 as to what it costs to build it.

1 Q. So you are using, that's almost like a
2 mixture of market comparison and the cost?
3 MR. TRAN: Objection, misstates the
4 testimony. Go ahead and answer.
5 A. No, it's not because it's broken down.
6 The land value is completely separate from the
7 building costs.
8 Q. I am trying to figure out how you come up
9 with 378. For example, okay, I can see that it's
10 3,002 square feet and you estimate the cost because
11 of your program to be \$89.56?
12 A. Right. Well, the 89.56 is not due to my
13 program, it's due to my figure from my cost handbook
14 there.
15 Q. Right, from your cost handbook?
16 A. Yes.
17 Q. So then you come up with a cost, now, your
18 handbook, does that handbook say this is what the
19 cost is right now?
20 A. Yes.
21 Q. In Las Vegas?
22 A. Yes, you have to keep updating it.
23 Q. And how did you, I guess, I am trying to
24 understand how you came up with \$50,000?
25 A. Okay. A lot of times when you use an

1 abstract method, it's because of your experience in
2 the area of what you come up with on other
3 properties. And that particular area in that lot
4 square footage was determining the 50,000 lot value.
5 Q. Then you calculate what the build-ins, the
6 costs of the garage?
7 A. Correct.
8 Q. How did you come up with the depreciation,
9 how does that work?
10 A. That automatically comes in and 1.07 is
11 the cost multiplier that we use for the handbook.
12 In the handbook it comes with it, and that's how you
13 put it in the numbers, and it comes up, so it's a
14 program.
15 Q. Okay. We will turn over, I guess, at the
16 very bottom, it says DA and number 72, and is that
17 your signature?
18 A. Yes, it is.
19 Q. Okay. Now, I am going to go over some of
20 your comps. What is the appraiser ruling or
21 guideline, if I use that word to determine your
22 comparables?
23 (Exhibit 3 was marked for
24 identification.)
25 A. What I see best fits that compares most

1 similar to the subject property that the market data
2 obtains at that time of inspection.
3 Q. And you are also suppose to stay as close
4 as you can to the same neighborhood?
5 A. Yes, there is no rule saying you can't go
6 as far as you want.
7 Q. Correct, but the standard says?
8 A. There is no appraisal standard in use
9 path, there is no appraisal standard saying we can
10 use comps as far away, but lender might have
11 guidelines, but it does not state, there is no
12 standard saying you have to have comps within a
13 certain distance.
14 Q. It doesn't say certain distance, but as
15 close to the neighborhood?
16 A. Close to the neighborhood, who says that?
17 Q. FHA, they say that?
18 A. Yes, there are certain guidelines.
19 Q. Okay. And this one was an FHA?
20 A. Right.
21 Q. Okay.
22 A. FHA states that you should try to find
23 comps as close as you can, but it doesn't say you
24 have to have comps.
25 Q. Okay. Once you agree that the closer it

<p style="text-align: right;">Page 30</p> <p>1 is the fewer adjustments you would have to make?</p> <p>2 A. It depends.</p> <p>3 Q. And what do you mean by it depends?</p> <p>4 A. Because we will take a perfect example of</p> <p>5 this subject property was a formal model home, there</p> <p>6 was not a lot of comps that had that many upgrades</p> <p>7 directly there. Also, this is a very new</p> <p>8 subdivision with very limited data at the time.</p> <p>9 Q. Okay. Now, since it was a new</p> <p>10 subdivision, did the builder have other models still</p> <p>11 on the market?</p> <p>12 A. Yes, they did.</p> <p>13 Q. Okay. Why didn't you use one of those as</p> <p>14 a comparison?</p> <p>15 A. I did.</p> <p>16 Q. You did?</p> <p>17 A. Sure did.</p> <p>18 Q. Okay. Do you know what the models were</p> <p>19 going for?</p> <p>20 A. No, I don't.</p> <p>21 Q. Okay.</p> <p>22 A. Number one, it doesn't matter what the</p> <p>23 models are going for because that's a base price.</p> <p>24 You have to see, that's a starting point, what they</p> <p>25 are selling for. That's not including all the</p>	<p style="text-align: right;">Page 32</p> <p>1 Q. Correct. And here it talks, this one, the</p> <p>2 original property was that a two-story or a</p> <p>3 three-story?</p> <p>4 A. The subject property, it's a three-story.</p> <p>5 Q. And so you found another three-story?</p> <p>6 A. Correct.</p> <p>7 Q. Okay. And do you know what neighborhood</p> <p>8 this one was in?</p> <p>9 (Exhibit 4 was marked for</p> <p>10 identification.)</p> <p>11 A. It's in the subject neighborhood.</p> <p>12 Q. Okay. And I would like to have you turn</p> <p>13 to Page 3 of Exhibit 4, have you seen this before?</p> <p>14 A. No.</p> <p>15 Q. Do you know what this is?</p> <p>16 A. I would have to review it to see what it</p> <p>17 is.</p> <p>18 Q. These are a list of all the sales that</p> <p>19 took place at the same time that this appraisal was</p> <p>20 taken place?</p> <p>21 A. Okay.</p> <p>22 Q. So why did you end up picking Tulip Hill</p> <p>23 Avenue?</p> <p>24 A. Because I felt that was one of the most</p> <p>25 comparable ones that I had available to apply data.</p>
<p style="text-align: right;">Page 31</p> <p>1 upgrades that they have inside, you pick those, then</p> <p>2 determine the value.</p> <p>3 Q. So wouldn't that be a good one to go ahead</p> <p>4 and say, this is a base price, then do adjustments</p> <p>5 based upon upgrades?</p> <p>6 MR. TRAN: Objection, argumentative.</p> <p>7 A. No.</p> <p>8 Q. You don't think so?</p> <p>9 A. No.</p> <p>10 Q. Okay. Does this document number three,</p> <p>11 look familiar?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And this shows where you got the</p> <p>14 various comparisons?</p> <p>15 A. Correct.</p> <p>16 Q. Okay. What I would like to do is go</p> <p>17 through some of these comparisons, if I could.</p> <p>18 Okay. Does this one look familiar, I think this is</p> <p>19 just comp number one?</p> <p>20 A. Yes, as far as the address, yes.</p> <p>21 Q. Okay. And this is a printout from the</p> <p>22 records of the assessor's office?</p> <p>23 A. This is from the website. We use</p> <p>24 different information than this, it's just a</p> <p>25 different format.</p>	<p style="text-align: right;">Page 33</p> <p>1 This, okay, I have a printout of all the builder</p> <p>2 sales inside the subdivision in my work file.</p> <p>3 Q. Okay.</p> <p>4 A. I don't know if it is or not, I don't know</p> <p>5 what this is, we don't go off of this particular</p> <p>6 information. This has no information, it has no</p> <p>7 square footage, it has no lot size. So all it has</p> <p>8 is just the sales price and the sale date. That's</p> <p>9 why we don't go off of that, it has no data, except</p> <p>10 for the sales price and sale date.</p> <p>11 Q. We know what these properties are because</p> <p>12 my client, that's because she lives in the</p> <p>13 neighborhood?</p> <p>14 MR. TRAN: Objection, argumentative.</p> <p>15 Q. And so with that, she would know which</p> <p>16 ones are comparable to hers?</p> <p>17 MR. TRAN: Objection, lacks foundation.</p> <p>18 Q. So with that being said, why did you think</p> <p>19 that this Tulip Hill Avenue was the most comparable?</p> <p>20 A. Let me take a look here. Because it was</p> <p>21 most similar in size, and it was the three-story, as</p> <p>22 the subject was.</p> <p>23 Q. Do you know if it was the same model?</p> <p>24 A. And it also has similar externals as the</p> <p>25 subject.</p>

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<p>1 Q. So when you say that you are saying same</p> <p>2 model?</p> <p>3 MR. TRAN: Objection. Vague as to the</p> <p>4 term model.</p> <p>5 A. No.</p> <p>6 Q. Do you know if this was the same model as</p> <p>7 the subject property?</p> <p>8 A. No, we don't go off the model, we go off</p> <p>9 of square footage.</p> <p>10 Q. How did you end up picking this one?</p> <p>11 A. Because when I researched all the</p> <p>12 comparables that have sold in the area and the</p> <p>13 neighborhood, I felt like this was a good comp to</p> <p>14 use.</p> <p>15 Q. Okay. Where do you get your information</p> <p>16 from the comparables?</p> <p>17 A. The MLS data, the greater Las Vegas</p> <p>18 Association Of MLS Data, and the assessor records,</p> <p>19 the assessor.</p> <p>20 (Exhibit 5 was marked for</p> <p>21 identification.)</p> <p>22 Q. So is the subject property in a gated</p> <p>23 community?</p> <p>24 A. No, it's not.</p> <p>25 Q. This one here is subject, comp for number</p>	<p>1 Q. What is the difference on that?</p> <p>2 A. One-story market reaction, one story tends</p> <p>3 to sell much higher than two stories.</p> <p>4 Q. And now this one is farther out?</p> <p>5 A. Still inside Highland Ranch.</p> <p>6 Q. What is Highland Ranch?</p> <p>7 A. That's where the subject is located.</p> <p>8 Q. So it's the same subdivision?</p> <p>9 A. Yes.</p> <p>10 Q. Same builder?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. And is it older, younger?</p> <p>13 A. Well, if you look at my appraisal it's one</p> <p>14 year older.</p> <p>15 Q. Okay. Why did you end up picking that?</p> <p>16 A. Because it was most similar to the</p> <p>17 subjects' interior upgrades.</p> <p>18 Q. So this was based upon the upgrades?</p> <p>19 A. Yes.</p> <p>20 (Exhibit 6 was marked for</p> <p>21 identification.)</p> <p>22 Q. Okay. Comp number three, now, that one is</p> <p>23 out of Highland Hills?</p> <p>24 A. Correct.</p> <p>25 Q. Why did you decide to go outside of</p>
Page 35	Page 37
<p>1 two, and now, from the assessor's, can you tell if</p> <p>2 it's a foreclosure property or not?</p> <p>3 A. Yes.</p> <p>4 Q. And how would you check?</p> <p>5 A. Because it says foreclosure on there.</p> <p>6 Q. How about the MLS?</p> <p>7 A. Yes.</p> <p>8 Q. Now, how many, this one is a two-story</p> <p>9 instead of a three-story?</p> <p>10 A. Yes.</p> <p>11 Q. But it's larger?</p> <p>12 A. Right.</p> <p>13 Q. Now, isn't it true, if it's a two-story,</p> <p>14 is it cheaper to build a three-story or a two-story?</p> <p>15 A. It doesn't matter what it costs to build,</p> <p>16 it matters what the market reaction to it is, and</p> <p>17 there was no market reaction between a two-story and</p> <p>18 three-story.</p> <p>19 Q. What about a two car garage or three car</p> <p>20 garage?</p> <p>21 A. Absolutely.</p> <p>22 Q. This one is more square feet?</p> <p>23 A. Which I adjusted for.</p> <p>24 Q. How about a one-story versus two-story?</p> <p>25 A. Yes, absolutely.</p>	<p>1 Highland Hills?</p> <p>2 A. Because there was not any comparable sales</p> <p>3 that I felt were similar to the subject inside and</p> <p>4 there was very limited data inside the subject</p> <p>5 subdivision. Therefore, knowing that the subject</p> <p>6 was a former model home and it was one of the</p> <p>7 highest upgraded properties in the area, I had to go</p> <p>8 out there to find something similar in size, it was,</p> <p>9 that I felt was similar to the subject.</p> <p>10 Q. So you got two of them that are in the</p> <p>11 same, three and five are in the same area?</p> <p>12 A. Yes.</p> <p>13 Q. And is this one on a busier street, not</p> <p>14 busier street, do you remember?</p> <p>15 A. Busier street, no.</p> <p>16 MR. TRAN: Objection, vague.</p> <p>17 Q. Is this one a gated community or not</p> <p>18 gated?</p> <p>19 A. I do not know, I would have to look and</p> <p>20 see. I believe it is, actually, I don't know, I</p> <p>21 don't know.</p> <p>22 Q. Okay. And why did you chose comp number</p> <p>23 three?</p> <p>24 A. As I stated before, it was very similar in</p> <p>25 size to the subject, and it had, it was a recent</p>

<p style="text-align: right;">Page 38</p> <p>1 sale, it was similar in size, and it had a most 2 close interior upgrade as the subject that I can 3 find, interior and exterior. 4 Q. Now, the subject property, did you, you 5 walked inside the subject property? 6 A. Yes. 7 Q. Okay. 8 A. And took several notes. 9 (Exhibit 7 was marked for 10 identification.) 11 Q. Okay. Comp number five, this is also out 12 of Highland Hills? 13 A. Correct. 14 MR. TRAN: Give me one second. 15 Q. Why did you pick this one? 16 A. Similar reason, I didn't pick three, I was 17 trying to find comps most similar to the subject 18 because the subject was highly upgraded, being that 19 it was a former model home. 20 Q. So the upgrades is what we are looking at? 21 A. Absolutely. 22 Q. If you could turn to the last page, and 23 there is a couple of comps here, maybe you didn't 24 even know about? 25 MR. TRAN: What page are we at now?</p>	<p style="text-align: right;">Page 40</p> <p>1 find, if I can't find anything comparable you start 2 going outside. 3 Q. So for example, if you were going to do an 4 appraisal today on this property, what would be the 5 parameter you would look at? 6 A. Well, first I would take a look at the, I 7 start off with the square footage, I would go in and 8 search anywhere from 2500 square feet to 3500 square 9 feet, two-story to three-story properties, and start 10 from there. And it just gets more detailed and more 11 detailed as I start refining my search. 12 Q. Okay. This one is this is one of your 13 listing comps? 14 MR. TRAN: David, where are we at now? 15 MR. WINTERTON: Exhibit Number 8. 16 A. That's not a listing comp. 17 Q. It's not? 18 A. No. 19 Q. Okay. What was this one? 20 A. That's just like the other ones, it's a 21 sold property. 22 Q. It's a sold property. Okay. And do you 23 know if this is in the same subdivision? 24 A. It's not, no. 25 Q. I think she said it's in Kirkland Ranch?</p>
<p style="text-align: right;">Page 39</p> <p>1 MR. WINTERTON: The last page of Exhibit 2 7. 3 MR. TRAN: David, is that part of your 4 supplemental disclosures? 5 MR. WINTERTON: Yes, it is. You have them 6 all. It has my clients' notes. 7 Q. So there are certain properties that the 8 values are a lot less, do you know why you didn't 9 use those? 10 A. Well, if I were to be looking at this, 11 with, this has no data though, this has no data. 12 Q. Okay. 13 A. When I go in to look at the property I go 14 into the MLS, not the assessor. The MLS has all the 15 data. 16 Q. Okay. 17 A. I have no idea what any of these 18 properties are. 19 (Exhibit 8 was marked for 20 identification.) 21 Q. So how is the MLS structured so that you 22 know which ones to use as your comparables or not? 23 A. Because there is a search data parameter 24 that we put in, and then pulls up everything, first 25 I go directly into the subdivision, see what I can</p>	<p style="text-align: right;">Page 41</p> <p>1 A. No, it's not, you are looking at the wrong 2 page. 3 Q. Yes. Why did you choose this one, oh, 4 this is Highland Ranch, I am sorry. Why did you 5 chose this comp? 6 A. Comp five, for the same reason. Wait, I 7 don't know where you are at here, 8 Q. Exhibit number eight. 9 A. Yes, you are looking at sale number five? 10 Q. Correct? 11 A. And I chose it for the same reasons I 12 chose the other ones. It was very similar to the 13 subject exterior upgrades, similar size. 14 Q. And then you made the adjustments? 15 A. Correct, I made the adjustments for 16 everything they had different. 17 (Exhibit 9 was marked for 18 identification.) 19 Q. Was this one of your listings? 20 A. That's correct. 21 Q. And why did you choose this listing? 22 A. Because it was inside the subdivision, it 23 was similar to the interior of the property, again. 24 And it also had a similar external obsolescence, 25 power lines.</p>

<p style="text-align: right;">Page 42</p> <p>1 Q. Do you know what model this one is?</p> <p>2 A. Again, we don't go off a model, we go off</p> <p>3 a square footage, we are not concerned with models</p> <p>4 whatsoever.</p> <p>5 Q. I think we will take a five-minute break</p> <p>6 and I am going to see if I can pull up your other</p> <p>7 stuff?</p> <p>8 MR. TRAN: Sure. Off the record.</p> <p>9 (Whereupon, an off the record discussion</p> <p>10 was held.)</p> <p>11 Q. I am going to jump ahead and I am going to</p> <p>12 go back. Now, there came a point in time where a</p> <p>13 year later, the plaintiff wanted to refinance the</p> <p>14 property?</p> <p>15 A. Correct.</p> <p>16 Q. So they went back to Guild Mortgage to see</p> <p>17 if they can refinance. How did you get involved in</p> <p>18 the refinance?</p> <p>19 A. Same way I got involved in the first one.</p> <p>20 Solidifi contacted me, sent me the engagement</p> <p>21 letter.</p> <p>22 Q. Now. Was it the luck of the draw or was</p> <p>23 there a reason?</p> <p>24 A. I couldn't tell you that.</p> <p>25 Q. And when you received this assignment,</p>	<p style="text-align: right;">Page 44</p> <p>1 Q. Okay. So you identified hey, I have been</p> <p>2 retained to do this?</p> <p>3 A. Correct.</p> <p>4 Q. Without anything else that you can recall</p> <p>5 about the conversation?</p> <p>6 A. Not the initial conversation, no.</p> <p>7 Q. So you went out to the property, do you</p> <p>8 recall the day you went out to the property?</p> <p>9 A. No, I do not.</p> <p>10 Q. Was it morning, evening, afternoon?</p> <p>11 A. It was probably morning. I usually</p> <p>12 schedule my appointments in the mornings.</p> <p>13 Q. When you got there, was anyone there?</p> <p>14 A. Yes, the husband and the wife were there.</p> <p>15 Q. Okay. And what conversation did you have</p> <p>16 with the husband and the wife?</p> <p>17 A. I just explained to them that I needed to</p> <p>18 walk around, take a few pictures, take a few notes.</p> <p>19 I asked them, I explained that I was there a year</p> <p>20 before, and I asked them if he had done any further</p> <p>21 upgrades or made any changes. And at that time he</p> <p>22 started showing me around.</p> <p>23 Q. Okay. So how did you know you had been</p> <p>24 there a year before?</p> <p>25 A. How did I know, because I remembered being</p>
<p style="text-align: right;">Page 43</p> <p>1 what did you do?</p> <p>2 A. Same thing I did before. I got all my</p> <p>3 information together and I went out to inspect the</p> <p>4 property. I contacted the homeowners, set up a time</p> <p>5 to schedule and went out there.</p> <p>6 Q. Okay. And did you check your data base?</p> <p>7 MR. TRAN: Objection, vague.</p> <p>8 Q. Did you check your data base at that time</p> <p>9 before you went out?</p> <p>10 A. No, because I was in a hurry and I wanted</p> <p>11 to go out and do the inspection first, and I was</p> <p>12 going to pull my comps after that.</p> <p>13 Q. Okay. So you called the homeowners up and</p> <p>14 said, I would like to do an inspection?</p> <p>15 A. Correct.</p> <p>16 Q. Who did you speak with?</p> <p>17 A. I believe I spoke to Maria. I don't know</p> <p>18 if I spoke to Maria or her husband, I don't recall,</p> <p>19 I believe it was Maria though.</p> <p>20 Q. And you identified yourself?</p> <p>21 A. Correct.</p> <p>22 Q. And what did you say to her?</p> <p>23 A. I said what time works for you, I gave her</p> <p>24 a few times that I had that worked for me and came</p> <p>25 out to the property.</p>	<p style="text-align: right;">Page 45</p> <p>1 there.</p> <p>2 Q. Okay. And so was that a coincidence?</p> <p>3 A. Was what a coincidence?</p> <p>4 Q. I guess, I am trying to figure out if,</p> <p>5 does Guild only use you?</p> <p>6 A. No, they use several other appraisers.</p> <p>7 Q. What are the odds that you ended up doing</p> <p>8 it?</p> <p>9 A. You are going to have to ask Solidifi</p> <p>10 that.</p> <p>11 Q. Okay. How much do you charge for</p> <p>12 appraisals?</p> <p>13 A. Depends.</p> <p>14 Q. How much did you charge for this one?</p> <p>15 A. I don't remember.</p> <p>16 Q. Okay. You are talking about this one, the</p> <p>17 first time you went out to the property?</p> <p>18 A. Yes, I don't remember, I would have to</p> <p>19 look at my invoices.</p> <p>20 Q. Do you know how much you were charging for</p> <p>21 the second appraisal?</p> <p>22 A. I didn't charge anything yet.</p> <p>23 Q. What were you going to charge, if you had</p> <p>24 that?</p> <p>25 A. I have no idea.</p>

1 Q. Now, the husband started showing you
2 around?
3 A. Correct.
4 Q. What was the conversation with the
5 husband, as he was showing you around?
6 A. Like I said, I asked him if he had done
7 any upgrades, anything. I believe they added a
8 something in the backyard, some landscaping of like
9 a gazebo or something in the back. I think he had
10 said he had done some painting, just some minor
11 things like that, and that's when I began to explain
12 to him that his square footage that the assessor and
13 the MLS still have his square footage incorrectly
14 documented because in my initial appraisal I
15 corrected it.
16 Q. What did he say?
17 A. He didn't seem to know anything, he just,
18 he didn't understand. He didn't know why it would
19 be documented wrong.
20 Q. So, MLS, if you were to, since this
21 property was not on the market, the only information
22 that would be on the MLS would be the old
23 information, is that not correct?
24 A. That's correct. So that's why I said the
25 old MLS had the wrong information and the assessor

1 record still has the incorrect square footage. And
2 he just didn't seem to know that was even incorrect.
3 He didn't know there was anything documented wrong.
4 Q. Okay. So what did you do after that
5 conversation?
6 A. Then we walked around a little more, I
7 told him I wanted to remeasure the outside bottom
8 floor a little bit more just to verify what I had
9 before, which I did. Then we went back inside, and
10 then we walked upstairs, I remember Maria was
11 sitting there in the kitchen, me, James and Maria
12 were standing there, and I said to her, as well, I
13 just want you to know that your square footage is
14 incorrect. And she said no, it's not, and she
15 became argumentative with me. So at that point I
16 said, well, that's the information that I have. I
17 just wanted to let you know, and I left the
18 property.
19 Q. Did she say why it was not correct?
20 A. No, she just said she didn't believe that,
21 she said what the MLS had was correct.
22 Q. Okay. So you left?
23 A. Correct.
24 Q. And then what did you do after that?
25 A. After that, I had a gut feeling for doing

1 this for so long that I wanted to back out of this
2 appraisal, because when people become argumentative
3 and don't believe me what I am saying, I don't
4 complete the appraisal. So I did not complete any
5 other information.
6 (Exhibit 10 was marked for
7 identification.)
8 Q. Okay. So did you ever tell the Boesiger's
9 that you were not completing the appraisal?
10 A. No, I did not.
11 Q. When did you tell Solidifi that you were
12 not going to complete the appraisal?
13 A. Shortly after I left the property.
14 Q. And what did you tell Solidifi?
15 A. I just told them that there was a
16 discrepancy, I didn't feel comfortable completing
17 the appraisal.
18 Q. Do you know if they went out to get
19 anybody else?
20 A. I have no idea.
21 Q. Okay. So this document here, which is
22 Exhibit Number 10, when was this information put in
23 the computer?
24 A. Probably a couple of days before I went
25 out to the property or a day before.

1 Q. Okay. And when did you put this cancel
2 line through it?
3 A. When did I do that?
4 Q. Yes.
5 A. Right after I left or when I decided to
6 cancel it.
7 Q. And the GLA discrepancy with homeowners.
8 A. Gross living area, that was my.
9 Q. When did you write that?
10 A. The same time.
11 Q. Okay. And then you put not proceeding?
12 A. Correct.
13 Q. Okay. Now, Guild Mortgage told my clients
14 that the appraisal came in at 344 and that there is
15 no increase in value?
16 A. Okay. What appraisal?
17 Q. Well, I am just telling you what she said.
18 Do you know why Guild Mortgage would have told my
19 clients that?
20 MR. TRAN: Objection, speculation.
21 A. I have zero idea.
22 Q. Now, going over to the second page, where
23 it says Solidifi.
24 A. Yes.
25 Q. I wonder if you could explain this

<p style="text-align: right;">Page 50</p> <p>1 document or how it was?</p> <p>2 A. That's the engagement letter that we</p> <p>3 received to come out and do the appraisal.</p> <p>4 Q. Okay. And I am trying to read the hand</p> <p>5 writing on the right-hand side, at the top it says</p> <p>6 what is it 37, Page 3, I don't know?</p> <p>7 A. That's the map number that the property is</p> <p>8 located on.</p> <p>9 Q. Okay. And then the hand writing below</p> <p>10 that?</p> <p>11 A. That was the appointment date that we</p> <p>12 decided on.</p> <p>13 Q. Okay. And is this your hand writing?</p> <p>14 A. Yes.</p> <p>15 Q. And then below that, what is that?</p> <p>16 A. Looks like it was her number.</p> <p>17 Q. And the appraisal for the refinance would</p> <p>18 have been 300?</p> <p>19 A. Yes, it looks like that is correct.</p> <p>20 Q. Of which 75 goes to the management?</p> <p>21 A. Correct.</p> <p>22 Q. And do you know what that hand writing is</p> <p>23 at the very bottom?</p> <p>24 A. It looks like it said left message 11/06,</p> <p>25 from what I can tell here.</p>	<p style="text-align: right;">Page 52</p> <p>1 A. Yes, I wasn't so concerned with the MLS as</p> <p>2 I was concerned with the assessor because they still</p> <p>3 had it incorrect, but for just having in my work</p> <p>4 file I like to know what the correct square footage</p> <p>5 is is on all documents.</p> <p>6 Q. And when did you cross that out?</p> <p>7 A. Probably when I got the order here.</p> <p>8 Q. So when you got the order you had not been</p> <p>9 at the property yet?</p> <p>10 A. No.</p> <p>11 Q. So how did you know it was smaller?</p> <p>12 A. Because I remembered being there.</p> <p>13 Q. Okay. The next page, what exactly is</p> <p>14 this?</p> <p>15 A. This is my notes, this is my worksheet</p> <p>16 that I take out to each property and I fill it out</p> <p>17 when I am out there. Looks like what he told me was</p> <p>18 new was what I wrote there. There is new marble</p> <p>19 island, new landscaping. What I wrote there, that's</p> <p>20 what he told me.</p> <p>21 Q. Okay. Because I can't read that. And on</p> <p>22 the left side of the comments of which you just gave</p> <p>23 us, what is that say?</p> <p>24 A. Tankless water heater.</p> <p>25 Q. Okay. Next page, where did you get this</p>
<p style="text-align: right;">Page 51</p> <p>1 Q. Okay. And what is this here, the next</p> <p>2 page, it looks like it's part?</p> <p>3 A. That's part of the engagement letter that</p> <p>4 has the person's contact information, so that's why</p> <p>5 I wrote her number, looks like he gave me, I called</p> <p>6 to set up the inspection with him because that was</p> <p>7 the only number listed on the engagement letter from</p> <p>8 Solidifi, and he gave me, I don't know if that's her</p> <p>9 cell or home number, and that's who I called.</p> <p>10 Q. Was there anything else about this</p> <p>11 engagement letter, the lines are just funny and I</p> <p>12 can't tell?</p> <p>13 A. No, that's just their order number and</p> <p>14 stuff.</p> <p>15 Q. Okay. This is the Clark County?</p> <p>16 A. Assessor's record, correct.</p> <p>17 Q. It had it at 3583?</p> <p>18 A. That's what it still had it at, yes.</p> <p>19 Q. And we will go over to the next page, and</p> <p>20 what is this page?</p> <p>21 A. That's the MLS data.</p> <p>22 Q. Okay.</p> <p>23 A. That was from the prior sale.</p> <p>24 Q. And so when you looked at that, that's</p> <p>25 what the MLS said?</p>	<p style="text-align: right;">Page 53</p> <p>1 building sketch?</p> <p>2 A. That was my sketch from my old file.</p> <p>3 Q. Okay?</p> <p>4 A. That is what I sketched in the program</p> <p>5 when I first went out there.</p> <p>6 Q. Okay. So you printed this out before?</p> <p>7 A. Correct.</p> <p>8 Q. You went out?</p> <p>9 A. Yes.</p> <p>10 Q. Next one, what is this?</p> <p>11 A. This is the assessor's record, this was</p> <p>12 the updated assessor's record. I don't know why</p> <p>13 that's in here, this wasn't part of the file.</p> <p>14 Q. This is what I was given, so I don't know.</p> <p>15 A. This was over a year later, I pulled this</p> <p>16 when I believe I received the information from your</p> <p>17 office.</p> <p>18 Q. Okay.</p> <p>19 A. This should not be in this file here.</p> <p>20 This is separate. Obviously you can tell by the</p> <p>21 date on the bottom, it says 10/19/15. Again, this</p> <p>22 was not updated when I went out the second time.</p> <p>23 Q. Okay. And I am gathering too that these</p> <p>24 next three documents, I wonder if you could explain</p> <p>25 what these were, because they were after the</p>

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<p>1 lawsuit?</p> <p>2 A. What, the ones that I just said shouldn't</p> <p>3 be with this one right here?</p> <p>4 Q. Correct?</p> <p>5 A. That is what I pulled up, to see if the</p> <p>6 assessor had changed it, and I had to order the</p> <p>7 sketch from the assessor. So that's my order form</p> <p>8 from the assessor's office, and they sent me this</p> <p>9 information here.</p> <p>10 Q. Had this assessor changed?</p> <p>11 A. Yes, it looks like they changed it from</p> <p>12 their 3500, 3553.</p> <p>13 Q. And they brought it down to the 2870?</p> <p>14 A. Correct.</p> <p>15 Q. So what is the difference between your</p> <p>16 3,002 and the assessor's 28?</p> <p>17 A. I couldn't tell you. That would be,</p> <p>18 that's the assessor's sketch. A lot of times the</p> <p>19 staircases are taken out and sometimes they are not.</p> <p>20 (Exhibit 11 was marked for</p> <p>21 identification.)</p> <p>22 Q. Is that everything?</p> <p>23 A. Yes.</p> <p>24 Q. Now, when you did this first appraisal,</p> <p>25 did you tell anybody that the square footage was</p>	<p>1 identification.)</p> <p>2 Q. I marked this whole stack, Exhibit 12.</p> <p>3 Okay. Let's go through it really quick and talk</p> <p>4 about it so we can have an understanding. What is</p> <p>5 Page 1 here?</p> <p>6 A. That's just my internal order form.</p> <p>7 Q. Okay. So when an order comes in from</p> <p>8 Solidifi, you create this?</p> <p>9 A. Yes, that's how I create my order.</p> <p>10 Q. Is it part of your master program that you</p> <p>11 have?</p> <p>12 A. Yes.</p> <p>13 Q. And the next few pages, we have gone over?</p> <p>14 A. Engagement letter.</p> <p>15 Q. This is a copy, which you received?</p> <p>16 A. Correct.</p> <p>17 Q. In regard to the purchase agreement?</p> <p>18 A. Correct.</p> <p>19 Q. Okay. Now, this next one, it's Page 17,</p> <p>20 is this your hand writing?</p> <p>21 A. Yes, it is.</p> <p>22 Q. And I wonder if you can explain what the</p> <p>23 numbers are?</p> <p>24 A. That's the cost approach for the numbers</p> <p>25 in the handbook.</p>
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<p>1 wrong?</p> <p>2 A. Yes, I documented it in my appraisal.</p> <p>3 Q. Okay. And then who did you give the</p> <p>4 appraisal to?</p> <p>5 A. Solidifi, and then Solidifi gave it to the</p> <p>6 lender.</p> <p>7 Q. And so when you were talking about the</p> <p>8 building sketch?</p> <p>9 A. Yes.</p> <p>10 Q. This is on at the bottom of the page, it's</p> <p>11 of Exhibit 11, it says 83 at the bottom, this was a</p> <p>12 sketch that you gave?</p> <p>13 A. Correct.</p> <p>14 Q. So you put it in your appraisal and then</p> <p>15 you gave Solidifi, who gave it to Guild Mortgage?</p> <p>16 A. Correct.</p> <p>17 Q. And do you know if the Boesiger's ever got</p> <p>18 a copy of it?</p> <p>19 A. I do not know that.</p> <p>20 Q. And these are the pictures that you have</p> <p>21 here, those are the pictures that you took?</p> <p>22 A. Correct.</p> <p>23 Q. When you went there the first time?</p> <p>24 A. Correct.</p> <p>25 (Exhibit 12 was marked for</p>	<p>1 Q. Do you know what they are like, the 7066?</p> <p>2 A. That's the, I would have to break it down</p> <p>3 in the cost handbook. 1.72 is probably for the warm</p> <p>4 and cooled air, size, elevation, all that different</p> <p>5 stuff, it gets pretty technical, I would have to</p> <p>6 pull it out.</p> <p>7 Q. And it says here it's 73.97 at 3,002</p> <p>8 square feet, comes out to be \$222,000?</p> <p>9 A. Correct.</p> <p>10 Q. And then what is below that six times</p> <p>11 3,002?</p> <p>12 A. That's my, I believe, the upgrades like</p> <p>13 flooring, things like that.</p> <p>14 Q. And then it appears to come up to</p> <p>15 \$247,000, approximately?</p> <p>16 A. Right.</p> <p>17 Q. And then you did multiply factor?</p> <p>18 A. Correct.</p> <p>19 Q. And you came up with \$256,000?</p> <p>20 A. Correct.</p> <p>21 Q. That's a lot more than what you came up</p> <p>22 with?</p> <p>23 A. What is that?</p> <p>24 Q. In your appraisal, this is a lot lower?</p> <p>25 A. Yes, because then I go in and take into</p>

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1 account, let's see, hold on, these numbers are not
2 exact, believe me, they are an estimate. A cost
3 approach is an estimate, it's really irrelevant. So
4 the 256 is basically just for the square footage
5 itself, right here I got 268,859, I added for some
6 more upgrades because the subject was so highly
7 upgraded.
8 Q. Okay. Page 19, what does that say?
9 A. Power lines, close.
10 Q. Sorry, I can't read your hand writing.
11 And that's no offense to your hand writing either.
12 Page 20, in the middle of it, do you know what that
13 is?
14 A. Brick.
15 Q. Okay. So did you print out all these
16 Gelbar documents?
17 A. Yes, correct.
18 Q. This is what you used to do your
19 investigation?
20 A. That's correct.
21 Q. Okay. Page 32 at the very bottom, it has
22 some hand writing?
23 A. Builder inside, builder sales inside,
24 those are just some of, that was just some of the
25 data that I pulled from inside the subdivision.

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1 Q. So these are ones that they sold?
2 A. Correct.
3 Q. And you had all sale dates?
4 A. Correct.
5 Q. From there that's where you picked your
6 two up?
7 A. Yes.
8 Q. The next Page, 33, there is some hand
9 writing there, do you know what that means?
10 A. Yes, that's three months prior to the
11 affected date of appraisal. We have to do a thing
12 in our appraisal called a 1004 MC, which gives all
13 the data, the prior sales from our search parameters
14 that we are using that are comparable to the
15 property within the last year. So then if you look
16 at my appraisal, it's broken down in there so the
17 340 is just the median price.
18 Q. What do you mean, the median?
19 A. We have to put that on our form, it's just
20 a way for an underwriter to get a feel for the
21 market in the last year.
22 Q. Why is 17 circled?
23 A. That was the medium days on market and
24 that's four to six months and then seven to 12
25 months.

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1 Q. Got you.
2 A. And then the listing that I had available
3 to me. Usually, the MLS data is all we have, but
4 when it's such a new subdivision like this we look
5 to see what I have for builder sales.
6 Q. Okay. '37, sorry?
7 A. These are just a list of all the upgrades
8 that are in the property, my hand writing down here.
9 Q. Okay.
10 A. This is just what type of floors, laminate
11 tile, carpet, what type of coating is in the
12 bathroom, and then what type of appliances, just
13 pretty much self explanatory what it is there.
14 Q. Okay. And then this is what you drew up?
15 A. Correct.
16 Q. And this is what you drew up?
17 A. Correct.
18 Q. And you came up with 2997?
19 A. No, that's what the builder had. I
20 believe that's what the builder had listed on there,
21 their website. This was their floor plan that had
22 this particular model, this particular floor plan.
23 Q. And then is your notes of the changes?
24 A. Correct, and then I changed it, once I
25 realized it was different.

Page 61

1 Q. Okay. Let's go to 42, what is the hand
2 writing on the left?
3 A. These are all the comps that I pulled that
4 I shot pictures of. So you have to drive around and
5 shoot pictures in front of the comparable
6 properties.
7 Q. So this was just to help you get the
8 pictures?
9 A. Yes, it's just my number so when I put it
10 in my program I know what numbers they are or what
11 order I put them in.
12 Q. This is just your information?
13 A. Yes, that's all my, as much market data as
14 I can find.
15 Q. Sixty-three, there are some hand writing
16 there?
17 A. This one was an external obsolescence I
18 believe that either backed to a roadway or power
19 lines and that says Southern Highlands.
20 Q. Okay. One last page, I wonder if you
21 could explain this to me?
22 A. This is just the invoice from what I got
23 paid on that from Solidifi, and just some of the
24 other ones. They send them all together, from a two
25 week period or what not and I just make a note and

<p style="text-align: right;">Page 62</p> <p>1 put it in my file.</p> <p>2 Q. Okay. So did you send a letter to or an</p> <p>3 e-mail to Guild saying you don't want to do the</p> <p>4 appraisal?</p> <p>5 A. No, I talked to a loan officer over there.</p> <p>6 Q. Who did you talk to?</p> <p>7 A. Becka Green.</p> <p>8 Q. And what did you tell Becka Green?</p> <p>9 A. I asked her, I said, you know, I didn't</p> <p>10 have a good conversation when I was out there at the</p> <p>11 property with the homeowners. I said I believe they</p> <p>12 still think that the property is 3553 square feet,</p> <p>13 and they didn't believe it was a lower square</p> <p>14 footage, and that I wish to cancel this, that was</p> <p>15 it.</p> <p>16 Q. Okay. And then anybody else that you</p> <p>17 spoke to?</p> <p>18 A. No.</p> <p>19 Q. Did you ever have any conversations with</p> <p>20 anybody at Solidifi?</p> <p>21 A. Regarding canceling the second one or the</p> <p>22 first one?</p> <p>23 Q. The second one?</p> <p>24 A. Yes, I called immediately and told them I</p> <p>25 didn't want to do the appraisal.</p>	<p style="text-align: right;">Page 64</p> <p>1 hadn't gone up in value they couldn't refinance?</p> <p>2 A. I have no idea.</p> <p>3 Q. Have you done much work with Becka Green?</p> <p>4 A. I do work with her office.</p> <p>5 Q. Okay. How often do you work with their</p> <p>6 office?</p> <p>7 A. I couldn't recall, quite a bit, here and</p> <p>8 there, Guild Mortgage has several different offices</p> <p>9 around town, so I do a lot of business with those</p> <p>10 guys.</p> <p>11 Q. Is Guild Mortgage half your business?</p> <p>12 A. No.</p> <p>13 Q. Twenty-five percent?</p> <p>14 A. Could be 25 percent.</p> <p>15 Q. Who do you mainly deal with at Guild</p> <p>16 Mortgage?</p> <p>17 A. I don't, I usually just deal with</p> <p>18 Solidifi.</p> <p>19 Q. Okay. How would you know to call Becka</p> <p>20 Green?</p> <p>21 A. Because on the order form it had the</p> <p>22 office, it had the office so I asked who the loan</p> <p>23 officer was on this.</p> <p>24 Q. Okay. And had you spoken to Becka Green</p> <p>25 prior to?</p>
<p style="text-align: right;">Page 63</p> <p>1 Q. Who did you call there?</p> <p>2 A. It's an 800 number. There is so many</p> <p>3 people working there, it's a call center kind of</p> <p>4 thing.</p> <p>5 Q. Why did you call Becka Green?</p> <p>6 A. Because I wanted to tell her I was</p> <p>7 canceling.</p> <p>8 Q. Wouldn't she have gotten notice from</p> <p>9 Solidifi?</p> <p>10 A. Yes, but I also wanted to let her know</p> <p>11 that I wasn't going to charge her for the inspection</p> <p>12 fee because I didn't feel like I needed to charge</p> <p>13 them for that.</p> <p>14 Q. Okay. Do you know how Becka would have</p> <p>15 come up with a different story?</p> <p>16 MR. TRAN: Objection, speculation, lacks</p> <p>17 foundation.</p> <p>18 A. I have no idea, a different story from</p> <p>19 what?</p> <p>20 MR. TRAN: It's vague.</p> <p>21 Q. As I said, the record from my clients,</p> <p>22 Becka Green said the appraisal came in at 3447</p> <p>23 A. That is a hundred percent incorrect. I</p> <p>24 never stated any value to Becka, whatsoever.</p> <p>25 Q. Okay. And then they said because it</p>	<p style="text-align: right;">Page 65</p> <p>1 A. No.</p> <p>2 Q. Never?</p> <p>3 A. I spoke to her maybe one other time on one</p> <p>4 other file, I don't recall, I never even met Becka</p> <p>5 in person.</p> <p>6 Q. Okay. Did you send any information to</p> <p>7 Solidifi?</p> <p>8 A. No, I just called them and told them.</p> <p>9 MR. TRAN: Objection, vague.</p> <p>10 Q. So you never sent an e-mail?</p> <p>11 A. No, I have canceled many with them before</p> <p>12 and you just call them up and say you don't want to</p> <p>13 do it, whatever the case was, and they say okay.</p> <p>14 Q. And do you always call up the mortgage</p> <p>15 company too when you cancel?</p> <p>16 A. Not always, no.</p> <p>17 Q. Okay. Most of the time or most of the</p> <p>18 time you don't?</p> <p>19 A. Most of the time I don't. When I have a</p> <p>20 gut feeling that there could be something wrong with</p> <p>21 the homeowner I will talk to somebody to find out</p> <p>22 what is going on, that's the only time I ever talked</p> <p>23 to anybody.</p> <p>24 Q. And this case, now, you are saying the</p> <p>25 homeowner said that she knew it was that high or</p>

Page 66		Page 68	
1	that you were wrong or?	1	CERTIFICATE OF DEPONENT
2	MR. TRAN: Objection, misstates testimony.	2	PAGE LINE CHANGE
3	You can answer.	3	
4	A. From what I recall, I didn't, she thought	4	
5	it was 3500 square foot, from what I remember. This	5	
6	is four years ago. From what I remember she had	6	
7	stated that no, it is 3553 square feet, and I said,	7	
8	I was here before and I measured the property and	8	
9	came up with this. I said it was noted in my	9	
10	appraisal what I came up with a different square	10	
11	footage, and she didn't want to believe me or I	11	
12	don't know. At that point I said I am going to	12	
13	leave, that was it.	13	
14	Q. Did you tell her you were not going to do	14	
15	the appraisal?	15	
16	A. No, I don't get into that with the	16	*****
17	homeowners.	17	I, TRAVIS GLIKO, deponent herein, do hereby
18	Q. How did the topic of square footage come	18	certify and declare under penalty of perjury the within and
19	up?	19	foregoing transcription to be my deposition in said action;
20	A. Because I knew I was there before and I	20	that I have read, corrected and do hereby affix my signature
21	told the husband, I said I just want you guys to	21	to said deposition.
22	know, as a common courtesy that your square footage	22	
23	is not correct, from what the assessor says, and as	23	TRAVIS GLIKO, Deponent
24	far as the MLS, as well, the realtor had put in the	24	
25	information, sold the property to them at 3500	25	
Page 67		Page 69	
1	square feet.	1	CERTIFICATE OF REPORTER
2	Q. Okay.	2	
3	A. I was trying to do it as a common courtesy	3	I, Shifra Moscovitz, Certified Court Reporter,
4	for them.	4	State of Nevada, do hereby certify:
5	Q. So they definitely got a piece of property	5	That I reported the deposition of TRAVIS GLIKO,
6	that the assessor and the MLS said was more?	6	commencing on Wednesday, October 4, 2017, at 1:30 p.m.
7	A. Correct.	7	That prior to being deposed, the witness was duly
8	Q. When it was really less?	8	sworn by me to testify to the truth. That I thereafter
9	A. Correct, yes, and that's all documented in	9	transcribed my said shorthand notes into typewriting and
10	my appraisal.	10	that the typewritten transcript is a complete, true and
11	Q. Do you know who put the information in the	11	accurate transcription of my said shorthand notes. That
12	assessor?	12	prior to the conclusion of the proceedings, the reading and
13	A. No idea, that's just public information.	13	signing was not requested by the witness or a party.
14	I have no idea who does that at their office.	14	I further certify that I am not a relative or
15	Q. Do you know who put it in the MLS?	15	employee of counsel of any of the parties, nor a relative or
16	A. It would be the listing agent.	16	employee of the parties involved in said action, nor a
17	Q. Okay. I have no further questions.	17	person financially interested in the action.
18	(The deposition concluded at	18	In witness whereof, I hereunto subscribe my name
19	3:15 p.m.)	19	at Las Vegas, Nevada, this 18th day of October, 2017.
20	*****	20	
21		21	SHIFRA MOSCOVITZ, CCR No. 938
22		22	
23		23	
24		24	
25		25	

Steven D. Grierson

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DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an individual,)	Case No. A-15-725567-C
MARIA S. BOESIGER, an individual,)	Dept. No. 24
Plaintiffs,)	
vs.)	
DESERT APPRAISALS, LLC, a Nevada)	
Limited-Liability Company; TRAVIS T.)	
GLIKO, an individual; DOES I-X, inclusive;)	Date: December 5, 2017
ROE CORPORATIONS XI through XX,)	Time: 9:00 a.m.
inclusive)	
Defendants.)	
)	[Arbitration Exempt]

AFFIDAVIT IN SUPPORT OF THE PLAINTIFF'S OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

STATE OF NEVADA)
COUNTY OF CLARK)

- I am one of the homeowners of 5015 Adrian Fog Avenue, Las Vegas, Nevada 89141. I am over the age of eighteen (18) and I am competent to testify. I have personal knowledge to testify to the facts contained herein.
- On September 26, 2013, I entered into a Purchase Agreement with my husband, James A. Boesiger, to purchase a house at 5015 Adrian Fog Avenue, Las Vegas, Nevada 89141 for \$337,000.

1 3. The offer was expressly contingent on us obtaining a loan in the amount of \$325,205
2 from the lender, Guild Mortgage.

3 4. I relied on the appraisal report ordered by Guild Mortgage to determine the home was
4 worth the offer price.

5 5. I believe I would not have qualified for the loan amount and met the contingency of the
6 sale but for the appraisal report affirming the valuation met or exceeded the purchase
7 price.

8 6. Approximately one year after we purchased the home, we tried to refinance for lower
9 monthly payments. We were previously advised by the mortgage company that we
10 would probably have enough equity in one year to refinance the loan from the existing
11 FHA loan to a less expensive conventional loan.

12 7. While we were trying to refinance, Guild Mortgage sent Travis Gliko to appraise our
13 home for the refinance application.

14 8. I alone was present on the day Travis Gliko came to my house for the second appraisal. I
15 did not see him take any measurements when he came for the second appraisal.

16 9. On the day Travis Gliko came to do the second appraisal, I was the only person at my
17 house, 5015 Adrian Fog Avenue. My husband was not at the house. Rather, my
18 husband was working at the urgent care for a shift from 8:00 am to 9:00 pm. To the best
19 of my knowledge, my husband never interacted or communicate with Mr. Gliko prior to
20 the proceedings commencing in this case.

21 10. After Mr. Gliko's visit for the second appraisal, Becca Green, the woman in charge of
22 my loan at Guild Mortgage, called me to follow up.

23 11. Ms. Green from Guild Mortgage told me by phone that she had good news and bad
24 news. She said the bad news is the property did not go up enough in value for you to get
25 a conventional loan. The good news is the appraiser felt bad and he's not going to
26 charge you the fee forth appraisal, which normally costs \$450.

1 12. In response, I asked Ms. Green how it was possible the home had not increased in value
2 when the builder had raised prices over the year and the neighboring property values had
3 gone up over the year. She replied she didn't know.

4 13. Subsequently, the Clark County tax assessment on my home led to the discovery that the
5 actual square footage of the house was significantly smaller than the amount listed in the
6 assessor's record at the time I purchased the house. It was subsequently revised by the
7 county to reflect the true square footage.

8 14. The appraiser from Clark County came to my house and said it was the wrong model
9 and not the one they have on file. He looked very confused by it. Clark County has since
10 changed the assessment to reflect the lower square footage.

11 15. I was unable to refinance my house and qualify for a less expensive conventional loan
12 because of the overvaluation of the house in the initial appraisal by Travis Gliko before I
13 finalized the purchased of my home.

14 Affiant Saith Nothing further

15 I swear under penalty of perjury under the laws of the state of Nevada that the above
16 information is true and correct.

17
18 Maria S. Boesiger
Maria S. Boesiger, Plaintiff

19
20 SUBSCRIBED and SWORN to before me
this 17 day of November 2017.

21 [Signature]
22 NOTARY PUBLIC



Steven D. Grierson

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an individual;
MARIA S. BOESIGER, an individual,

Plaintiffs,

vs.

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI-XX, inclusive.

Defendants.

Case No.: A-15-725567-C
Dept. No.: XXIV

**DEFENDANTS' REPLY IN SUPPORT
OF MOTION FOR SUMMARY
JUDGMENT**

Date: 12/05/17
Time: 9:00 a.m.

Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144
(702) 382-1500 FAX: (702) 382-1512

Defendants Dessert Appraisals, LLC and Travis T. Gliko, by and through their attorneys of record LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C. hereby submits this Reply in Support of Motion for Summary Judgment.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiffs' Opposition demonstrates exactly why an expert is required to establish the duty of care, and breach of the duty of care in cases where a plaintiff asserts a claim for professional negligence against a professional appraiser.

The facts in this case demonstrates that Plaintiff Maria Boesiger, who is uneducated in the area of residential appraisals, is wholly unqualified to render any form

1 of testimony regarding how an appraisal such as Defendant Travis Gliko committed
2 professional negligence. The whole premise of Plaintiffs' professional negligence claim
3 against Defendants is that Plaintiffs believe Defendants appraised the Property
4 incorrectly because Defendants were unaware that the Clark County Assessor's Office
5 had a different model home and a different square footage listed in its records. See
6 Maria Boesiger's Affidavit of at ¶ 13, 14, 15. In this regard, Maria Boesiger's affidavit
7 states as follows:

8 13. Subsequently, the Clark County tax assessment on my
9 home led to the discovery that the actual square footage of
10 the house was significantly smaller than the amount listed in
11 the assessor's record at the time I purchased the house. It
was subsequently revised by the county to reflect the true
square footage.

12 14. The appraiser from the Clark County came to my house
13 and said it was the wrong model and not the one they have
14 on file. He looked very confused by it. Clark County has
15 since changed the assessment to reflect the lower square
16 footage.

17 15. I was unable to refinance my house and qualify for a less
18 expensive conventional loan because of the overvaluation of
the house in the initial appraisal by Travis Gliko before I
finalized the purchase of the home.

19 Id.

20 Plaintiff Maria Boesiger's statement however, shows that she did not fully read
21 the Appraisal Report because the Appraisal Report makes it clear that Defendant Travis
22 Gliko was well aware of the discrepancy in the square footage of the Property from the
23 Assessor's Office and the MLS Listing. In this regard, the Appraisal Report clearly
states as follows:

24 **SQUARE FOOTAGE DIFFERENCE:**

25 The Assessor and MLS Listing have a documented 3,533
26 SF of living area for the subject property. This is
27 incorrect as the subject was former model home with
28 the garage converted to office space. It has since been
converted back to the original floor plan with a 2-car
garage but the Assessor and MLS still have the garage

space as living area. The appraiser approx. measurements with the 2 car garage is 3,002SF. This appears to be the correct living square footage as verified with the builders floor plan. Therefore, the appraiser will utilize the appraisers approx measurements within the context of this report.

See Defendants' Appraisal Report at Exhibit C at DA00076 (bold underline emphasis added).

If Plaintiffs would have correctly read the Appraisal Report, or if Plaintiffs would have obtained an expert to evaluate Defendants' Appraisal Report, Plaintiffs would have realized the underlying premise for their professional negligence claim against Defendants is incorrect. The Appraisal Report shows that Defendants were always aware that the Assessor's Office and the MLS listing had the Property listed with the incorrect square footage which is why Defendant Travis Gliko used his own measurements and made his own determination of the square footage of the Property!

Plaintiffs however, audaciously believe that no expert testimony is required and instead, that Plaintiff Maria Boesiger, an uneducated lay person, who did not clearly read the Appraisal Report, is qualified to testify that Appraiser Travis Gliko committed professional negligence. Plaintiffs are simply wrong and summary judgment should be granted in Defendants' favor.

II. LEGAL ARGUMENT

A. **PLAINTIFFS' STATEMENT OF "DISPUTED FACTS" IS NOTHING MORE THAN RED HERRING IN AN ATTEMPT TO DISTRACT THE COURT FROM THE FACT THAT THEIR LACK OF AN EXPERT DESIGNATION IS FATAL TO THEIR CASE.**

As an initial matter, Plaintiffs' attempt to create "disputed facts" is nothing more than red herring an attempt to distract this Court from the relevant and material facts in this case. Plaintiffs simply believe that by demonstrating that there are "disputed facts" that this will be enough to defeat Defendants' Motion for Summary Judgment. This is simply false. A close look at Plaintiffs' disputed facts shows that these facts are all simply Plaintiff Maria Boesiger's own uneducated opinions and allegations, and that

1 there is no actual evidence to support these "disputed facts." In addition, Plaintiffs'
2 Opposition contains disjointed, unexplained, immaterial, incorrectly quoted and
3 inadmissible hearsay evidence. Plaintiffs are obfuscating the record by throwing
4 unsupported arguments and false representations,¹ in order to create "genuine issues of
5 fact." But Plaintiffs' unsupported and false representations cannot defeat Defendants'
6 Motion to Summary Judgment.

7 However, even if there are disputed facts, as Plaintiffs recognize in their
8 Opposition, "the mere existence of *some* alleged factual dispute between the parties will
9 not defeat an otherwise properly supported motion for summary judgment; the
10 requirement is that there be no *genuine* issue of *material* fact." Wood v. Safeway, Inc.,
11 121 Nev. 724, 730, 121 P.3d 1026, 1030 (2005). Plaintiffs however, have not
12 demonstrated how these "disputed facts" are relevant and create genuine issues of
13 material fact for trial. Instead, the relevant facts for this Court to consider are that
14 Plaintiffs are alleging professional negligence against an appraiser, but Plaintiffs do not
15 have an expert to testify to the standard of care and breach of the standard of care for
16 an appraiser. Thus, Plaintiffs' professional negligence claim and their derivative claims
17 fail. In addition, the relevant material facts are that the Appraisal Report does not
18 clearly indicate that Plaintiffs are intended beneficiaries. Thus, Plaintiffs' Third-Party
19 Beneficiary claim fails as a matter of law.

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26
27 ¹One example of Plaintiffs' false representation to the Court is on page 12 line 27 to page 13 line 1 where
28 Plaintiffs state "Mr. Gliko testified in his deposition that he relied on the square footage of the assessor's
record and the MLS. Id. at 1:10-20:7."

1 B. EXPERT TESTIMONY IS ABSOLUTELY REQUIRED TO SUPPORT A CAUSE
2 OF ACTION FOR PROFESSIONAL NEGLIGENCE AGAINST AN APPRAISER.

3 1) Egan v. Chambers Does Not Support Plaintiffs' Position
4 Because This case is Well past the Complaint Stage, and an
5 expert is Required to Establish the Elements of Duty and
6 Breach Against an Appraiser at Trial.

7 Plaintiffs' main argument in Opposition to Defendants' Motion for Summary
8 Judgment is that Plaintiffs do not need an expert to support their cause of action for
9 professional negligence against an appraiser. In support of their audacious argument,
10 Plaintiffs cite to Egan v. Chambers, 129 Nev. Adv. Op. 25, 299 P 3d. 364 (2013) and
11 incorrectly argue that the Nevada Supreme Court ruled that expert testimony is not
12 required to establish the elements of duty of care and breach of that duty for
13 professional negligence claims with the exception of medical professionals as outlined
14 in NRS 41A.071. See Opposition at 7: 24-27.

15 Plaintiffs have completely misconstrued the ruling in Egan. In Egan, the Nevada
16 Supreme Court reinterpreted NRS 41A.071 and concluded that professional negligence
17 actions are not subject to the affidavit-of-merit requirement NRS 41A.071. Egan, 299
18 P.3d at 365. NRS 41A.071 provides that the district court shall dismiss, without
19 prejudice, actions for "medical malpractice or dental malpractice" filed without an
20 affidavit of merit. Id. at 366-67. The Court in Egan strictly construed NRS 41A.071
21 which requires that a plaintiff must attach an expert affidavit to his/her Complaint when
22 asserting a claim for medical or dental malpractice. The Court in Egan, then ruled that
23 based on the plain meaning of NRS 41A.071, a plaintiff does not need to attach an
24 expert affidavit to his complaint to support a claim for professional negligence against a
25 podiatrist. Id.

26 The ruling in Egan is completely distinguishable from the present case. Here,
27 Defendants are not arguing that Plaintiffs need an expert affidavit attached to their
28 Complaint to proceed with their professional negligence against an appraiser. This case
is well past the point of filing the Complaint. Instead, Defendants' position is that

1 Plaintiffs in this case will not be able to prove their claim for professional negligence
2 against Defendants at trial because Plaintiffs never designated an expert to testify
3 regarding the standard of care for an appraiser and how Defendants breached that duty
4 of care. Thus, Plaintiffs' sole reliance on Egan is completely baseless.

5 2) **Plaintiffs are Alleging That Defendants Incorrectly measured**
6 **the Property, Used The Wrong Comparables, and Overvaluated**
7 **the Property, Which are all Beyond a Lay Person's Purview of**
8 **Knowledge.**

9 In addition, Plaintiffs argue that the negligence of the appraiser in this case is not
10 beyond the knowledge of the jury to determine because "a layperson can understand
11 that the actual square footage of the house based on the assessor's correction does not
12 match the appraisal report." See Plaintiffs' Opposition to MSJ at page 9:19-22.

13 Plaintiff's argument is false for numerous reasons: First, Plaintiffs' actually
14 conceded that they need an expert to establish the standard of care and duty when
15 Plaintiffs originally designated appraiser Craig Ju as their expert. See Defendants'
16 **Exhibit D**. Plaintiffs' stated in their original designation that Craig Jiu was designated to
17 discuss the errors in Defendants' Appraisal.

18 Second, Plaintiffs do not even identify what the Clark County Assessor's office
19 listed as the square footage of the Property. Stated differently, Plaintiffs have not stated
20 what they believe the correct square footage for the Property should be.
21 Notwithstanding what Plaintiffs' believe the square footage of the Property, Defendant
22 Gliko actually came out to measure and sketch the Property as part of his Appraisal
23 Report. See the Building Sketch at **Exhibit C** at DA00083. Based on his measurements,
24 he concluded that the Property had a living area of 3,002 square feet. Id. In this regard,
25 Defendant Gliko testified at his deposition as follows:

26 Q. And you put down there that the gross living area is
27 3,002?

28 A. Correct.

Q. And how did you calculate the 3,002?

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1
2 A. From my sketch, from my measurements and my
3 sketch when I was out of the property.

4 Q. So your measurement, how do you measure the
5 outside?

6 A. With a tape, clip board, tape. I literally draw it out
7 when I don't have a builder floor plan, I draw out every
8 house by hand and I sketch it, I will throw my tape
9 down and walk the walls and everything.

10 Q. Okay. And you go all the way around the house?

11 A. Yes.

12 See Plaintiffs' Exhibit B attached to Plaintiffs' Opposition at 21:7-22.

13 In contrast, Plaintiff Maria Boesiger testified neither she nor the appraiser from
14 the Assessor's office that came to her home ever measured the Property to determine
15 the square footage. See Defendants' Exhibit F at 76:6-14. In this regard, Maria
16 Boesiger testified as follows:

17 Q. Okay. Did you do any measurements of your house
18 yourself?

19 A. No.

20 Q. Okay. Did the Clark County Assessor's office
21 actually go out to your property and measure the
22 property?

23 A. He went out to the property. He did not exactly
24 measure the property. When he went back to his
25 office is when he called me back to say that – and
26 he's the one that gave me the information on the
27 model, and then he took the builder's floor plan and
28 he minused, like I said, the stairwell.

See Exhibit F at 76:3-14.

Even if the square footage that the Clark County Assessor's Office listed for the
Property is different from the 3,002-square footage that Defendant Gliko came up with

1 based on his actual measurements, Plaintiffs have no way of proving that Defendant
2 Gliko's measurement is incorrect or that the Clark County Assessor's office is correct in
3 their listing of the square footage of the Property. In fact, Maria Boesiger admitted that
4 the County Assessor's listing is not the only correct appraisal of the property.

5 Q. Okay. So -- so is it your testimony that the Clark
6 County's Assessor's office is the only correct --

7 A. No

8 Q. -- appraisal of the property?

9 A. No. This is the builder's dimensions. They're doing
10 this.

11 Id. at 146:13-18.

12 Indeed, the only way for Plaintiffs to establish that the Clark County Assessor's
13 Office's listing is correct and that Defendants' measurement is wrong is through expert
14 testimony.² Instead, all that Plaintiffs have, even at this juncture in the case, is still
15 just allegations that Defendants incorrectly measured the Property at 3,002
16 square feet. Plaintiffs still have no actual evidence that Defendants measured the
17 square footage of the Property incorrectly. Because Plaintiffs do not have an expert
18 to testify as to the correct square footage of the home, Plaintiffs cannot prove that
19 Defendants breached their duty of care. Wood, 121 Nev. at 731, 121 P.3d at 1030-
20 31(2005) (stating "[w]hen a motion for summary judgment is made and supported as
21 required by NRCP 56, the non-moving party may not rest upon general allegations and
22 conclusions . . .")

23
24 ² In addition, this Court should not even consider any stated square footage from the Clark County
25 Assessor's Office because that would be hearsay evidence, which is not admissible for purposes of
26 Defendants' Motion for Summary Judgment. The admissibility of evidence on a motion for summary
judgment is subject to Nev.R.Civ.P. 43(a), and evidence that would be inadmissible at trial is inadmissible
on a motion for summary judgment. A trial court cannot consider hearsay or other inadmissible evidence.
Adamson v. Bowsker, 85 Nev. 115, 450 P.2d 796 (1969).

Further, Plaintiffs' professional negligence claim against Defendants is based on more than simply that Defendants got the square footage the Property wrong. Instead, Plaintiffs also alleges that Defendants also used the wrong comparables in appraising the Property. See Defendants' Exhibit F at 76:1-2 (where Maria Boesiger states "[a]nd the comparison that he used, they weren't all comparable to my property"). In addition, Plaintiffs' stated in their responses to Interrogatories as follows:

INTERROGATORY NO. 2:

Describe and explain what supports your allegations in paragraph 19 of the Complaint, alleging that "the house that was really being purchased by the Plaintiff was a different model and that it was four hundred to five hundred square ft. smaller (400-500 sq. ft.)."

RESPONSE TO INTERROGATORY NO.2

The house was appraised at a higher price than it should have been appraised because it was a smaller house. There were two major factors. First, if the appraiser used the correct comparable properties he would have established the true value of the Property. Second, if he was using the proper comparable properties he would have learned he was using the wrong model. Third, no notice was given to Plaintiff that it was the wrong model, the square footage was not right nor the value did not match the comparable properties.

See Defendants' **Exhibit I** attached hereto at 3:17-4:1(bold underline emphasis added).

In fact, Plaintiffs' Opposition to Defendants' MSJ states that their professional negligence claim is based on the fact that they believe Defendants used the wrong comparables which resulted in Plaintiffs overpaying for the property by \$50,000-\$81,000. See Plaintiffs' Opposition to Defendants' MSJ at 13:7-13. Clearly, Plaintiffs are also criticizing the comparables that Defendants and Defendants' valuation of the Property.

However, determining which comparables to use and the value of the Property is not something that is within the purview of a lay person's knowledge. In fact, as stated in Defendants' Motion for Summary Judgment, NAC 645C.237 requires Certified Residential Appraisers to take 15 hours of instruction on the Uniform Standard of Professional Appraisal Practice; 15 hours of residential appraiser valuate of a site and

1 cost approach; and 30 hours of residential sales comparison and income approaches.
2 Further, Certified Residential Appraisers must also have 2 years and 2,500 hours of
3 experience working as an appraiser or an intern. See
4 [http://red.nv.gov/Content/Appraisal/Licensing Requirements/](http://red.nv.gov/Content/Appraisal/Licensing%20Requirements/). The requirements of a
5 Certified Residential Appraiser are strenuous because appraising homes, conducting
6 measurements of homes, and using the appropriate comparables to value homes are
7 not within the purview of a lay person's knowledge.

8 **C. THE PLAINTIFFS ARE NOT THIRD-PARTY BENEFICIARIES TO THE**
9 **APPRAISAL REPORT.**

10 Plaintiffs' Opposition completely ignores the fact that the Contract at issue is the
11 Appraisal Report. Plaintiffs also ignore the fact that the Appraisal Report is devoid of
12 any mention that the Plaintiffs are intended third-party beneficiaries of the Appraisal
13 Report.

14 Instead, Plaintiffs cite to Stemmel Motors Inc. v. First National Bank, 94 Nev.
15 131575 P.2d 938 (1978) which does not stand for the proposition that an appraiser
16 could owe a duty of care to borrowers. In addition, contrary to Plaintiffs' false argument,
17 the Restatement of Torts Section 552 is not specifically applied to appraisers. Thus,
18 Plaintiffs' analysis based on the Restatement of Torts Section 552 has no bearing on
19 whether they are third-party beneficiary to the Appraisal Report.³

20 **III. CONCLUSION**

21 Plaintiffs have utterly failed to produce any evidence to establish that Defendants
22 committed professional negligence. Instead, Plaintiffs are still simply relying on their
23 own uneducated allegations that Defendants committed professional negligence.
24 However, Plaintiffs absolutely need an expert at trial to testify to the standard of care
25 and breach of the standard of care for an appraiser to establish their claim for
26

27 ³ Plaintiffs also cite to an unpublished federal district court order in Copper Sands Homeowners Ass'n v.
28 Copper Sands Realty, LLC. However, because Plaintiffs did not cite to the exact date in which this order
was issued, and because there are multiple orders in 2012 regarding this case, Defendants' counsel was
unable to locate this case that Plaintiffs are referring to.

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1 professional negligence as their allegation against Defendants go far beyond simply that
2 Defendants incorrectly measured the square footage of the Property. In addition,
3 Plaintiffs were never an intended third-party beneficiary of the Appraisal Report. For
4 these reasons, Defendants request that this Court Grant their Motion for Summary
5 Judgment in its entirety.

6 Dated this 1st day of December, 2017.

7 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

8 /s/ Eric N. Tran

9 By: _____

10 JOSEPH P. GARIN, ESQ. (Bar No. 6653)

11 ERIC N. TRAN, ESQ. (Bar No. 11876)

12 9900 Covington Cross Drive, Suite 120

13 Las Vegas, Nevada 89144

14 *Attorneys for Defendants*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 1st day of December, 2017, I electronically served the foregoing **DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT** to the following parties utilizing the Court's E-File/ServeNV System:

David J. Winterton, Esq.
DAVID J. WINTERTON & ASSOC.
1140 N. Town Center Dr., Ste. 120
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david@davidwinterton.com
Attorneys for Plaintiffs

/s/ Kim Glad

*An Employee of LIPSON, NEILSON, COLE,
SELTZER & GARIN, P.C.*

EXHIBIT I

DAVID J. WINTERTON & ASSOCIATES, LTD
1140 No. Town Center Drive, Suite 120
Las Vegas, Nevada 89144
Phone: (702) 363-0317

1 **RSP**
2 **DAVID J. WINTERTON, ESQ.**
3 Nevada Bar No. 004142
4 **DAVID J. WINTERTON & ASSOCIATES, LTD.**
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6 Las Vegas, Nevada 89144
7 Phone: (702) 363-0317
8 Facsimile: (702) 363-1630
9 david@davidwinterton.com
10 *Attorneys for Plaintiffs,*

DISTRICT COURT
CLARK COUNTY, NEVADA

9 JAMES A. BOESIGER, an individual;
10 MARIA S. BOESIGER, an individual

Plaintiffs,

11 vs.

12 DESERT APPRAISALS, LLC, a Nevada
13 Limited-Liability Company; TRAVIS T.
14 GLIKO, an individual; DOES I-X, inclusive;
15 ROE CORPORATIONS XI-XX, inclusive;

Defendants.

Case No.: A-15-725567-C
DEPT. NO. IX

RESPONSE TO DEFENDANTS' FIRST SET OF
INTERROGATORIES TO THE PLAINTIFFS

17 COMES NOW, JAMES A. BOESIGER and MARIA S. BOESIGER, ("Plaintiffs"),
18 hereby file this Response to the Defendants' First Set of Interrogatories to the Plaintiff. In
19 responding to the request, the Plaintiffs enter the following general objections.

20 The Plaintiffs hereby submit the following objections and responses to this request for
21 interrogatories. All of the general objections are incorporated into each specific responses
22 below as if they were fully repeated herein, even if not specifically referred to in a particular
23 response. The enumeration of the particular objections and responses to any specific request is
24 not intended to be exclusive and does not limit applicable of each general objection to each
25 request, even where a specific objection is not incorporated in a number of the responses.
26

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1 conclusion and legal contentions, or possibly lead to additions and variations in these responses.
2 In making these responses, Plaintiffs reserve and do not waive their right to present to rely upon
3 additional facts, information, document or evidence later discovered, obtained or inadvertently
4 omitted a this time. These responses are made in good-faith effort to supply as much factual
5 information and as much specification of legal contention as are presently known, but should in
6 no way prejudice Plaintiffs in relation to further discovery, research or analysis.

7 INTERROGATORIES

8 INTERROGATORY NO. 1:

9 Describe and explain what supports your allegations in paragraph 18 of the Complaint,
10 alleging that "Defendants did an appraisal on the Property that was completely wrong. The
11 bottom line is that the Defendants used the wrong model to create their appraisal."

12 RESPONSE TO INTERROGATORY NO. 1:

13 The Defendant was using the wrong model. When you look at the values used in the
14 appraisal, the Defendant had access to a number of comparables in the neighborhood to come
15 up with the correct value. If he did so, it would have be obvious that he was using the wrong
16 model.

17 INTERROGATORY NO. 2:

18 Describe and explain what supports your allegations in paragraph 19 of the Complaint,
19 alleging that "the house that was really being purchased by the Plaintiff was a different model
20 and that it was four hundred to five hundred square ft. smaller (400-500 sq. ft.)."

21 RESPONSE TO INTERROGATORY NO. 2:

22 The house was appraised at a higher price than it should have been appraised because it
23 was a smaller house. There were two major factors. First, if the appraiser used the correct
24 comparable properties he would of established the true value of the property. Second, if he was
25 using the proper comparable properties he would have learned he was using the wrong model.
26 Third, no notice was given to the Plaintiff that it was the wrong model, the square footage was
27
28

1 not right nor the value did not match the comparable properties.

2 **INTERROGATORY NO. 3:**

3 Identify each and every element of damage you are claiming in this action and for each
4 element, please:

- 5 a. Identify all persons whom you will rely upon for support of each and every
6 element of damage identified;
- 7 b. The amount of damages you are seeking, the basis upon which you compute this
8 amount, and the identity of all persons upon whom you will rely upon for
9 support of the amount claimed;
- 10 c. Identify all documents upon which you will rely upon to support or corroborate
11 your response to this Interrogatory.

12 **RESPONSE TO INTERROGATORY NO. 3:**

- 13 a. MARIA S. BOESIGER, c/o DAVID J. WINTERTON & ASSOC., LTD., 1140
14 N. Town Center Drive, Suite 120, Las Vegas, Nevada 89144
- 15 b. The damages as discovered to this point is as follows. The value of the original
16 sale as stated above was \$337,000. They should have paid between \$280,000
17 and \$290,000. The Plaintiff figured that the damages in this case was around
18 \$47,000 to \$48,000. The damages also include the overpayment of interest on
19 the loan above and beyond the decrease in value of the property. The damages
20 based upon the overpayment of interest is \$56,287.20. When you combine
21 decrease in the value of the house and the overpayment of interest, the damages
22 comes to \$104,287.20.
- 23 c. The documents produced under the 16.1 case conference.

24 **INTERROGATORY NO. 4:**

25 Identify each person, other than counsel, who provided information or assisted you with
26 respect to the preparation of these answers to the foregoing interrogatories, including
27 denominating to particular interrogatories such person provided information or assistance and
28

Steven D. Grierson

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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an individual;
MARIA S. BOESIGER, an individual,

Case No.: A-15-725567-C
Dept. No.: XXIV

Plaintiffs,

vs.

ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI-XX, inclusive.

Defendants.

Defendants Desert Appraisal, LLC and Travis Gliko's (collectively referred to as "Defendants") Motion for Summary Judgment came before the Court on December 5, 2017 at 9:00 a.m. Eric N. Tran, Esq. appeared on behalf of Defendants; and David Winterton, Esq. appeared on behalf of Plaintiffs James A. Boesiger and Maria S. Boesiger (collectively referred to as "Plaintiffs"). The Court having reviewed the pleadings and papers on file, and oral arguments of counsel, and cause appearing, hereby orders as follows:

///

///

<input type="checkbox"/> Voluntary Dismissal	<input checked="" type="checkbox"/> Summary Judgment
<input type="checkbox"/> Involuntary Dismissal	<input type="checkbox"/> Stipulated Judgment
<input type="checkbox"/> Stipulated Dismissal	<input type="checkbox"/> Default Judgment
<input type="checkbox"/> Motion to Dismiss by Deft(s)	<input type="checkbox"/> Judgment of Arbitration

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I. FINDINGS OF FACT

1. On September 26, 2013, Plaintiffs entered into a Purchase Agreement to purchase real property located at 5015 Adrian Fog Avenue, Las Vegas, Nevada 89141 ("the Property").

2. As part of the agreement, Plaintiffs made an initial offer of \$337,000.00 contingent on Plaintiffs obtaining a loan in the amount of \$325,205.00 from the lender, Guild Mortgage, Inc.

3. After Plaintiffs' initial offer of \$337,000.00 to purchase the Property was accepted by the Seller, Guild Mortgage hired Defendants to conduct an appraisal on the Property.

4. On October 9, 2013, Defendant Gliko conducted an appraisal of the Property.

5. According to the Appraisal Report, Defendant Gliko appraised the Property at \$340,000.00. The Property was also appraised at having 3,002 square feet of gross living area.

6. On October 2, 2015, Plaintiffs filed a Complaint against Defendants asserting claims for (1) Professional Negligence; (2) Breach of Third Party Beneficiary Contract; (3) Negligent Misrepresentation; and (4) Breach of the Statutory Duty to Disclose Material Facts pursuant to NRS 645C.470.

7. Plaintiffs' Complaint stems from Plaintiff Maria Boesiger's belief that "Defendants did an appraisal on the Property that was completely wrong" and that "Defendants used the wrong model to create their appraisal." See Complaint at ¶ 18. The Complaint also alleges that Defendants appraised the Property at 400-500 square feet higher than the actual size of the Property. Id. at ¶ 19. Plaintiffs allege that Defendants' wrong appraisal of the Property resulted in Plaintiffs paying \$337,000.00 for the Property and required Plaintiffs to obtain a larger loan to purchase the Property. Id. at ¶ 20.

1 8. On July 29, 2016, Plaintiffs' served their designation of expert witness
2 naming appraiser Craig Jiu as their expert. Plaintiffs stated that Mr. Jiu was designated
3 to discuss the errors in the Defendants' appraisal. However, Plaintiffs' expert disclosure
4 did not contain an expert report regarding the statements or opinions of Mr. Jiu or the
5 data or other information that Mr. Jiu relied upon. Instead, Plaintiffs' "designation of
6 expert witness Craig Jiu" was a one-page document simply stating that Plaintiffs
7 designated Craig Jiu as an expert. On May 22, 2017, Plaintiffs withdrew their Expert
8 Designation of Craig Jiu after Defendants filed a Motion to Strike Plaintiffs' Expert
9 Designation. The deadline for expert disclosures was June 8, 2017, and Plaintiffs never
10 disclosed another expert to support their case.

11 9. The premise of Plaintiffs' professional negligence claim against
12 Defendants is that Plaintiffs believe Defendants appraised the Property incorrectly
13 because Defendants were unaware that the Clark County Assessor's Office had a
14 different model home and a different square footage listed in its records. See Maria
15 Boesiger's Affidavit attached to Plaintiffs' Opposition at ¶¶ 13, 14, 15. In this regard,
16 Maria Boesiger's affidavit states as follows:

17 13. Subsequently, the Clark County tax assessment on my
18 home led to the discovery that the actual square footage of the
19 house was significantly smaller than the amount listed in the
20 assessor's record at the time I purchased the house. It was
subsequently revised by the county to reflect the true square
footage.

21 14. The appraiser from the Clark County came to my house and
22 said it was the wrong model and not the one they have on file.
23 He looked very confused by it. Clark County has since changed
the assessment to reflect the lower square footage.

24 15. I was unable to refinance my house and qualify for a less
25 expensive conventional loan because of the overvaluation of the
26 house in the initial appraisal by Travis Gliko before I finalized
the purchase of the home.

27 Id.

28 ///

///

10. However, the Appraisal Report makes it clear that Defendant Travis Gliko was well aware of the discrepancy in the square footage of the Property from the Assessor's Office and the MLS Listing. In this regard, the Appraisal Report clearly states as follows:

SQUARE FOOTAGE DIFFERENCE:

The Assessor and MLS Listing have a documented 3,533 SF of living area for the subject property. This is incorrect as the subject was former model home with the garage converted to office space. It has since been converted back to the original floor plan with a 2-car garage but the Assessor and MLS still have the garage space as living area. The appraiser approx. measurements with the 2 car garage is 3,002SF. This appears to be the correct living square footage as verified with the builders floor plan. Therefore, the appraiser will utilize the appraisers approx measurements within the context of this report.

See Defendants' Appraisal Report at Exhibit C to Defendants' Motion for Summary Judgment at DA00076 (bold underline emphasis added).

11. The Appraiser Report was also made directly and solely for the benefit of the Lender Guild Mortgage. For example, the front of the Appraisal Report states that the appraisal is for "Guild Mortgage." See Defendants' Motion for Summary Judgment at Exhibit C to Appraisal Report at DA000066. The second page of the Appraisal Report states "the purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property." See Id. at DA000067. The Appraiser Report also states the intended user and intended use is as follows:

Intended Use: The intended use of this appraisal report is for the lender/client to evaluate the property that is the subject of this appraisal for a mortgage finance transaction.

Intended User: The intended user for this appraisal report is the lender/client.

Id. at DA000070.

The Appraisal Report then identified the lender/client as follows:

LENDER/CLIENT

Name Solidifi

Company Name Guild Mortgage

Id. at DA000072

The Supplemental Addendum portion of the Appraisal Report states the intended user is as follows:

INTENDED USER:

The Intended User of this appraisal report is the Lender/Client. The Intended Use is to evaluate the property that is the subject of this appraisal for a mortgage finance transaction, subject to the state Scope of Work, purpose of the appraisal, reporting requirements of this appraisal report form, and the Definition of Market Value. **No additional intended Users are identified by this appraiser.**

Id. at DA000076 (bold emphasis added).

12. Nowhere in the Appraisal Report does it clearly state the intended beneficiaries are the Plaintiffs. On the contrary, as emphasized above, the Appraiser Report clearly states that "no addition intended users are identified by this appraiser."

Id. at DA000076.

II. CONCLUSIONS OF LAW

13. In order to establish a prima facie case of negligence, a plaintiff must establish four elements: "(1) the existence of a duty of care, (2) breach of that duty, (3) legal causation, and (4) damages." Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc., 125 Nev. 818, 824, 221 P.3d 1276, 1280 (2009).

14. When a claim of negligence is based on an allegation that a professional was negligent, the plaintiff must show that the professional's conduct fell below the standard of care associated with that profession. See Redden v. SCL Colo. Funeral Servs., Inc., 38 P.3d 75, 80-81 (Colo.2001). For those practicing a profession involving specialized knowledge or skill, the applicable standard of care generally requires the actor to possess a standard minimum of special knowledge and ability and to exercise

1 reasonable care in a manner consistent with members of the profession in good
2 standing. Hice v. Lott, 223 P.3d 139, 143 (Colo. App. 2009).

3 15. This means that a plaintiff in a professional malpractice action is required
4 to provide expert testimony to establish defendant's standard of care because ordinary
5 persons are not conversant with it. Daniel Mann, Johnson & Mendenhall v. Hilton
6 Hotels Corp., 98 Nev. 113, 115, 642 P.2d 1086, 1087 (1982); Tommy L. Griffin
7 Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc., 351 S.C. 459, 570 S.E.2d
8 197, 203 (S.C.Ct.App. 2002); Hice, 223 P.3d at 143.

9 In Nevada, the general rule governing the admissibility of expert testimony is
10 NRS. 50.275, which states:

11 If scientific, technical or other specialized knowledge will
12 assist the trier of fact to understand the evidence or to
13 determine a fact in issues, a witness qualified as an expert
14 by special knowledge, skill, experience, training, or
15 education may testify to matters within the scope of such
16 knowledge.

16 The Nevada Supreme Court discussed NRS 50.275 in Hallmark v. Eldridge,
17 shedding light on various aspects of the statute. Hallmark v. Eldridge, 124 Nev. 492,
18 189 P.3d 646, 650 (2008). In Hallmark, the Court held that before a person may testify
19 as an expert pursuant to NRS 50.275, the District Court must first determine whether he
20 or she is qualified in an area of scientific, technical, or other specialized knowledge. Id.,
21 124 Nev. at 499, 189 P.3d at 651. In determining whether a person is properly
22 qualified, the court should consider the following factors: "(1) formal schooling and
23 academic degrees, (2) licensure, (3) employment experience, and (4) practical
24 experience and specialized training." Id.

25 Expert testimony is unnecessary only in such cases where the relevant standard
26 of care does not require specialized or technical knowledge. See Am. Family Mut. Ins.
27 Co. v. Allen, 102 P.3d 333, 343 (Colo.2004); see also White v. Jungbauer, 128 P.3d
28 263, 264 (Colo.App.2005) (expert testimony is not required if the subject matter of a

professional negligence claim lies within the ambit of common knowledge of ordinary persons); Daniel, 98 Nev.at 115, 642 P.2d at 1087.

NOW THEREFORE, IT IS HEREBY ORDERED:

16. With respects to Plaintiffs' causes of action for Professional Negligence, in this case, Plaintiffs' failure to disclose an expert is fatal to their case as an expert is necessary to establish the duty of care, and Defendants' breach of the duty of care. Likewise, Plaintiffs cannot simply rely on statements made by Plaintiff Marie Boesiger because Ms. Boesiger is not qualified to provide any testimony regarding the duty of care or Defendants' breach of the duty of care.

17. With respects to Plaintiffs' causes of action for Negligent Misrepresentation and Breach of the Statutory Duty to Disclose Material Facts, these claims also fail as they are derivative of Plaintiffs' Professional Negligence claim.

18. With respects to Plaintiffs' cause of action for Breach of Third Party Beneficiary, this claim fails because the Appraisal Report clearly and unequivocally state that the Lender Guild Mortgage is the only intended beneficiary. The Appraisal Report also clearly state that "[n]o additional intended Users are identified by this appraiser." In addition, because Plaintiffs are not intended beneficiaries to the Appraisal Report, Plaintiffs do not even have standing as there was never ever a duty owed to Plaintiffs which is dispositive of this entire case.

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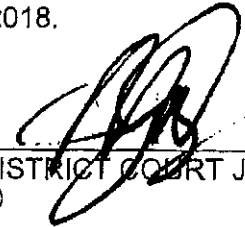
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19. Defendants' Motion for Summary Judgment is hereby **GRANTED** in its entirety.

Dated this 12 day of January, 2018.


DISTRICT COURT JUDGE JIM CROCKET
(MS)

Submitted by:

LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.

By: 

JOSEPH P. GARIN, ESQ. (Bar No. 6653)

ERIC N. TRAN, ESQ. (Bar No. 11876)

9900 Covington Cross Drive, Suite 120

Las Vegas, Nevada 89144

Attorneys for Defendants

Approved as to form and content:

DAVID J. WINTERTON & ASSOC., LTD.

Submitted for review/No Response

By: _____

DAVID J. WINTERTON, ESQ. (Bar No. 4142)

7881 W. Charleston Blvd., Suite 220

Las Vegas, NV 89117

Attorneys for Plaintiffs



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Attorneys for Defendants

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JAMES A. BOESIGER, an individual;
MARIA S. BOESIGER, an individual,

Plaintiffs,

vs.

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI-XX, inclusive.

Defendants.

Case No.: A-15-725567-C
Dept. No.: XXIV

**NOTICE OF ENTRY OF ORDER
GRANTING DEFENDANTS' MOTION
FOR SUMMARY JUDGMENT**

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1 Please take notice that on the 19th day of January, 2018, an Order Granting
2 Defendants' Motion for Summary Judgment was entered in the above-captioned matter. A
3 copy of said Order is attached hereto and made part hereof.

4 Dated this 25th day of January, 2018.

5 LIPSON NEILSON, P.C.

6
7 */s/ Eric N. Tran*

8 By: _____
9 JOSEPH P. GARIN, ESQ. (Bar No. 6653)
10 ERIC N. TRAN, ESQ. (Bar No. 11876)
11 9900 Covington Cross Drive, Suite 120
12 Las Vegas, Nevada 89144

13 *Attorneys for Defendants*
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 25th day of January, 2018, I electronically served the foregoing **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT** to the following parties utilizing the Court's E-File/ServeNV System:

David J. Winterton, Esq.
DAVID J. WINTERTON & ASSOC.
1140 N. Town Center Dr., Ste. 120
Las Vegas, NV 89144
david@davidwinterton.com
Attorneys for Plaintiffs

/s/ Kim Glad

An Employee of LIPSON NEILSON P.C.

Steven D. Grierson

1 NTC
2 DAVID J. WINTERTON, ESQ.
3 Nevada Bar No. 004142
4 MEGHAN HAWLEY SHIGEMITSU, ESQ.
5 Nevada Bar No. 0014618
6 DAVID J. WINTERTON & ASSOCIATES, LTD
7 7881 W. Charleston Blvd., Suite 220
8 Las Vegas, Nevada 89117
9 Telephone: (702) 363-0317
10 Facsimile: (702) 363-1630
11 Email: david@davidwinterton.com
12 Email: meghan@davidwinterton.com
13 Attorneys for Plaintiffs

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 JAMES A. BOESIGER, an individual,
17 MARIA S. BOESIGER, an individual

Case No.: Case No. A-15-725567-C

18 Plaintiffs,

19 vs.

20 DESERT APPRAISALS, LLC a Nevada
21 Limited-Liability Company, TRAVIS T.
22 GLIKO, an individual; DOES I-X inclusive
23 ROE CORPORATIONS XI-XX inclusive

24 Defendants.

[Arbitration Exempt - amount of damages
in excess of \$50,000.00]

25 NOTICE OF APPEAL

26 Notice is hereby given that JAMES A. BOESIGER, and MARIA S. BOESIGER, hereby
27 appeals to the Supreme Court of Nevada from the final decision in favor of Desert Appraisals, LLC
28 entered on the docket on January 26, 2018

DATED this 15th day of February, 2018

DAVID J. WINTERTON & ASSOCIATES LTD


By: *David J. Winterton*

David J. Winterton Esq.
Nevada Bar No.: 004142
7881 W. Charleston Blvd., Suite 220
Las Vegas, Nevada 89117

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Eric Tran, Esq.
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9 Attorneys for *Plaintiffs*

10
11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

13 JAMES A. BOESIGER, an individual,
14 MARIA S. BOESIGER, an individual

Case No.: Case No. A-15-725567-C

15 Plaintiffs,

16 vs.

17 DESERT APPRAISALS, LLC a Nevada
18 Limited-Liability Company, TRAVIS T.
19 GLIKO, an individual; DOES I-X inclusive
20 ROE CORPORATIONS XI-XX inclusive

21 Defendants.

[Arbitration Exempt - amount of damages
in excess of \$50,000.00]

22 **NOTICE OF POSTING OF BOND FOR COSTS OF APPEAL**

23 COMES NOW, JAMES A. BOESIGER and MARIA S. BOESIGER (Plaintiffs),
24 by and through his counsel of record, DAVID J. WINTERTON & ASSOCIATES, LTD., hereby
25 files this Notice of Posting Cost Bond on Appeal in the amount of \$500.00.

26 DATED this 2nd day of March, 2018.

27 DAVID J. WINTERTON & ASSOCIATES, LTD.

28 By: /s/ David J. Winterton, Esq.

DAVID J. WINTERTON, ESQ.
Nevada Bar No. 004142
1140 No. Town Center Drive, Suite 120
Las Vegas, Nevada 89144
(702) 363-0317

1 CERTIFICATE OF MAILING

2 I HEREBY CERTIFY that I deposited a true and accurate copy of the foregoing Notice of
3 Posting Cost Bond on Appeal by e-serving the same on the 2nd day of March, 2018, addressed as
4 follows:

5
6 Eric Tran, Esq.
LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
7 Nevada Bar N. 011876
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8 Las Vegas, Nevada 89144

9
10 
Employee of DAVID J. WINTERTON & ASSOC., LTD.
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OFFICIAL RECEIPT

District Court Clerk of the Court 200 Lewis Ave, 3rd Floor Las Vegas, NV 89101

Payor
David J. Winterton & Assoc., LTD.

Receipt No.
2018-15716-CCCLK

Transaction Date
03/5/2018

Description	Amount Paid
-------------	-------------

On Behalf Of Boesiger, James A.
A-15-725587-C
James Boesiger, Plaintiff(s) vs. Desert Appraisals LLC, Defendant(s)
Appeal Bond

Appeal Bond
SUBTOTAL

500.00
500.00

PAYMENT TOTAL **500.00**

Check (Ref #11489) Tendered 500.00
Total Tendered 500.00
Change 0.00

03/05/2018
12:30 PM

Cashier
Station RJC2C

Audit
36095981

OFFICIAL RECEIPT

Steven D. Grierson

1 DAVID J. WINTERTON, ESQ.
Nevada Bar No. 004142
2 MEGHAN HAWLEY SHIGEMITSU, ESQ.
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david@davidwinterton.com
6 meghan@davidwinterton.com

7 *Attorneys for Plaintiffs*

8 **DISTRICT COURT**
9 **CLARK COUNTY NEVADA**

10
11 JAMES A. BOESIGER, an individual;
12 MARIA S. BOESIGER, an individual,

13 *Plaintiffs,*

14 vs.

15 DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
16 GLIKO, an individual; DOES 1-X, inclusive;
17 ROE CORPORATIONS XI-XX, inclusive.

18 *Defendants.*

Case No. A-15-725567-C

Dept. No. XXIV

Date: December 5, 2017

Time: 9:00 AM

19
20
21 **STATEMENT OF EVIDENCE PURSUANT TO N.R.A.P. 9(d)**

22 The Honorable Judge Joe Crockett took the bench in the hearing for Defendant's Motion
23 for Summary Judgment on December 5, 2017. Judge Crockett then proceeded to make his initial
24 ruling on the record. He stated there are no genuine issue of material fact. He states that he
25 believes that an expert witness will be required to prove the Plaintiff's case. He further stated
26 that a third-party beneficiary law eliminates Plaintiff's case in all respects. As a result the Judge
27 granted the Defendant's motion for summary judgment. Mr. Tran was to prepare the order along
28

1 findings of fact and conclusions of law, within ten days per EDCR 7.21.

2 After Judge Crocket made his opening comments, he asked Mr. Winterton if he would like to
3 respond. Attorney Winterton, representing the Plaintiffs, made an oral argument against summary
4 judgment on two grounds: (1) an expert witness is not required for any of the causes of action and (2)
5 real estate appraisers can be liable to potential home buyers as third party beneficiaries to appraisals
6 contracted by the lender.

7 Mr. Winterton cited Egan v. Chambers 299 P.3d 364, where the Nevada Supreme Court held
8 that an expert witness is not required in professional negligence cases except in limited, statutorily-
9 defined medical cases. Unless the profession involved falls into the narrow statutory exception for
10 professions that require an expert witness to establish the professional standard of care, no expert witness
11 testimony is required as a matter of law to establish professional negligence. Mr. Winterton explained
12 that a real estate appraiser is clearly outside the scope of the exception for designated medical fields. In
13 fact, Egan involved a podiatrist, which is closer to the statutory exception than real estate appraisers.
14 Defense counsel did not cite any statute or controlling precedent that indicates a need for expert
15 testimony for establishing the duty and breach of real estate appraisers. Plaintiff's counsel thus concluded
16 that, as a matter of law, no expert witness testimony is required for his first three causes of action in tort
17 law: professional negligence, negligent misrepresentation, and the breach of the statutory duty to disclose
18 material facts.

19 Mr. Winterton stated that the negligence of using the wrong model for your appraisal with a
20 larger square footage is something a lay fact finder can understand. Furthermore, there is issues
21 of fact regarding the negligence of the appraiser in this case as indicated in Mrs. Boesiger's
22 deposition testimony, suspicious markings in the appraisal report, subsequent knowledge of the
23 error by the Clark County Assessor's Office, and circumstantial evidence from the first appraisal
24 and the attempted second appraisal. All of this evidence creates genuine issues of fact on the
25 record for establishing a breach of duty of care by the appraiser to survive summary judgment.
26 Therefore, no expert witness is required.

27 Second, Mr. Winterton explained real estate appraisers can be liable to potential home
28 buyers as third party beneficiaries to appraisals contracted by the lender. While there is no

1 published law directly on point, Mr. Winterton explained that appraisers should be liable to
2 known home buyers based on Nevada's adoption of Restatement (Second) of Torts Section 552.
3 It states that anyone who supplies false information or guidance in a transaction where he has a
4 profit interest or is acting in the course of his business can be liable to someone who justifiably
5 relies on the information. Certainly home buyers rely on the appraised value of their home in
6 deciding to purchase the home and to accept a loan to finance the home. Mr. Winterton also
7 mentioned an unpublished case in Nevada that held a real estate appraiser hired by a lending
8 company could be liable to homebuyers under this adopted Restatement. Mr. Winterton also
9 mentioned that there were other published opinions from high courts in other jurisdictions brief
10 that have held real estate appraisers are liable to potential home buyers as third-party
11 beneficiaries to contracts to appraise the home value between appraisers and lenders. Schauf v.
12 Highfield 127 Wn.2d 17 Wash. 1995) that held appraisers liable. In addition Sage v. Blagg
13 appraisal Co. Ltd in (AZ 2009)

14 In response, the judge first addressed the issue of expert witness testimony. He stated that
15 an expert witness is necessary to establish negligence of a residential real estate appraiser. The
16 judge did not address specific facts of the negligence involved in this particular case. Rather, he
17 stated that the professional standard for appraisers could not be established without an expert
18 witness. He explained that a fact finder, judge or jury, does not have the requisite knowledge to
19 determine what arises to the standard of care for duty and breach by a real estate appraiser. He
20 stated that Mrs. Boesiger did not have adequate experience in real estate to be considered an
21 expert on the issues in the case. He also stated she could not provide testimony on the
22 comparable properties and that much of her proposed affidavit was inadmissible hearsay. The
23 error by the appraiser could be that the home is a model home. The garage was used as an office
24 and he may have counted the garage as living square feet at the time.

25 Then Attorney Winterton, representing the Plaintiffs, made a comment about the holding
26 the Nevada Supreme Court case Egan v. Chambers that expressly held expert witness testimony
27 was not required as a matter of law except for narrowly-defined medical professions.

28 The judge then conceded that expert testimony may not be required to survive summary

1 judgment. However, he said the expert witness issue does not matter because all four causes of
2 action can be summarily dismissed because there is no third-party beneficiary relationship
3 between home buyers and appraisers that are hired by lending companies even where the home
4 buyers are designated and pay for the cost of the appraisal. He discussed how the contract clause
5 limiting reliance was enforceable and dispositive. The judge also stated that there is no way for
6 an appraiser to be liable to home buyers where he was hired by the lender and not the home
7 buyers, even if (1) the home buyers paid for the appraisal fee, (2) the appraisal was done
8 specifically for those home buyers' loan application to buy the house, and (3) the sale of the
9 house was contingent on the house valuing at a certain price by the appraiser to qualify for the
10 loan to purchase it. The judge added further that the clause in the appraisal contract stating others
11 could not rely on the appraisal was dispositive and there was no argument to be made for third
12 party liability, even though this same clause did not prevent liability to third-party beneficiaries
13 in other jurisdictions that have published opinions addressing this issue.

14 The judge did not cite any case law or statute on point showing there was no third party
15 liability as a matter of law. Opposing counsel also did not cite any controlling law on this point in
16 its motion or in oral argument. Mr. Winterton argued that there could be third party beneficiary
17 liability and that such liability was not required for most of the causes of action. Mr. Winterton
18 attempted to give full oral argument on the case for holding real estate appraisers liable to
19 potential home buyers as third party beneficiaries to appraisals contracted by the lender but the
20 judge interrupted and held that there was no grounds for third party beneficiary liability. Thus,
21 the hearing concluded with no further argument and all four of Plaintiffs' causes of action were
22 dismissed and Defendant's Motion for Summary Judgement was granted.

23 While there is no transcript, the minutes from the court clearly addresses the finding on
24 the third party beneficiary issue. **"COURT FINDS, there is no genuine issue of material fact;**
25 **third-party beneficiary law eliminates Plaintiff's case in all respects,** and stated its further
26 findings. Further arguments by Mr. Winterton. COURT ORDERED, Defendant's motion for
27 summary judgment GRANTED." [Emphasis added].
28

1 Thus the record is clear that the judge dismissed all of four causes of action based on the lack of
2 third party beneficiary liability of real estate appraisers to potential home buyers as third party
3 beneficiaries to appraisals contracted by the lender.

4 DATED this 13th day of April, 2018

5 DAVID J. WINTERTON & ASSOCIATES LTD.

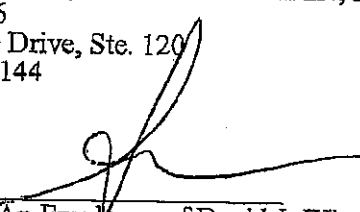
6
7 By: 


David J. Winterton Esq.
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David J. Winterton & Associates Ltd.
7881 W. Charleston Blvd. Suite 220
Las Vegas, NV 89117
Phone (702) 363-0317

1 CERTIFICATE OF SERVICE

2 I HEREBY CERTIFY that I electronically served a true and accurate copy of the
3 foregoing Statement of Evidence. by depositing same in the United States Postal Service, via first
4 class mail, postage prepaid in Las Vegas, Nevada, on the 13th day of April, 2018, addressed as
5 follows:

6
7 Eric Tran, Esq.
8 LIPSON, NEILSON, COLE, SELTZER & GARIN, P.C.
9 Nevada Bar N. 011876
10 9900 Covington Cross Drive, Ste. 120
11 Las Vegas, Nevada 89144

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An Employee of David J. Winterton & Assoc., Ltd.



LIPSON NEILSON P.C.
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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

JAMES A. BOESIGER, an individual;
MARIA S. BOESIGER, an individual,

Case No.: A-15-725567-C
Dept. No.: XXIV

vs. Plaintiffs,

DESERT APPRAISALS, LLC, a Nevada
Limited-Liability Company; TRAVIS T.
GLIKO, an individual; DOES I-X, inclusive;
ROE CORPORATIONS XI-XX, inclusive.

Defendants.

**OBJECTION TO PLAINTIFFS'
STATEMENT OF EVIDENCE; AND
DEFENDANTS' STATEMENT OF THE
PROCEEDINGS ON DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
PURSUANT TO NRAP 9(d)**

Defendants Dessert Appraisals, LLC and Travis T. Gliko, by and through their attorneys of record LIPSON NEILSON P.C. hereby submit this Objection to Plaintiffs' Statement of the Evidence. Defendants also submit this competing Statement of the Proceedings on Defendants' Motion for Summary Judgment.

**STATEMENT OF THE PROCEEDINGS ON DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

Defendants Desert Appraisal, LLC and Travis Gliko's (collectively referred to as "Defendants") Motion for Summary Judgment came before the Court on December 5, 2017 at 9:00 a.m. Eric N. Tran, Esq. appeared on behalf of Defendants; and David

Lipson Neilson P.C.
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(702) 382-1500 FAX: (702) 382-1512

1 Winterton, Esq. appeared on behalf of Plaintiffs James A. Boesiger and Maria S.
2 Boesiger (collectively referred to as "Plaintiffs").

3 The Honorable Judge Jim Crockett took the bench. Judge Crockett noted that
4 while Defendants' filed a Notice of Non-Opposition of Defendants' Motion for Summary
5 Judgment, because Plaintiffs subsequently filed an Opposition, the Court will consider
6 Plaintiffs' Opposition in ruling on Defendants' Motion for Summary Judgment.

7 Judge Crockett then recited the following relevant facts as follows:

8 1. On September 26, 2013, Plaintiffs entered into a Purchase Agreement to
9 purchase real property located at 5015 Adrian Fog Avenue, Las Vegas, Nevada 89141
10 ("the Property").

11 2. As part of the agreement, Plaintiffs made an initial offer of \$337,000.00
12 contingent on Plaintiffs obtaining a loan in the amount of \$325,205.00 from the lender,
13 Guild Mortgage, Inc.

14 3. After Plaintiffs' initial offer of \$337,000.00 to purchase the Property was
15 accepted by the Seller, Guild Mortgage hired Defendants to conduct an appraisal on the
16 Property.

17 4. On October 9, 2013, Defendant Gliko conducted an appraisal of the
18 Property.

19 5. According to the Appraisal Report, Defendant Gliko appraised the
20 Property at \$340,000.00. The Property was also appraised at having 3,002 square feet
21 of gross living area.

22 6. On October 2, 2015, Plaintiffs filed a Complaint against Defendants
23 asserting claims for (1) Professional Negligence; (2) Breach of Third Party Beneficiary
24 Contract; (3) Negligent Misrepresentation; and (4) Breach of the Statutory Duty to
25 Disclose Material Facts pursuant to NRS 645C.470.

26 7. Plaintiffs' Complaint stems from Plaintiff Maria Boesiger's belief that
27 "Defendants did an appraisal on the Property that was completely wrong" and that
28

1 "Defendants used the wrong model to create their appraisal." The Complaint also
2 alleges that Defendants appraised the Property at 400-500 square feet higher than the
3 actual size of the Property. Plaintiffs allege that Defendants' wrong appraisal of the
4 Property resulted in Plaintiffs paying \$337,000.00 for the Property and required Plaintiffs
5 to obtain a larger loan to purchase the Property.

6 8. On July 29, 2016, Plaintiffs' served their designation of expert witness
7 naming appraiser Craig Jiu as their expert. Plaintiffs stated that Mr. Jiu was designated
8 to discuss the errors in the Defendants' appraisal. However, Plaintiffs' expert disclosure
9 did not contain an expert report regarding the statements or opinions of Mr. Jiu or the
10 data or other information that Mr. Jiu relied upon. Instead, Plaintiffs' "designation of
11 expert witness Craig Jiu" was a one-page document simply stating that Plaintiffs
12 designated Craig Jiu as an expert. On May 22, 2017, Plaintiffs withdrew their Expert
13 Designation of Craig Jiu after Defendants filed a Motion to Strike Plaintiffs' Expert
14 Designation. The deadline for expert disclosures was June 8, 2017, and Plaintiffs never
15 disclosed another expert to support their case.

16 9. The premise of Plaintiffs' professional negligence claim against
17 Defendants is that Plaintiffs believe Defendants appraised the Property incorrectly
18 because Defendants were unaware that the Clark County Assessor's Office had a
19 different model home and a different square footage listed in its records. For example,
20 Maria Boesiger's affidavit states as follows:

21 13. Subsequently, the Clark County tax assessment on my
22 home led to the discovery that the actual square footage of the
23 house was significantly smaller than the amount listed in the
24 assessor's record at the time I purchased the house. It was
subsequently revised by the county to reflect the true square
footage.

25 14. The appraiser from the Clark County came to my house and
26 said it was the wrong model and not the one they have on file.
27 He looked very confused by it. Clark County has since changed
the assessment to reflect the lower square footage.

15. I was unable to refinance my house and qualify for a less expensive conventional loan because of the overvaluation of the house in the initial appraisal by Travis Gliko before I finalized the purchase of the home.

10. However, the Appraisal Report makes it clear that Defendant Travis Gliko was well aware of the discrepancy in the square footage of the Property from the Assessor's Office and the MLS Listing. For example, the Appraisal Report clearly states as follows:

SQUARE FOOTAGE DIFFERENCE:

The Assessor and MLS Listing have a documented 3,533 SF of living area for the subject property. This is incorrect as the subject was former model home with the garage converted to office space. It has since been converted back to the original floor plan with a 2-car garage but the Assessor and MLS still have the garage space as living area. The appraiser approx. measurements with the 2 car garage is 3,002SF. This appears to be the correct living square footage as verified with the builders floor plan. Therefore, the appraiser will utilize the appraisers approx measurements within the context of this report.

11. The Appraiser Report was also made directly and solely for the benefit of the Lender Guild Mortgage. For example, the Appraisal Report states throughout the report that the appraisal is for "Guild Mortgage." The Appraiser Report specifically disclaimed usage of the Appraisal Report by any other party other than Guild Mortgage.

Judge Crockett then addressed the causes of action in Plaintiffs' Complaint. With respects to Plaintiffs' causes of action for Professional Negligence, Judge Crockett noted that an expert is not always required to establish duty of care and breach of the duty of care; however, in this specific case, based on the professional negligence allegations made against Defendants, Judge Crockett agrees with Defendants that Plaintiffs' failure to disclose an expert is fatal to Plaintiffs' case as an expert is necessary to establish the duty of care, and breach of the duty of care against Defendants who are certified residential appraisers. Likewise, because Plaintiffs are

1 alleging professional negligence against a certified residential appraiser, Plaintiffs
2 cannot simply rely on statements made by Plaintiff Marie Boesiger in her Affidavit
3 because Ms. Boesiger is not qualified to provide any testimony regarding the duty of
4 care or Defendants' breach of the duty of care of an appraiser, and because many of
5 the statements by Ms. Boesiger in her Affidavit constitute hearsay. Thus, Judge
6 Crockett granted summary judgment to Defendants on Plaintiffs' Professional
7 Negligence; Negligent Misrepresentation; and Breach of the Statutory Duty to Disclose
8 Material Facts causes of action.

9 With respects to Plaintiffs' cause of action for Breach of Third Party Beneficiary,
10 this claim fails because the Appraisal Report clearly and unequivocally state that the
11 Lender Guild Mortgage is the only intended beneficiary. The Appraisal Report also
12 clearly states that "[n]o additional intended Users are identified by this appraiser." In
13 addition, because Plaintiffs are not intended beneficiaries to the Appraisal Report,
14 Plaintiffs do not even have standing as there was never ever a duty owed to Plaintiffs
15 which is also dispositive of this entire case. Thus, summary judgment can be granted to
16 Defendants because Plaintiffs lack standing to even bring its Complaint against
17 Defendants.

18 Mr. Winterton then argued that the Nevada Supreme Court case in Egan v.
19 Chambers demonstrates that an expert is necessary in only limited medical malpractice
20 cases and that Plaintiffs are not required to provide expert testimony in this case as a
21 lay person can testify to the negligence committed by an appraiser. Mr. Winterton then
22 stated that Ms. Boesiger's Affidavit establishes genuine issues of fact. Judge Crockett
23 responded that many of the statements made in Ms. Boesiger's deposition is hearsay
24 and thus inadmissible. Mr. Winterton then stated that Ms. Boesiger testified at her
25 deposition that she made her own comparables to the Subject Property which
26 demonstrates that Defendants' appraisal of the Property was wrong. Judge Crockett
27
28

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1 responded that Ms. Boesiger was unqualified to render any opinions regarding the
2 standard of care for an appraiser or to even provide her own comparables.

3 Judge Crockett then reiterated that he was granting Defendants' Motion for
4 Summary Judgment in its entirety and directed Mr. Tran to prepare the Order.

5 Dated this 9th day of May, 2018.

6 LIPSON NEILSON P.C.

7 /s/ Eric Tran

8 By: _____

9 Joseph P. Garin, Esq. (Bar No. 6653)
10 Eric N. Tran, Esq. (Bar No. 11876)
11 9900 Covington Cross Drive, Suite 120
12 Las Vegas, Nevada 89144
13 igarin@lipsonneilson.com
14 etran@lipsonneilson.com
15 *Attorneys for Defendants*

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, I certify that on the 9th day of May, 2018, I electronically served the foregoing **OBJECTION TO PLAINTIFFS' STATEMENT OF EVIDENCE; AND DEFENDANTS' STATEMENT OF THE PROCEEDINGS ON DEFENDANTS' MOTION FOR SUMMARY JUDGMENT PURSUANT TO NRAP 9(d)** to the following parties utilizing the Court's E-File/ServeNV System:

David J. Winterton, Esq.
DAVID J. WINTERTON & ASSOC.
1140 N. Town Center Dr., Ste. 120
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david@davidwinterton.com
Attorneys for Plaintiffs

/s/ Kim Glad

An Employee of LIPSON NEILSON P.C.