

IN THE SUPREME COURT OF THE STATE OF NEVADA

J.E. JOHNS & ASSOCIATES, a Nevada
business entity; and A.J. JOHNSON, an
individual,

Appellants/Cross-Respondents,

vs.

JOHN LINDBERG, an individual; MICHAEL
LINDBERG, an individual; and JUDITH L.
LINDBERG, an individual,

Respondents/Cross-Appellants.

No. 78086

Electronically Filed
District Court Case No. CV15-00281
Aug 08 2019 10:59 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Appeal from the Second Judicial District Court
of the State of Nevada In and For Washoe County

The Honorable Jerome Polaha, District Judge Presiding

RESPONDENTS'/CROSS-APPELLANTS' APPENDIX – VOLUME II

Attorney for Respondents/Cross-Appellants John Lindberg,
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RESPONDENTS'/CROSS-APPELLANTS' APPENDIX¹

DOCUMENT TITLE	DATE	VOLUME	RA BEGIN	RA END
Answer to Second Amended Complaint	1/10/18	1	RA 0015	RA 0020
Default	3/1/18	1	RA 0195	RA 0196
Defendants' Motion in Limine No. 3	2/13/18	1	RA 0037	RA 0059
Defendants' Opposition to Plaintiffs' Motion in Limine No. 2	2/22/18	1	RA 0063	RA 0070
Motion to Substitute Party	4/15/16	1	RA 0001	RA 0005
Notice of Intent to Take Default	2/14/18	1	RA 0060	RA 0062
Opposition to Motion ² to Amend or Alter Judgment Pursuant to NRCP 59(e)	10/24/18	2	RA 0219	RA 0279
Order (Grant Motion to Substitute Party)	6/1/16	1	RA 0013	RA 0014
Order (on Plaintiffs' Motions in Limine 1 – 3)	3/20/18	1	RA 0212	RA 0218
Plaintiffs' Combined Opposition to Defendants' Motions in Limine Numbers Two and Three	2/23/18	1	RA 0071	RA 0185

¹ The listed pleadings were requested to be added to the Joint Appendix when the parties conferred on the contents of the Joint Appendix and were not included in the final Joint Appendix. The listed transcripts were to be included in the Joint Appendix but were not added to the final Joint Appendix.

² The Opposition to Motion to Amend or Alter Judgment Pursuant to NRCP 59(e) was included in the Joint Appendix as requested, however, the exhibits to the Opposition were not included in the Joint Appendix.

DOCUMENT TITLE	DATE	VOLUME	RA BEGIN	RA END
Plaintiffs' Motion in Limine No. 2 to Exclude Offer of Evidence or Argument Related to Settlements Reached with Other Defendants	2/9/18	1	RA 0021	RA 0036
Plaintiffs' Reply in Support of Motion in Limine No. 2	3/5/18	1	RA 0197	RA 0211
Reply Argument in Support of Defendants' Motion in Limine Number Two and Motion in Limine Number Three	2/27/18	1	RA 0186	RA 0194
Request for Submission	5/4/16	1	RA 0006	RA 0012
Transcript - Trial Day 1	8/20/18	2	RA 0280	RA 0449
Transcript – Trial Day 2	8/21/18	3	RA 0450	RA 0591
Transcript – Trial Day 3	8/22/18	3	RA 0592	RA 0674
Transcript - Post-Trial Motion Hearing	1/9/19	3	RA 0675	RA 0693

CERTIFICATE OF SERVICE

Pursuant to NRAP 25(d), I certify that I am an employee of Moore Law Group, PC, and that on August 8, 2019, I caused the foregoing document to be served on all parties to this action by:

 X E-service via Nevada Supreme Court eflex filing system

to the following:

Glade Hall, Esq.

/s/ Genevieve DeLucchi

An employee of Moore Law Group, PC

2645
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN LINDBERG, an individual; MICHAL
LINDBERG, an individual; and JUDITH L.
LINDBERG, an individual,

Plaintiffs,

v.

HARRY RICHARD REYNOLDS, an
individual; DEANN REYNOLDS, an
individual; J.E. JOHNS & ASSOCIATES, a
Nevada business entity; JAMES E. JOHNS,
an individual; A.J. JOHNSON, an individual;
BRIAN F. KINCANNON, an individual;
GROUP ONE, INC., a Nevada corporation
dba Keller Williams Realty; ROBERT
CLEMENT, an individual; and DOES 3
through 10, inclusive,

Defendants.

Case No. CV15-00281

Dept. No. 3

**OPPOSITION TO MOTION TO AMEND OR ALTER
JUDGMENT PURSUANT TO NRCP 59(e)**

Plaintiffs hereby file this Opposition to Defendants' Motion to Amend or Alter Judgment pursuant to NRCP 59(e) ("Opposition"). The remaining Defendants in this matter erroneously claim in their Motion to Amend or Alter Judgment pursuant to NRCP 59(e) ("Motion") that they are entitled to an off-set for settlements reached with other defendants who settled their disputes with the Plaintiffs several

1 years ago. Despite these various other settlements, the remaining Defendants in this action cite to no case
2 or statute or other legal authority that would entitle them to any kind of off-set or claim of contribution in
3 this matter. As a result, the Court should deny the remaining Defendants' Motion and uphold the
4 judgment entered in this matter in the Plaintiffs' favor. In denying this Motion, the Court should also
5 award Plaintiffs the reasonable attorneys' fee Plaintiffs have expended to oppose the Motion.
6

7 **FACTUAL AND PROCEDURAL BACKGROUND**
8 **AND LEGAL ARGUMENT**

9 The remaining Defendants erroneously believe they are entitled to an off-set or to contribution
10 under NRS 17.245 as "joint tortfeasors" with the defendants that have settled out of this dispute. What
11 the remaining Defendants fail to realize is that they are not "joint tortfeasors" with any of the settling
12 defendants. In the Plaintiffs' Second Amended Complaint, a copy of which is attached hereto as **Exhibit**
13 **1**, the Plaintiffs specifically alleged statutory and tort-based claims against Harry Reynolds and Deann
14 Reynolds (in the First, Second and Third Causes of Action), who were the sellers of the property that
15 formed the basis of the Second Amended Complaint. The Plaintiffs *did not* assert any tort-based claims
16 against their own agent and his broker (Brian Kincannon, Robert Clement and Dickson Realty) or against
17 the remaining Defendants (A.J. Johnson, James E. Johns, and JE Johns & Associates), instead alleging
18 *only statutory claims* against the realtors and the brokers that were named in the Second Amended
19 Complaint. Therefore, Plaintiffs did not pursue any theories of *joint tort liability* against the sellers and
20 any of the realtors or brokers named in the Second Amended Complaint. All liability stated against the
21 remaining Defendants is statutory in nature, is based upon different facts than those claimed against the
22 sellers and does not form joint tort liability between the remaining Defendants and any other defendant.
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26 In their answer to the Plaintiffs' Second Amended Complaint, a copy of which is attached hereto
27 as **Exhibit 2**, the remaining Defendants did not claim as a defense or as an affirmative claim for relief
28 that they were entitled to an off-set or to contribution from the other named defendants under NRS 17.225

1 through NRS 17.305. Additionally, regarding the two tort claims asserted against the sellers of the
2 property for negligence and fraud (the Second and Third Causes of Action), the remaining Defendants
3 correctly stated in their answer that these claims did not apply to them, so they did not provide any answers
4 to the allegations of the Second and Third Causes of Action of the Second Amended Complaint. **Id.**
5 Conversely, when Brian Kincannon, Robert Clement and Dickson Realty answered the Second Amended
6 Complaint, a copy of that answer being attached hereto as **Exhibit 3**, these settling defendants specifically
7 alleged as an affirmative defense in their answer that they were entitled to contribution from third-parties
8 (Eleventh Affirmative Defense). In the Cross-Claim that these settling defendants filed concurrently with
9 their answer in this matter, Brian Kincannon, Robert Clement and Dickson Realty asserted a right to claim
10 contribution and indemnity arising from the remaining Defendants' conduct, thereby preserving those
11 claims. **Id.** By not alleging a right to an off-set in their answer, the remaining Defendants have waived
12 any such claims at this very late stage of this case.

15 The issue of joint tort liability being raised to permit an off-set or contribution under NRS 17.225
16 through NRS 17.305 was previously raised with this Court in Plaintiffs' Motion in Limine No. 2, a copy
17 of which is attached hereto as **Exhibit 4**. Upon considering the arguments in Plaintiffs' Motion in Limine
18 No. 2, which are incorporated into this Opposition by this reference, and any arguments in opposition to
19 that motion, the Court granted Plaintiffs' Motion in Limine No. 2, concluding that Plaintiffs' "claims are
20 purely statutory, and the statutes involved do not contain provisions for joint liability or contribution.
21 Further, the Defendants have not cited any binding authority that would entitle them to offset the \$7500
22 (which is the amount of the settlement with the Plaintiffs' realtor)." Also, in this Order, the Court found
23 that "Defendants acknowledge that the only basis for liability against the Defendants is statutory. . ." and
24 that "Defendants argue[d] that they are entitled in the amount of \$7500 to prevent a double recovery by
25 the Plaintiffs." **Id.** The Court did not buy the remaining Defendants' argument related to an off-set the
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1 first time the remaining Defendants made it and should not at this time.

2 The one case cited by the remaining Defendants in their Motion related to this issue is
3 distinguishable from the facts established at the trial of this matter because in this cited case, the right to
4 contribution and to a set-off or indemnity among *joint tortfeasors* was the issue decided. In *The Doctors*
5 *Co. v. Vincent*, 120 Nev. 644, 98 P.3d 681 (2004), the only case cited on this issue in the Motion, the
6 Nevada Supreme Court reviewed and issued opinions related to contribution and indemnity among joint
7 tortfeasors, both allegedly responsible for the same injury. In this regard, the Supreme Court concluded
8 that a party must extinguish all joint tort liability in a settlement if it wished to preserve its right to
9 contribution but that a party did not need to extinguish all joint tort liability in a settlement if it wished to
10 pursue claims of total indemnity. *Id.* at 646-647. *The Doctors Co.* case has no bearing on this litigation
11 and the remaining Defendants do not show how this cited case would apply in this matter. Moreover, as
12 noted in the Court's order on Plaintiffs' Motion in Limine No. 3, the remaining Defendants have admitted,
13 in prior pleadings with this Court, that the only source of liability against the remaining Defendants is
14 statutory and there is no joint tort liability to determine. The *AA Primo Builders, LLC v. Washington* case
15 also cited in the remaining Defendants' Motion has no bearing on issues of contribution or a right to an
16 off-set or indemnity, but instead deals with the manner and nature of a motion to amend or alter a
17 judgment under NRCP 59(e), and whether such motions, if improperly brought, do not toll the time to
18 appeal set forth in NRAP 4. Nothing in *AA Primo* provides for a right of contribution, indemnity or an
19 off-set.
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24 Because this Court already dealt with the remaining Defendants' claim that they are entitled to an
25 off-set or contribution under NRS 17.225 through NRS 17.305 when the Court granted Plaintiffs' Motion
26 in Limine No. 2, because the remaining Defendants did not preserve the right to claim an off-set or to
27 assert claims of contribution in their answer, and because this case does not deal with the determination
28

1 and apportionment of joint tort liability, in that the claims are purely statutory in nature against the
2 remaining Defendants, the remaining Defendants are not entitled to an order amending or altering the
3 judgment. Plaintiffs obtained a judgment against these remaining Defendants in the principal amount of
4 \$75,780.79, with interest of \$19,121.48 awarded as of September 25, 2018, which well exceeds the
5 \$5,000.00 offer of judgment the remaining Defendants made in this case. No off-set for settlements
6 reached with other defendants should be granted and the Court should uphold the judgment in favor of
7 Plaintiffs and award Plaintiffs the attorney's fees expended to oppose the remaining Defendants' Motion.
8

9 **AFFIRMATION PURSUANT TO NRS 239B.030**

10 The undersigned attorney does hereby affirm that the preceding document does not
11 contain the social security number of any persons.
12

13 DATED this 24th day of October, 2018.

14 MOORE LAW GROUP, PC

15
16 By 

17 John D. Moore, Esq.
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24 Attorney for Plaintiffs
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28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that on October 24, 2018, I caused the foregoing document to be served on all parties to this action

by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

_____ personal delivery

_____ facsimile (fax)

_____ Federal Express/UPS or other overnight delivery

_____ Reno/Carson Messenger Service

XX E-service via flex filing system

to the following:

- GLADE HALL, ESQ. for AMINA JOHNS; J.E. JOHNS & ASSOCIATES et al



An Employee of Moore Law Group, PC

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INDEX OF EXHIBITS		
Exhibit Number	Description of Exhibit	No. of Pages
1	Second Amended Complaint	10
2	Answer – A.J. Johnson, et al.	6
3	Answer filed – Brian Kincannon, et al.	18
4	Plaintiffs’ Motion in Limine No. 2	16

FILED
Electronically
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Jacqueline Bryant
Clerk of the Court
Transaction # 6945389 : yvilorla

EXHIBIT 1

EXHIBIT 1

1090
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IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN LINDBERG, an individual; MICHAL
LINDBERG, an individual; and JUDITH L.
LINDBERG, an individual,

Plaintiffs,

v.

HARRY RICHARD REYNOLDS, an individual;
DEANN REYNOLDS, an individual; J.E. JOHNS
& ASSOCIATES, a Nevada business entity;
JAMES E. JOHNS, an individual; A.J.
JOHNSON, an individual; BRIAN F.
KINCANNON, an individual; GROUP ONE,
INC., a Nevada corporation dba Keller Williams
Realty; ROBERT CLEMENT, an individual; and
DOES 3 through 10, inclusive,

Defendants.

Case No. CV15-00281

Dept. No. 3

SECOND AMENDED COMPLAINT

Plaintiffs, JOHN LINDBERG, MICHAL LINDBERG, and JUDITH L. LINDBERG
(collectively "Lindbergs"), by and through their counsel of record, John D. Moore, Esq., Moore Law
Group, PC, for their Second Amended Complaint against Defendants, allege as follows:

PARTIES

1. At all times material to this Complaint, the Lindbergs were and are individuals and

1 residents of Washoe County, Nevada. JUDITH L. LINDBERG is JOHN LINDBERG's mother.
2 JOHN LINDBERG and MICHAL LINDBERG were and are husband and wife.

3 2. At all times material to this Complaint, Defendants HARRY RICHARD REYNOLDS
4 ("Harry Reynolds"), and DEANN REYNOLDS (collectively "Sellers"), were and are individuals and
5 residents of Washoe County, Nevada.

6 3. On information and belief, at all times material to this Complaint, Defendant J.E.
7 JOHNS & ASSOCIATES was and is a Nevada business entity of unknown type, not registered with
8 the Nevada Secretary of State, doing business in Washoe County, Nevada.

9 4. On information and belief, at all times material to this Complaint, Defendant JAMES
10 E. JOHNS was and is an individual and resident of Washoe County, Nevada, and was at all times
11 pertinent hereto a Nevada licensed real estate broker. Defendants J.E. JOHNS & ASSOCIATES and
12 JAMES E. JOHNS collectively are referred to herein as "Johns."

13 5. On information and belief, at all times material to this Complaint, Defendant A.J.
14 JOHNSON ("Johnson") was and is an individual and resident of Washoe County, Nevada, and was at
15 all times pertinent hereto a Nevada licensed real estate salesperson.

16 6. On information and belief, at all times material to this Complaint, Defendant Johnson
17 acted as a salesperson subject to the supervision of his broker, JAMES E. JOHNS.

18 7. On information and belief, at all times material to this Complaint, Defendant GROUP
19 ONE, INC., was a Nevada corporation doing business as KELLER WILLIAMS REALTY ("Keller
20 Williams"), and ROBERT CLEMENT ("Clement") was and is an individual and resident of Minden
21 County, Nevada, and was at all times pertinent hereto a Nevada licensed real estate broker.

22 8. On information and belief, at all times material to this Complaint, Defendant BRIAN
23 F. KINCANNON ("Kincannon") was and is an individual and resident of Washoe County, Nevada,
24 and was at all times pertinent hereto a Nevada licensed real estate salesperson.

25 9. On information and belief, at all times material to this Complaint, Defendant
26 Kincannon acted as a salesperson subject to the supervision of his broker, Clement.

10. Defendants DOES 3 through 10 are sued herein under fictitious names because the true names and capacities of said Defendants are not known by the Lindbergs, who will ask leave of this Court to amend this Complaint to set forth the same at such time as they become known. The Lindbergs are informed and believe that Defendants DOES 3 through 10 were owners, real estate agents, real estate brokers, contractors, subcontractors, individuals, co-conspirators or third party beneficiaries with respect to the real property and/or sale referenced herein, and as such are responsible for the Lindbergs' injuries and damages.

11. At all times material to this Complaint, each of the Defendants was the agent, co-conspirator, employee, partner or affiliate of each of the remaining Defendants, and each was at all times acting within the purpose and scope and in furtherance of said agency, employment or conspiracy and for the benefit of each of the remaining Defendants.

FACTS

12. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as if set forth at length herein.

13. In approximately September, 2012, Sellers offered their residential real property for sale, which property was located at 20957 Eaton Road, Pleasant Valley, Nevada 89521, and further described as Parcel 2 of Parcel Map No. 292 for John and Marie Brown, according to the map thereof, filed in the office of the County Recorder of Washoe County, State of Nevada, on July 27, 1976; (APN# 045-337-11) (the "Property").

14. In approximately late 2012, Johns and Johnson listed the Property for sale under MLS# 120014058, on behalf of their clients, the Sellers.

15. At least one listing for the Property stated that the Property “Total Living Space” was 3,880 square feet, and that the Property included an “INLAW QUARTERS OR GUEST HOUSE.”

16. In approximately January, 2013, the Lindbergs became interested in the Property, and began negotiating the purchase price and other terms through their own real estate agent, Kincannon, and his broker, Clement.

1 17. The Lindbergs read and relied on the information provided by Harry Richard Reynolds,
2 Johns, and Johnson that the Property "Total Living Space" was 3,880 square feet, and that the Property
3 included an "INLAW QUARTERS OR GUEST HOUSE."

4 18. Defendant, Harry Richard Reynolds, showed Plaintiff, John Lindberg the Property, and
5 specifically showed Mr. Lindberg a two-story building that was detached from the main house, and
6 appeared to be a stand-alone guest house. Harry Richard Reynolds also showed John Lindberg a
7 separate garage and attached converted bonus room. Harry Richard Reynolds affirmatively
8 represented to John Lindberg that these buildings could be used for residential living, and that the
9 apparent garage could be used as a typical garage.

10 19. Prior to the closing on the sale of the Property to the Lindbergs, the Sellers initialed
11 and signed a form entitled, "Sellers Real Property Disclosure Form" (the "Form"). That form
12 consisted in part of numbered questions regarding the status or condition of the Property, with columns
13 of check-boxes to the right for Sellers to check, "YES," "NO," or "N/A" as to each numbered question.

14 20. On page 2 of the Form, question number 1(c), asked, "Any construction, modification,
15 alterations, or repairs made without required state, city, or county building permits?" The check-box
16 to the right of that question indicates a "NO" answer.

17 21. Both Sellers initialed page 2 of the Form, and both signed the Form on page 4. The
18 hand-printed date September 21, 2012 appears next to both of the Sellers' signatures on the Form.

19 22. In reliance on all of Defendants' representations regarding the Property, on or about
20 February 28, 2013, the Lindbergs closed on the sale of the Property.

21 23. The Lindbergs thereafter discovered (1) that the separate building at the Property that
22 appeared to be (and was represented by Defendants to be) a detached two-story "In-Law" quarters, in
23 fact had never been permitted for residential occupancy; and (2) that the separate building at the
24 Property that appeared to be (and was represented by Defendants to be) a detached garage / bonus
25 room, in fact had not been permitted for residential occupancy, or even for use as a garage. The
26 Lindbergs discovered that Sellers had pulled a permit for certain construction of the separate buildings,
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1 but that no such construction had been finalized, and no permits were obtained.

2 24. The Lindbergs also discovered that the square footage of living space at the property
3 was falsely overrepresented as 3,880 square feet, and that utilities such as the septic system and
4 electrical system serving the Property, were undersized, and inadequate to properly serve the Property.

5 25. As a proximate and foreseeable result of the statements and other conduct of the
6 Defendants, the Lindbergs have been required, and will in the future be required, to engage contractors,
7 design professionals, inspectors, and other professionals to assess and determine the true status and
8 condition of the Property, and to remediate and correct aspects of the condition of the Property. The
9 Lindbergs have incurred other damages and injuries, subject to proof at trial.
10

11 26. As a proximate and foreseeable result of the statements and other conduct of
12 Defendants, the Lindbergs have been required, and will in the future be required, to incur costs to
13 repair or replace defective portions of the Property that were not disclosed by Defendants.

14 27. The conduct of the Defendants and the above-described damages sustained by the
15 Lindbergs have caused a diminution in the market value of the Property, and a loss of use of the
16 Property.

17 28. As a proximate and foreseeable result of the conduct of the Defendants, the Lindbergs
18 foreseeably have become involved in litigation with third parties.

19 29. As a proximate and foreseeable result of the conduct of the Defendants, the Lindbergs
20 have incurred attorney's fees as damages, in an amount subject to proof at trial.
21

22 FIRST CAUSE OF ACTION

23 (Action Pursuant to NRS 113.150 –Defendant Sellers)

24 30. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as if set
25 forth at length herein.

26 31. The Sellers failed to provide truthful and correct disclosures required by NRS 113.130,
27 proximately causing damages to the Lindbergs as described herein.

28 32. As a result of the Sellers' failure to provide truthful and correct disclosures required by

1 NRS 113.130 to the Lindbergs, the Lindbergs have a cause of action against the Sellers under NRS
2 113.150 to recover treble the costs of correcting the undisclosed defects in the Property, and for related
3 court costs and reasonable attorney's fees.

4 SECOND CAUSE OF ACTION
5 (Negligence – Defendant Sellers)

6 33. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as if set
7 forth at length herein.

8 34. In the communication of information to the Lindbergs, Sellers each had a duty to
9 exercise such care, skill, prudence and diligence that a reasonably prudent person would exercise.

10 35. In the communication of information to the Lindbergs, Sellers breached their duty to
11 exercise such care, skill, prudence and diligence that a reasonably prudent person would exercise.

12 36. The negligent conduct of the Sellers proximately caused damages to Plaintiffs, as more
13 fully described herein, in an amount in excess of \$10,000, and subject to proof at trial.

14 THIRD CAUSE OF ACTION
15 (Fraud – Defendant Sellers)

16 37. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as
17 if set forth at length herein.

18 38. The Sellers made the following false representations to the Lindbergs: (1) that the
19 Property included an In-Law Quarters or Guest House; (2) that the Property included a detached garage
20 / bonus room; (3) that Sellers were not aware of any "construction, modification, alterations, or repairs
21 made without required state, city, or county building permits"; (4) that the property "Total Living
22 Space" was 3,880 square feet; and (5) that the Property was free of known defects other than as stated
23 in the Form. Additionally, Harry Richard Reynolds affirmatively represented to John Lindberg that
24 the stand-alone building could be used as mother-in-law quarters.

25 39. The Sellers knew or believed that such representations were false, or had an
26 insufficient basis of information for making the representations.
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1 40. The Sellers intended to induce the Lindbergs to forego further investigation of the
2 condition of the Property, and to purchase the Property in reliance on the false representations.

3 41. The Lindbergs in fact relied upon the Sellers' false representations by foregoing
4 further investigation of the condition of the Property, and by purchasing the Property.

5 42. The Sellers' false representations proximately caused damages to Plaintiffs, as more
6 fully described herein, in an amount in excess of \$10,000, and subject to proof at trial.

7 43. The Sellers' false representations were calculated, willful, oppressive and malicious
8 and, therefore, Plaintiffs are entitled to punitive damages.
9

10 FOURTH CAUSE OF ACTION

11 (Action Pursuant to NRS 645.252 and NRS 645.257 – Defendants Johns, Johnson,
12 Clement, and Kincannon)

13 44. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as if set
14 forth at length herein.

15 45. Defendants Johns, Johnson, Clement, and Kincannon each owed a duty to the
16 Lindbergs to comply with NRS 645.252 in the course of the above-described sale of the Property.

17 46. Defendants Johns, Johnson, Clement, and Kincannon breached their duties to the
18 Lindbergs to comply with NRS 645.252, in that they acted as agents in the above-described real estate
19 transaction, and yet failed to exercise reasonable skill and care with respect to all parties to the
20 transaction, and failed to disclose material and relevant facts, data, or information which they knew,
21 or which by the exercise of reasonable care and diligence they should have known, relating to the
22 Property.

23 47. As a proximate and foreseeable result of Johns', Johnson's, Clement's, and
24 Kincannon's breaches of their duties to comply with NRS 645.252, Plaintiffs have a cause of action
25 against these Nevada real estate licensees, pursuant to NRS 645.257, to recover their actual damages.

26 48. As a proximate and foreseeable result of Johns', Johnson's, Clement's, and
27 Kincannon's breaches of their duties to comply with NRS 645.252, Plaintiffs have foreseeably become
28 involved in litigation with Sellers, and consequently, Plaintiffs are entitled to recover their reasonable

1 attorney's fees, as damages.

2 FIFTH CAUSE OF ACTION

3 (Action Pursuant to NRS 645.252, NAC 645.600, and NRS 645.257 – Defendants Johns and
4 Clement)

5 49. Plaintiffs incorporate by reference the preceding Paragraphs of this Complaint as if set
6 forth at length herein.

7 50. Defendants Johns and Clement owed an additional duty to the Lindbergs, in part
8 pursuant to NRS 645.252 and NAC 645.600, to maintain adequate supervision of the agents practicing
9 under them, and to use reasonable care in the supervision of their agents.

10 51. Defendants Johns and Clement breached their duties to the Lindbergs to maintain
11 adequate supervision of their agents, and to use reasonable care in the supervision of their agents.

12 52. As a proximate and foreseeable result of Johns' and Clement's breaches of their duties
13 to maintain adequate supervision of their agents, and to use reasonable care in the supervision of their
14 agents, Plaintiffs have a cause of action against Johns and Clement, pursuant to NRS 645.257, to
15 recover their actual damages.

16 53. As a proximate and foreseeable result of Defendants Johns' and Clement's breaches of
17 their duties to maintain adequate supervision of their agents, and to use reasonable care in the
18 supervision of their agents, Plaintiffs incurred damages as more fully described herein, in an amount
19 in excess of \$10,000, and subject to proof at trial.

20 54. As a proximate and foreseeable result of Johns's breaches, Plaintiffs have foreseeably
21 become involved in litigation with Sellers, and consequently, Plaintiffs are entitled to recover their
22 reasonable attorney's fees, as damages.

23 WHEREFORE, Plaintiffs demand judgment against Defendants as follows:
24

25 1. For compensatory general and special damages according to proof at trial in excess of
26 \$10,000;

27 2. For punitive damages against Sellers according to proof at trial in excess of \$10,000;
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1 3. For contractual and/or statutory interest, reasonable attorney's fees, attorney's fees as
2 damages, and costs of suit; and

3
4 4. For such other relief as the Court deems proper.

5 **AFFIRMATION PURSUANT TO NRS 239B.030**

6 The undersigned does hereby affirm that the proceeding document does not contain the social
7 security number of any persons.

8 DATED this 17th day of May, 2016.

9 MOORE LAW GROUP, PC

10
11 By: 

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that on May 18, 2016, I caused the foregoing document to be served on all parties to this action by:

_____ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the United States mail at Reno, Nevada.

_____ personal delivery

_____ facsimile (fax)

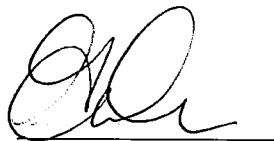
_____ Federal Express/UPS or other overnight delivery

_____ Reno/Carson Messenger Service

XX E-service via flex filing system

to the following:

- ALICIA JOHNSON, ESQ. for DEANN REYNOLDS, HARRY RICHARD REYNOLDS
- C. PEREOS, ESQ. for A. J. JOHNSON, JAMES E. JOHNS, J.E. JOHNS & ASSOCIATES



An Employee of Moore Law Group, PC

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Jacqueline Bryant
Clerk of the Court
Transaction # 6945389 : yvilorla

EXHIBIT 2

EXHIBIT 2

1 CODE: 1140
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
6 (775) 329-0678
7 ATTORNEY FOR DEFENDANTS
8 J. E. JOHNS & ASSOCIATES
9 & A. J. JOHNSON

6
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9
10 JOHN LINDBERG, MICHAL LINDBERG,
11 JUDITH L. LINDBERG

12 Plaintiffs,

13 vs.

14 HARRY RICHARD REYNOLDS, DEANN
15 REYNOLDS, J. E. JOHNS & ASSOCIATES, A.
16 J. JOHNSON, KEN AMUNDSON, BRIAN F.
17 KINCANNON

18 Defendants.

Case No. CV15-00281

Dept. No. 3

19
20 **ANSWER TO SECOND AMENDED COMPLAINT**

21 Defendants, James E. Johns and A.J. Johnson answering the Second Amended
22 Complaint, admits, denies and avers as follows:

23 **THE PARTIES**

24 I

25 Defendants answering the "Parties" allegations of the Second Amended
26 Complaint on file herein admits, denies and avers as follows:

27 1. Admit that Reynolds were residents of Washoe County, Nevada. Admit
that James E. Johns was a resident of Washoe County, Nevada. These Defendants
are without knowledge or information sufficient to form a belief as to the truth of the

1 averments contained in paragraphs 2, 4, 7 through 11, inclusive to the Second
2 Amended Complaint.

3 **FACTS**

4 I

5 Defendants answering the "Facts" of the Second Amended Complaint on file
6 herein admits, denies and avers as follows:

7 1. Adopt by reference and make a part hereof each and all the admissions,
8 denials contained hereinabove.

9 2. Admit that J.E. Johns & Associates listed the property for sale on behalf of
10 the sellers. Deny each, and every and other averments contained in paragraphs 14,
11 17, 18, 20 through 29, inclusive.

12 **FIRST CAUSE OF ACTION**

13 I

14 Answering the "First Cause of Action" of the Second Amended Complaint, these
15 Defendants admits, denies and avers as follows:

16 1. Insofar as said first cause of action is not applicable to these Defendants,
17 Defendants denies the same.

18 **SECOND CAUSE OF ACTION**

19 I

20 Answering the "Second Cause of Action" of the Second Amended Complaint,
21 these Defendants admits, denies and avers as follows:

22 1. Insofar as the second cause of action is not applicable to these
23 Defendants, these Defendants denies the same.

24 **THIRD CAUSE OF ACTION**

25 I

26 Answering the "Third Cause of Action" of the Second Amended Complaint, these
27 Defendants admits, denies and avers as follows:

1. Insofar as this third cause of action is not applicable to these Defendants, these Defendants denies the same.

FOURTH CAUSE OF ACTION

1

Answering the "Fourth Cause of Action" of the Second Amended Complaint, these Defendants admits, denies and avers as follows:

1. Adopt by reference and make a part hereof each and all the admissions, denials contained hereinabove.

2. Deny each, and every and all of the averments contained in paragraphs 46 through 48 of the fourth cause of action.

FIFTH CAUSE OF ACTION

1

Answering the "Fifth Cause of Action" of the Second Amended Complaint, these Defendants admits, denies and avers as follows:

1. Adopt by reference and make a part hereof each and all the admissions, denials contained hereinabove.

2. Deny each, and every and all of the averments contained in paragraphs 50 through 54, inclusive of the fifth cause of action.

FIRST AFFIRMATIVE DEFENSE

Defendant James E. Johns is now deceased and this Court lacks jurisdiction.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have resolved its claim with regard to the remaining Defendants and these Defendants is entitled to a credit therefore.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs were provided reports indicating problems with regard to the subject property and proceeded to close the escrow and assumed the risks by reason of the same.

III

1 **FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiffs received compensation for the losses alleged to have been sustained in
3 the purchase of the property and the claim has been satisfied.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 Plaintiffs has waived any rights to collect for issues as to these Defendants by
6 reason of the notice of deficiencies.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Said complaint fails to state a claim upon which relief can be granted.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 At all times herein mentioned, Plaintiffs negligently and carelessly conducted
11 themselves in and about the matters averred in said complaint which said negligence
12 and carelessness attributed to any and all lawsuits allegedly to be sustained by them.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 Plaintiffs engaged independent contractors and consultants and relied on the
15 materials provided to them.

16 **NINTH AFFIRMATIVE DEFENSE**

17 The duties owed to the Plaintiffs to adequately investigate and counsel the
18 Plaintiffs were not by these Defendants.

19 **TENTH AFFIRMATIVE DEFENSE**

20 The claims of the complaint are barred by justification.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 The claims of the complaint are barred by unjust enrichment.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 The claims of the complaint are barred by failure to act in a commercially
25 reasonable manner.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 The claims of the complaint are barred by lack of consideration.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 The claims of the complaint are barred in whole or in part by waiver
3 acquiescence and/or estoppel.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 The claims of the complaint are barred by unclean hands and bad faith.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**

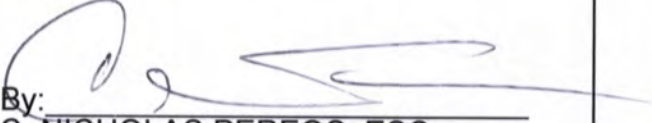
7 Recession is the remedy available to the Plaintiff.

8 Wherefore, these Defendants pray that Plaintiffs take nothing from said
9 Complaint and that these Defendants have judgment against Plaintiffs for costs of suit
10 and reasonable attorneys fees.
11

12 **AFFIRMATION**

13 The undersigned affirms that the foregoing pleading does not contain a social
14 security number.

15
16 DATED this 17th day of JANUARY, 2018 C. NICHOLAS PEREOS, LTD.

17
18
19 By: 
20 C. NICHOLAS PEREOS, ESQ.
21 1610 MEADOW WOOD LANE, STE.202
22 RENO, NV 89502
23 ATTORNEY FOR DEFENDANTS
24
25
26
27
28


CERTIFICATE OF SERVICE BY ELECTRONIC FILING

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I caused to be served a true copy of the foregoing pleading on all parties to this action by electronically filing the foregoing with the Clerk of the Court by using the CM/ECF system which served the following parties electronically:

John D. Moore, Esq.
MOORE LAW GROUP, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

DATED: _____

1/18/18



Iris M. Norton

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Jacqueline Bryant
Clerk of the Court
Transaction # 6945389 : yvilorla

EXHIBIT 3

EXHIBIT 3

1140
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Las Vegas, Nevada 89134
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Attorneys for Defendants and Cross-Claimants
BRIAN F. KINCANNON, ROBERT CLEMENT,
and GROUP ONE, INC. dba KELLER WILLIAMS
REALTY

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JOHN LINDBERG, an individual; MICHAL
LINDBERG, an individual; and JUDITH L.
LINDBERG, an individual,

Plaintiffs,

v.

HARRY RICHARD REYNOLDS, an
individual; DEANN REYNOLDS, an
individual; J.E. JOHNS & ASSOCIATES, a
Nevada business entity; JAMES E. JOHNS, an
individual; A.J. JOHNSON, an individual;
BRIAN F. KINCANNON, an individual;
GROUP ONE, INC. dba KELLER
WILLIAMS REALTY, a Nevada corporation;
ROBERT CLEMENT, an individual; and
DOES 3 through 10, inclusive,

Defendants.

BRIAN F. KINCANNON, ROBERT
CLEMENT, and GROUP ONE, INC. dba
KELLER WILLIAMS REALTY,

Cross-Claimants,

v.

CASE NO. CV15-00281

DEPT. NO.: 3

**DEFENDANTS BRIAN F. KINCANNON,
ROBERT CLEMENT, AND GROUP
ONE, INC. dba KELLER WILLIAMS
REALTY'S ANSWER TO PLAINTIFFS'
SECOND AMENDED COMPLAINT AND
CROSS-CLAIM**

1 HARRY RICHARD REYNOLDS, DEANN)
2 REYNOLDS, J.E. JOHNS & ASSOCIATES,)
3 JAMES E. JOHNS, and A.J. JOHNSON, and)
4 MOES 1 – 10, inclusive,)
5 Cross-Defendants.)

6 COMES NOW, Defendants BRIAN F. KINCANNON (“Kincannon”), ROBERT
7 CLEMENT (“Clement”), and GROUP ONE, INC. dba KELLER WILLIAMS REALTY (“Keller
8 Williams Realty”) (collectively referred to herein as “Defendants”) in the above-captioned action,
9 by and through its attorneys of record of the law firm of Meyers McConnell Reisz Sideman, and
10 for its Answer to Plaintiffs JOHN LINDBERG, MICHAEL LINDBERG, and JUDITH L.
11 LINDBERG’s (referred to herein as “Plaintiffs”) Second Amended Complaint (the “SAC”) on file
12 herein, admits, denies and alleges as follows:

13 **GENERAL ALLEGATIONS**

14 1. Answering Paragraphs 1, 2, 3, 4, 5, and 6 of the SAC, Defendants state that they do
15 not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of
16 the allegations contained therein.

17 2. Answering Paragraph 7 of the SAC, Defendants admit the allegations.

18 3. Answering Paragraph 8 of the SAC, Defendants admit the allegations.

19 4. Answering Paragraph 9 of the SAC, Defendants admit the allegations.

20 5. Answering Paragraph 10 of the SAC, Defendants state that they do not have
21 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
22 allegations contained therein and therefore deny on that basis.

23 6. Answering Paragraph 11 of the SAC, Defendants state that they do not have
24 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
25 allegations contained therein and therefore deny on that basis.

26 **FACTS**

27 7. In response to Paragraph 12 of the SAC, Defendants repeat and incorporate herein by
28 reference their responses to the paragraphs alleged in Plaintiffs’ SAC to the same extent Plaintiffs
incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 12.

1 8. Answering Paragraph 13 of the SAC, Defendants state that they do not have
2 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
3 allegations contained therein and therefore deny on that basis.

4 9. Answering Paragraph 14 of the SAC, Defendants state that they do not have
5 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
6 allegations contained therein and therefore deny on that basis.

7 10. Answering Paragraph 15 of the SAC, Defendants state that they do not have
8 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
9 allegations contained therein and therefore deny on that basis.

10 11. Answering Paragraph 16 of the SAC, Defendants admit that Kincannon was the real
11 estate agent for John Lindberg and Michal Lindberg and engaged in negotiations for the purchase of
12 the subject property on their behalf. Defendants deny the remainder of Paragraph 16.

13 12. Answering Paragraph 17 of the SAC, Defendants state that they do not have
14 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
15 allegations contained therein and therefore deny on that basis.

16 13. Answering Paragraph 18 of the SAC, Defendants state that they do not have
17 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
18 allegations contained therein and therefore deny on that basis.

19 14. Answering Paragraph 19 of the SAC, Defendants state that they do not have
20 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
21 allegations contained therein and therefore deny on that basis.

22 15. Answering Paragraph 20 of the SAC, Defendants state that they do not have
23 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
24 allegations contained therein and therefore deny on that basis.

25 16. Answering Paragraph 21 of the SAC, Defendants state that they do not have
26 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
27 allegations contained therein and therefore deny on that basis.

28 ///

1 17. Answering Paragraph 22 of the SAC, Defendants state that they do not have
2 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
3 allegations contained therein and therefore deny on that basis.

4 18. Answering Paragraph 23 of the SAC, Defendants state that they do not have
5 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
6 allegations contained therein and therefore deny on that basis.

7 19. Answering Paragraph 24 of the SAC, Defendants state that they do not have
8 sufficient knowledge or information upon which to base a belief as to the truth or falsity of the
9 allegations contained therein and therefore deny on that basis.

10 20. Answering Paragraph 25 of the SAC, to the extent this Paragraph is directed at
11 Defendants, the allegations are denied. As to the remainder of Paragraph 25, Defendants state that
12 they do not have sufficient knowledge or information upon which to base a belief as to the truth or
13 falsity of the allegations contained therein and therefore deny on that basis.

14 21. Answering Paragraph 26 of the SAC, to the extent this Paragraph is directed at
15 Defendants, the allegations are denied. As to the remainder of Paragraph 26, Defendants state that
16 they do not have sufficient knowledge or information upon which to base a belief as to the truth or
17 falsity of the allegations contained therein and therefore deny on that basis.

18 22. Answering Paragraph 27 of the SAC, to the extent this Paragraph is directed at
19 Defendants, the allegations are denied. As to the remainder of Paragraph 27, Defendants state that
20 they do not have sufficient knowledge or information upon which to base a belief as to the truth or
21 falsity of the allegations contained therein and therefore deny on that basis.

22 23. Answering Paragraph 28 of the SAC, to the extent this Paragraph is directed at
23 Defendants, the allegations are denied. As to the remainder of Paragraph 28, Defendants state that
24 they do not have sufficient knowledge or information upon which to base a belief as to the truth or
25 falsity of the allegations contained therein and therefore deny on that basis.

26 24. Answering Paragraph 29 of the SAC, to the extent this Paragraph is directed at
27 Defendants, the allegations are denied. As to the remainder of Paragraph 29, Defendants state that
28 they do not have sufficient knowledge or information upon which to base a belief as to the truth or

1 falsity of the allegations contained therein and therefore deny on that basis.

2 **FIRST CAUSE OF ACTION**

3 (Action Pursuant to NRS 113.150 – Defendant Sellers)

4 25. In response to Paragraph 30 of the SAC, Defendants repeat and incorporate herein by
5 reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs
6 incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 30.

7 26. Answering Paragraph 31 of the SAC, Defendants state that no allegations contained
8 in Paragraph 31 are directed toward Defendants and therefore no response by Defendants is
9 required. If a response is required, Defendants state that they do not have sufficient knowledge or
10 information upon which to base a belief as to the truth or falsity of the allegations contained therein
11 and therefore deny on that basis.

12 27. Answering Paragraph 32 of the SAC, Defendants state that no allegations contained
13 in Paragraph 32 are directed toward Defendants and therefore no response by Defendants is
14 required. If a response is required, Defendants state that they do not have sufficient knowledge or
15 information upon which to base a belief as to the truth or falsity of the allegations contained therein
16 and therefore deny on that basis.

17 **SECOND CAUSE OF ACTION**

18 (Negligence – Defendant Sellers)

19 28. In response to Paragraph 33 of the SAC, Defendants repeat and incorporate herein by
20 reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs
21 incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 33.

22 29. Answering Paragraph 34 of the SAC, Defendants state that no allegations contained
23 in Paragraph 34 are directed toward Defendants and therefore no response by Defendants is
24 required. If a response is required, Defendants state that they do not have sufficient knowledge or
25 information upon which to base a belief as to the truth or falsity of the allegations contained therein
26 and therefore deny on that basis.

27 30. Answering Paragraph 35 of the SAC, Defendants state that no allegations contained
28 in Paragraph 35 are directed toward Defendants and therefore no response by Defendants is

1 required. If a response is required, Defendants state that they do not have sufficient knowledge or
2 information upon which to base a belief as to the truth or falsity of the allegations contained therein
3 and therefore deny on that basis.

4 31. Answering Paragraph 36 of the SAC, Defendants state that no allegations contained
5 in Paragraph 36 are directed toward Defendants and therefore no response by Defendants is
6 required. If a response is required, Defendants state that they do not have sufficient knowledge or
7 information upon which to base a belief as to the truth or falsity of the allegations contained therein
8 and therefore deny on that basis.

9 **THIRD CAUSE OF ACTION**
10 (Fraud – Defendant Sellers)

11 32. In response to Paragraph 37 of the SAC, Defendants repeat and incorporate herein by
12 reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs
13 incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 37.

14 33. Answering Paragraph 38 of the SAC, Defendants state that no allegations contained
15 in Paragraph 38 are directed toward Defendants and therefore no response by Defendants is
16 required. If a response is required, Defendants state that they do not have sufficient knowledge or
17 information upon which to base a belief as to the truth or falsity of the allegations contained therein
18 and therefore deny on that basis.

19 34. Answering Paragraph 39 of the SAC, Defendants state that no allegations contained
20 in Paragraph 39 are directed toward Defendants and therefore no response by Defendants is
21 required. If a response is required, Defendants state that they do not have sufficient knowledge or
22 information upon which to base a belief as to the truth or falsity of the allegations contained therein
23 and therefore deny on that basis.

24 35. Answering Paragraph 40 of the SAC, Defendants state that no allegations contained
25 in Paragraph 40 are directed toward Defendants and therefore no response by Defendants is
26 required. If a response is required, Defendants state that they do not have sufficient knowledge or
27 information upon which to base a belief as to the truth or falsity of the allegations contained therein
28 and therefore deny on that basis.

36. Answering Paragraph 41 of the SAC, Defendants state that no allegations contained in Paragraph 41 are directed toward Defendants and therefore no response by Defendants is required. If a response is required, Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein and therefore deny on that basis.

37. Answering Paragraph 42 of the SAC, Defendants state that no allegations contained in Paragraph 42 are directed toward Defendants and therefore no response by Defendants is required. If a response is required, Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein and therefore deny on that basis.

38. Answering Paragraph 43 of the SAC, Defendants state that no allegations contained in Paragraph 43 are directed toward Defendants and therefore no response by Defendants is required. If a response is required, Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein and therefore deny on that basis.

FOURTH CAUSE OF ACTION

(Action Pursuant to NRS 645.252 and NRS 645.257 –
Defendants Johns, Johnson, Clement, and Kincannon)

39. In response to Paragraph 44 of the SAC, Defendants repeat and incorporate herein by reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 44.

40. Answering Paragraph 45 of the SAC, Defendants deny the allegations.

41. Answering Paragraph 46 of the SAC, Defendants deny the allegations.

42. Answering Paragraph 47 of the SAC, Defendants deny the allegations.

43. Answering Paragraph 48 of the SAC, Defendants deny the allegations.

FIFTH CAUSE OF ACTION

(Action Pursuant to NRS 645.252, NAC 645.600, and NRS 645.257 –
Defendants Johns and Clement)

44. In response to Paragraph 49 of the SAC, Defendants repeat and incorporate herein by

reference their responses to the paragraphs alleged in Plaintiffs' SAC to the same extent Plaintiffs incorporate their allegations in the preceding paragraphs of the SAC into Paragraph 49.

45. Answering Paragraph 50 of the SAC, Defendants deny the allegations.

46. Answering Paragraph 51 of the SAC, Defendants deny the allegations.

47. Answering Paragraph 52 of the SAC, Defendants deny the allegations.

48. Answering Paragraph 53 of the SAC, Defendants deny the allegations.

49. Answering Paragraph 54 of the SAC, Defendants state that no allegations contained in Paragraph 54 are directed toward Defendants and therefore no response by Defendants is required. If a response is required, Defendants state that they do not have sufficient knowledge or information upon which to base a belief as to the truth or falsity of the allegations contained therein and therefore deny on that basis.

50. Answering the payer of the SAC, Defendants state that the allegations contain legal conclusions, which require no response. Defendants deny that Plaintiffs are entitled to any relief whatsoever under any cause of action against Defendants and each of them.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Defendants are informed, believe, and thereupon allege that the SAC filed by Plaintiffs fails to state facts sufficient to constitute a cause of action against these answering Defendants.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs' claims are barred by the statute of limitations and/or repose, including each and every applicable statute of limitations, including but not limited to NRS §§ 11.010 through 11.500, as applicable.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs, though under a duty to do so, have failed and neglected to mitigate their alleged damages and therefore cannot recover against these answering Defendants, whether as alleged or otherwise.

///

///

1 **FOURTH AFFIRMATIVE DEFENSE**

2 The negligence, misconduct, and/or of Plaintiffs exceed that of these answering Defendants,
3 if any, and Plaintiffs are thereby barred from any recovery against these answering Defendants.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 The claims of Plaintiffs are barred by the equitable doctrines of estoppel, waiver, laches,
6 and/or unclean hands.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 The damages Plaintiffs allegedly sustained, if any, were caused by the negligent acts, errors,
9 and/or omissions of third-parties over which these answering Defendants have no authority or
10 control.

11 **SEVENTH AFFIRMATIVE DEFENSE**

12 These answering Defendants have complied with all applicable laws, regulations,
13 ordinances, and codes.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 These answering Defendants performed all professional services and/or work in a
16 professional manner and met or exceeded the standard of care at the time that services and/or work
17 was performed.

18 **NINTH AFFIRMATIVE DEFENSE**

19 Plaintiffs expressly, voluntarily, and knowingly assumed all risks about which they
20 complain in their SAC and therefore are barred either totally or to the extent of said assumption
21 from any damages.

22 **TENTH AFFIRMATIVE DEFENSE**

23 If Plaintiffs suffered or sustained any loss, injury, damage, or detriment, the same was
24 directly and proximately caused or contributed to by Plaintiffs' conduct, acts, omissions, activities,
25 carelessness, recklessness, negligence, and/or intentional misconduct, thereby completely or
26 partially barring Plaintiffs' recovery herein.

27 ///

28 ///

1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 These answering Defendants deny any legal responsibility, in any manner, for the damages
3 and injuries claimed by Plaintiffs in the SAC; however, if Defendants are subjected to any liability
4 to Plaintiffs, it will be due, in whole or in part, to the conduct, acts, omissions, activities,
5 carelessness, recklessness, and/or negligence of others. Accordingly, any recovery obtained by
6 Plaintiffs against these answering Defendants should be reduced in proportion to the respective
7 negligence, fault, and legal responsibility of all other parties, persons, and entities, their agents,
8 servants, and employees who contributed to and/or caused the injury or damages, in accordance
9 with the law of comparative negligence. The liability of these answering Defendants, if any, is
10 limited in direct proportion to the percentage of fault actually attributed to these answering
11 Defendants.

12 **TWELFTH AFFIRMATIVE DEFENSE**

13 Defendants allege that Plaintiffs' unreasonable delay in the filing of the SAC and the
14 notifying of these answering Defendants of the alleged defects at the subject property, and the basis
15 for the causes of action alleged against these answering Defendants, has unduly and severely
16 prejudiced these answering Defendants in its defense of these action, thereby barring or diminishing
17 Plaintiffs' recovery herein under the doctrine of stoppels.

18 **THIRTEENTH AFFIRMATIVE DEFENSE**

19 These answering Defendants allege that Plaintiffs have failed to join all necessary and
20 indispensable parties to this lawsuit.

21 **FOURTEENTH AFFIRMATIVE DEFENSE**

22 These answering Defendants allege that Plaintiffs, or other persons or entities other than
23 Defendants, without the knowledge or consent of Defendants, altered the subject property, and to
24 the extent that Plaintiffs have incurred or suffered any damages, which Defendants deny, such
25 alleged damages were solely and proximately caused by such alteration.

26 **FIFTEENTH AFFIRMATIVE DEFENSE**

27 These answering Defendants have retained the services of an attorney to defend this action
28 and therefore are entitled to a reasonable sum for attorneys' fees together with the costs expended in

1 this action.

2 **SIXTEENTH AFFIRMATIVE DEFENSE**

3 These answering Defendants allege that the loss and damages, if any, which Plaintiffs allege
4 were directly and proximately caused and/or contributed to by the negligence, carelessness or fault
5 of Plaintiffs and, therefore, these answering Defendants are entitled to contribution apportioned to
6 the percentage of negligence attributable to Plaintiffs.

7 **SEVENTEENTH AFFIRMATIVE DEFENSE**

8 These answering Defendants allege that the damages and injuries, if any, incurred by
9 Plaintiffs, are not attributable to any act, conduct, or omission on the part of these answering
10 Defendants.

11 **EIGHTEENTH AFFIRMATIVE DEFENSE**

12 The damages sustained by Plaintiffs, if any, were proximately caused by the acts, omissions,
13 negligence, fraud, and/or breach of obligations by persons other than these answering Defendants,
14 including that of Plaintiffs, and beyond these answering Defendants' supervision and control.

15 **NINETEENTH AFFIRMATIVE DEFENSE**

16 These answering Defendants are informed and believe and thereupon allege that any claims
17 or remedies alleged by the Plaintiffs have been waived in whole or in part.

18 **TWENTIETH AFFIRMATIVE DEFENSE**

19 To the extent that any communications were made to Plaintiffs by these answering
20 Defendants, such communications were truthful and accurate, to the best of these answering
21 Defendants' knowledge.

22 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

23 These answering Defendants deny that they made any misrepresentations; however, if it is
24 found that these answering Defendants did so, any such misrepresentations were not material and/or
25 relied upon.

26 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

27 These answering Defendants did not interfere, whether intentionally or negligently, with any
28 contractual obligation to any party in this matter.

1 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

2 These answering Defendants are informed and believe, and thereon allege that Plaintiffs'
3 damages, if any, were proximately caused by the intentional acts of persons or entities other than
4 these answering Defendants that were not reasonably foreseeable. As a result, those reasonably
5 unforeseeable intentional acts of others constitute a superseding, intervening act that operate to
6 break the chain of causation of any negligent acts or omissions attributable to these answering
7 Defendants, thereby relieving these answering Defendants of any liability to Plaintiffs.

8 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

9 These answering Defendants have appropriately, completely, and fully performed and
10 discharged any and all obligations and legal duties arising out of the matters alleged in the SAC.

11 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

12 These answering Defendants are informed and believe, and on such information and belief
13 allege, that these answering Defendants did not make any warranties or guaranties, expressed,
14 implied, or apparent, upon which Plaintiffs may rely.

15 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

16 These answering Defendants hereby incorporate by reference those affirmative defenses
17 enumerated in Rule 11 of the Nevada Rules of Civil Procedure as fully set forth herein. In the event
18 further investigation or discovery reveals the applicability of any such defenses, Defendants reserve
19 the right to seek leave of court to amend its answer to specifically assert the same. These
20 Defendants preserve such other affirmative defenses that may become available to them by this
21 Answer and do not waive any such or subsequent defenses. Such defenses are herein incorporated
22 by reference for the specific purpose of not waiving same.

23 **PRAYER**

24 **WHEREFORE**, Defendants pray for judgment as follows:

- 25 A. That Plaintiffs take nothing by virtue of their SAC herein;
26 B. For costs of suit; and
27 C. For such other and further relief as these Court deems just and proper.

28 ///

**DEFENDANTS/CROSS-CLAIMANTS BRIAN F. KINCANNON AND GROUP ONE, INC.
dba KELLER WILLIAMS REALTY'S CROSS-CLAIM AGAINST HARRY RICHARD
REYNOLDS, DEANN REYNOLDS, J.E. JOHNS & ASSOCIATES, JAMES E. JOHNS, AND
A.J. JOHNSON**

Defendants/Cross-Claimants BRIAN F. KINCANNON ("Kincannon"), ROBERT CLEMENT ("Clement"), and GROUP ONE, INC. dba KELLER WILLIAMS REALTY ("Keller Williams Realty") (collectively referred to herein as "Cross-Claimants"), by and through their attorneys of record of the law firm of Meyers McConnell Reisz Siderman, as and for their Cross-Claim against Defendants/Cross-Defendants HARRY RICHARD REYNOLDS, DEANN REYNOLDS, J.E. JOHNS & ASSOCIATES, JAMES E. JOHNS, and A.J. JOHNSON ("Cross-Defendants") alleges as follows:

1. At all times relevant hereto, Keller Williams Realty was a Nevada domestic corporation.

2. At all times relevant hereto, Kincannon was an individual and resident of Washoe County, Nevada, and a Nevada real estate salesperson associated with Keller Williams Realty.

3. At all times relevant hereto, Clement was an individual and resident of Minden County, Nevada, and a Nevada real estate broker associated with Keller Williams Realty.

4. On information and belief, at all times relevant hereto, Cross-Defendants HARRY RICHARD REYNOLDS and DEANN REYNOLDS (collectively "Reynolds") were individuals and residents of Washoe County, Nevada.

5. On information and belief, at all times relevant hereto, Cross-Defendant J.E. JOHNS & ASSOCIATES ("J.E. Johns & Associates") was a Nevada business entity of unknown time, doing business in Washoe County, Nevada.

6. On information and belief, at all times relevant hereto, Cross-Defendant JAMES E. JOHNS ("Johns") was an individual and resident of Washoe County and a Nevada licensed real estate broker associated with J.E. Johns & Associates.

7. On information and belief, at all times relevant hereto, Cross-Defendant A.J. Johnson ("Johnson") was an individual and resident of Washoe County and a Nevada licensed real estate salesperson associated with J.E. Johns & Associates

8. MOES 1 through 10 are fictitious names of Cross-Defendants, whether individuals, corporations, partnerships, or other business entities, whose names and capacities are not presently known to Cross-Claimants, and when said true names and capacities are ascertained, Cross-Claimants will seek leave of this Cross-Claim to allege their true names and capacities when and as ascertained, and will further ask leave to join said Cross-Defendants in these proceedings. MOES 1 through 10 are either fully or partly responsible for Plaintiffs' injuries and damages, if any, and, as such, would owe indemnity to Cross-Claimants. As more particularly alleged in Plaintiffs' SAC, and any amendments thereto, these fictitiously named Cross-Defendants are alleged to have negligently, fraudulently, carelessly, and/or recklessly engaged in some manner, or been involved, in the real estate transaction that is the subject of this action.

GENERAL ALLEGATIONS

9. On May 18, 2016, Plaintiffs filed a Second Amended Complaint in the County of Washoe, Nevada District Court, Case No. CV15-00281 against Cross-Claimants and Cross-Defendants. Said SAC is incorporated herein by reference for purposes of this Cross-Claim; however, Cross-Claimants do not adopt as true or correct any of the allegations of the SAC.

10. Plaintiffs alleged in the SAC that, in approximately September 2012, Cross-Defendants offered their residential real property for sale, which property was located at 20957 Eaton Road, Pleasant Valley, Nevada 89521, and further described as Parcel 2 of parcel Map No. 292 for John and Marie Brown, according to the map thereof, filed in the office of the County Recorder of Washoe County, State of Nevada, on July 27, 1976; (APN #045-337-11) (the "Property").

11. Plaintiffs alleged in the SAC that J.E. Johns & Associates, Johns, and Johnson listed the Property for sale under MLS # 120014058, stating that the Property's "Total Living Space" was 3,880 square feet and included an "INLAW QUARTERS OR GUEST HOUSE."

12. Plaintiffs alleged in the SAC that the Reynolds affirmatively represented to them in the "Sellers Real Property Disclosure Form," and in other representations, that a detached two-story building at the Property could be used for residential living and a separate garage with an attached converted bonus room, could also be used for residential living or as a garage, and that both

1 structures were constructed, modified, altered, or repaired with required permits.

2 13. Plaintiffs alleged in the SAC that, after they purchased the Property, they discovered
3 that the (i) the detached two-story building was not permitted for residential occupancy and (ii) the
4 separate garage with a converted a bonus room was not permitted for residential occupancy or even
5 for use as a garage. Plaintiffs alleged in the SAC that the square footage of living space was falsely
6 overrepresented in as 3,880 square feet.

7 14. Plaintiffs' alleged injuries and damages, if any, have arisen out of
8 misrepresentations, nondisclosures, acts, or omissions by Cross-Defendants, and not from any act,
9 error, or omission of Cross-Claimants. Cross-Claimants have denied, and deny, any responsibility
10 for Plaintiffs' alleged damages.

11 15. Cross-Claimants have incurred and are incurring attorneys' fees, court costs,
12 investigative costs, and other costs in connection with defending against the SAC, the exact amount
13 of which is unknown at this time.

14 **FIRST CAUSE OF ACTION**

15 **(Equitable Indemnity – All Cross-Defendants)**

16 16. Cross-Claimants repeat and reallege Paragraphs 1-15 of the Cross-Claim as though
17 fully set forth herein.

18 17. Cross-Claimants allege that they are in no way legally responsible for the injuries or
19 damages alleged by Plaintiffs in this action. If Cross-Claimants are held to be liable for all or any
20 part of Plaintiffs' injuries and/or damages, as presently alleged in the SAC, such liability is solely
21 due to the conduct of Cross-Defendants as herein alleged. Cross-Claimants are entitled to be fully
22 indemnified and held harmless by Cross-Defendants should Cross-Claimants be so found liable.

23 18. If Cross-Claimants are held liable to Plaintiffs for their alleged injuries and/or
24 damages, such liability of Cross-Claimants are secondary and passive whereas the liability of Cross-
25 Defendants are primary and active and/or the direct and proximate result of their active and primary
26 conduct.

27 19. It has been necessary for Cross-Claimants to defend against Plaintiffs' action. Cross-
28 Claimants are entitled to recover from Cross-Defendants their attorneys' fees and costs incurred in

1 defense of Plaintiffs' action.

2 **SECOND CAUSE OF ACTION**

3 **(Express Indemnity – Cross-Defendants Reynolds)**

4 20. Cross-Claimants repeat and reallege Paragraphs 1-19 of the Cross-Claim as though
5 fully set forth herein.

6 21. Cross-Claimants allege that a contract or agreement exists between Cross-Claimants
7 and Cross-Defendants Reynolds wherein Cross-Defendants Reynolds agree to defend and
8 indemnify Cross-Claimants from any claim, demand, action, or proceeding resulting from any
9 omission or alleged omission by Cross-Defendants Reynolds in their representations about the
10 Property. Cross-Claimants previously tendered the defense of Plaintiffs' claims to Cross-
11 Defendants Reynolds, which Cross-Defendants Reynolds rejected.

12 22. If Cross-Claimants are held liable to Plaintiffs for all or any part of their alleged
13 injuries and/or damages, then Cross-Claimants are entitled to full indemnity from Cross-
14 Defendants Reynolds pursuant to the express terms of the contract or agreement.

15 23. By reason of the express terms of the contract or agreement between Cross-
16 Claimants and Cross-Defendants Reynolds, Cross-Claimants are entitled to indemnity from Cross-
17 Defendants for all costs, attorney's fees, expenses, settlements, and/or judgments paid and incurred
18 by Cross-Claimants in connection with Plaintiffs' action.

19 **THIRD CAUSE OF ACTION**

20 **(Contribution and Apportionment – All Cross-Defendants)**

21 24. Cross-Claimants repeat and reallege Paragraph 1-23 of the Cross-Claim as though
22 fully set forth herein.

23 25. Cross-Claimants allege that they are in no way legally responsible for the injuries or
24 damages alleged by Plaintiffs in this action. If Cross-Claimants are held to be liable for all or any
25 part of Plaintiffs' injuries and/or damages, as presently alleged in the SAC, then Cross-Claimants
26 are entitled to contribution from Cross-Defendants in an amount proportionate to the negligence
27 and/or fault attributable to Cross-Defendants.

28 ///

26. It has been necessary for Cross-Claimants to defend against Plaintiffs' action. Cross-Claimants are entitled to reimbursement from Cross-Defendants to the extent of their proportionate share of liability.

WHEREFORE, Cross-Claimants pray for relief as follows:

1. That Cross-Defendants be required to fully indemnify Cross-Claimants for any and all amounts found to be due and owing;

2. That Cross-Defendants be required to contribute to the payment of any and all amounts adjudged by this Court to be due and owing to Plaintiffs herein;

3. For reasonable attorneys' fees and costs of suit incurred herein; and

4. For such other and further relief as this Court deems just and proper.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned affirms that this document does not contain the social security number of any person.

DATED: this 28th day of July, 2016.

MEYERS MCCONNELL REISZ SIDERMAN

By:

Lori E. Siderman, Esq.
Nevada Bar No. 007515
S. Seth Kershaw, Esq.
Nevada Bar No. 10639
11620 Wilshire Boulevard, Suite 800
Los Angeles, CA 90025
1745 Village Center Circle
Las Vegas, Nevada 89134
Attorneys for Defendants and Cross-Claimants
BRIAN F. KINCANNON and GROUP ONE,
INC. dba KELLER WILLIAMS REALTY

CERTIFICATE OF SERVICE

32.966

Pursuant to NRCP 5(b), I hereby certify that I am an employee of Meyers, McConnell Reisz and Siderman and that on the 29th day of July, 2016, I caused the service of the foregoing to be served as follows:

**DEFENDANTS BRIAN F. KINCANNON, ROBERT CLEMENT, AND GROUP ONE, INC.
dba KELLER WILLIAMS REALTY'S ANSWER TO PLAINTIFFS' SECOND AMENDED
COMPLAINT AND CROSS-CLAIM**

☒ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Los Angeles, CA; and/or

☐ pursuant to EDCR 7.26, to be sent **via facsimile**; and/or

☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Second Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail and/or

☐ to be hand-delivered;

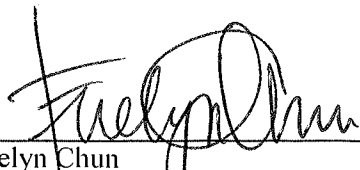
to the attorney(s) listed below at the address and/or facsimile number indicated below:

John D. Moore, Esq.
MOORE LAW GROUP, PC
3715 Lakeside Drive, Suite A
Reno, Nevada 89509
Tel: (775) 336-1600
Fax: (775) 336-1601
Email: john@moore-lawgroup.com

*Attorney for Plaintiffs JOHN LINDBERG,
MICHAEL L. LINDBERG, and JUDITH L.
LINDBERG*

C. Nicholas Pereos, Esq.
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Tel: (775) 329-0678
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Email:

*Attorney for Defendants JAMES E. JOHNS and A.J.
JOHNSON*



Evelyn Chun
Employee of Meyers McConnell Reisz Siderman

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2018-10-24 01:30:28 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6945389 : yvilorla

EXHIBIT 4

EXHIBIT 4

2245
John D. Moore, Esq.
Nevada State Bar No. 8581
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Attorney for Plaintiffs
john@moore-lawgroup.com

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JOHN LINDBERG, an individual; MICHAL
LINDBERG, an individual; and JUDITH L.
LINDBERG, an individual,

Plaintiffs,

v.

HARRY RICHARD REYNOLDS, an
individual; DEANN REYNOLDS, an
individual; J.E. JOHNS & ASSOCIATES, a
Nevada business entity; JAMES E. JOHNS,
an individual; A.J. JOHNSON, an individual;
BRIAN F. KINCANNON, an individual;
GROUP ONE, INC., a Nevada corporation
dba Keller Williams Realty; ROBERT
CLEMENT, an individual; and DOES 3
through 10, inclusive,

Defendants.

Case No. CV15-00281

Dept. No. 3

**MOTION IN LIMINE NO. 2 TO EXCLUDE THE
OFFER OF EVIDENCE OR ARGUMENT RELATED
TO SETTLEMENTS REACHED WITH OTHER DEFENDANTS**

Plaintiffs, John Lindberg, Michal Lindberg, and Judith L. Lindberg, ("Plaintiffs") hereby file
this Motion in Limine No. 2 to Exclude the Offer of Evidence or Argument Related to Settlements
Reached with Other Defendants. ("Motion"). In recent filings with this Court, including in the answer

1 that James E. Johns¹ and A.J. Johnson² filed to Plaintiffs' Second Amended Complaint in this matter
2 on January 10, 2018, these Defendants have asserted that "Plaintiffs have resolved its [sic] claim with
3 regard to the remaining Defendants and these Defendants is [sic] entitled to a credit therefore."
4 Answer to Second Amended Complaint at Second Affirmative Defense, attached hereto as **Exhibit 1**.
5 Defendants also claim in their Fourth Affirmative Defense that "Plaintiffs received compensation for
6 the losses alleged to have been sustained in the purchase of the property and the claim has been
7 satisfied." *Id.* In these affirmative defenses, these Defendants appear to be attempting to apply
8 principles of contribution in an effort to create a credit for settlements already reached with other
9 defendants that are no longer parties to this dispute. The Court should not allow Defendants to present
10 evidence or argument of these other settlements with other defendants because such evidence or
11 argument is not admissible to prove or disprove liability under NRS 48.105, Defendants have no right
12 of contribution under a plain reading of NRS 17.255, the disclosure of such evidence is irrelevant, and
13 the disclosure of such evidence or argument, if relevant, would be overly prejudicial to Plaintiffs. For
14 these various reasons, the Court should exclude evidence or argument of any settlements reached with
15 any other defendants in this dispute.
16

18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I. FACTUAL BACKGROUND**

20 Plaintiffs filed a complaint on February 10, 2015 to vindicate their rights arising from the sale
21 of property to Plaintiffs that took place on or about February 28, 2013. These claims arise under NRS
22 113.150 against the sellers of the property, Harry Richard Reynolds and Deann Reynolds, for their
23

25 ¹ Unfortunately, James E. Johns died on February 10, 2016. Mr. Johns' death was the subject of a suggestion of
26 death on the record in or about March of 2016 and a motion to substitute party filed in or about April of 2016. The motion
27 to substitute party was not opposed and in June of 2016, A.J. Johnson was substitute into this matter as the representative
28 of the deceased James E. Johns.

² JE Johns & Associates has not yet answered Plaintiffs' Second Amended Complaint and Plaintiffs are seeking to
understand this entity's position on this issue. Plaintiffs expect either an answer from this Defendant soon or Plaintiffs
will file a default against this Defendant prior to trial.

1 failure to disclose various issues with the property in violation of NRS 113.130. Plaintiffs also asserted
2 claims of negligent and fraudulent misrepresentation against the sellers. Plaintiffs' claims also arise
3 under NRS 645.251, et seq., against the seller's realty agent and broker, A.J. Johnson, James E. Johns,
4 and J.E. Johns & Associates and against the buyer's realty agent and broker, Brian Kincannon, Robert
5 Clement, and Group One, Inc., dba Keller Williams Realty for their failure to disclose information
6 that they knew or that they should have known and because these realtor defendants did not act with
7 reasonable skill and care in this transaction, which constitute statutory violations of NRS 645.252,
8 NAC 645.600, and NRS 645.257.

9
10 For purposes of informing the Court only, the sellers and the buyers' realty agent and broker
11 have resolved all claims Plaintiffs raised against them. The only remaining defendants in this case are
12 the sellers' realty agents and broker, A.J. Johnson, James E. Johns and J.E. Johns & Associates
13 ("Defendants"). The claims against these remaining Defendants are statutory in nature, there are no
14 joint tortfeasors, there is no alleged injury to person or property associated with these claims, there is
15 no single injury alleged under any of the applicable statutes, and there is no right of contribution
16 existing in favor of these Defendants. As such, these Defendants cannot lawfully point the finger at
17 any other defendant to this case and cannot reduce their liability by any settlement reached with any
18 other defendant.

19 Approximately one year after purchasing the property in question, John Lindberg discovered
20 that two structures found on the property were not constructed with building permits, which is a fact
21 Plaintiffs allege was known to the sellers of the property at the time of the sale. Accordingly, Plaintiffs
22 sued the sellers under NRS 113.150 for their failure to disclose in a Seller's Real Property Disclosure
23 form the fact that two of the buildings on the property were not permitted. Plaintiffs also sued the
24 sellers for negligent and fraudulent misrepresentation. Plaintiffs also sued the remaining Defendants
25 in this matter asserting that these Defendants knew or should have known that the septic system and
26 well at the property were undersized, that the listing of the property as a single family residence was
27 improper, and that the listing of the property as having 3,880 square feet was made in error, even
28

1 though the remaining Defendants knew the size of the combined living space found at the property
2 and the remaining Defendants knew or should have known that the septic system and well were
3 inadequate. Plaintiffs alleged that Defendants violated NRS 645.252, NAC 645.600 and NRS 645.257
4 because of these many failures. The remaining Defendants are not subject to the common law, as set
5 forth under NRS 645.251, and their liability is based in statute.

6 If Plaintiffs proved their claims against the sellers of the property, their damages would be
7 based in statute under NRS 113.150(4) in that Plaintiffs would be entitled to “recover from the seller
8 treble the amount necessary to repair or replace the defective part of the property, together with court
9 costs and reasonable attorney’s fees.” These damages are specific to the seller of real property and
10 the seller’s agent is not responsible to pay these damages arising from a seller’s failure to disclose,
11 unless the agent knew of the failure to disclose. If Plaintiffs prove their claims against the Defendants
12 in this case, then liability and damages are established by a different statute, NRS 645.257. Under that
13 statute, the Plaintiffs would be entitled to recover damages that are the “proximate result of a licensee’s
14 failure to perform any duties required by NRS 645.252, 645.253, or 645.254, or the regulations
15 adopted to carry out these sections. . .” and these damages would be limited to the “actual damages”
16 suffered by the Plaintiffs.
17

18 Under these two separate statutes, the seller’s liability and damages that may be assessed
19 against the seller are not the same as those that may be assessed against the Defendants in this case,
20 meaning that there is no single injury that would entitle the Defendants to contribution in this case.
21 There is also not a right to contribution in this case because the injury is not to the Plaintiffs’ person
22 or property. The liability of the seller (for possible treble damages) and the liability of the Defendants
23 (for actual damages) are statutory in nature. Because the damages that Plaintiffs may recover from
24 each group of defendants in this case are different and are based in different statutes, there is no joint
25 and several liability of two or more joint tortfeasors from which a single injury to person or property
26 has been sustained, meaning that there is no right of contribution in favor of the Defendants against
27 any other defendant in this dispute. NRS 17.225. Without such a right of contribution, the Defendants
28

1 cannot offset any amounts paid in settlement by any other defendant who paid to settle statutory claims
2 that include statutory damages payable by that defendant only.

3 **II. LEGAL ARGUMENT**

4 **a. There is no Right of Contribution that favors these Defendants.**

5 Defendants' affirmative defenses outlining that they believe they are entitled to a credit for
6 settlements from defendants who have resolved their statutory liability already in this case represents
7 a fundamental misunderstanding of the right of contribution in Nevada. For a party to be entitled to
8 contribution to offset a settlement from another defendant in any case, it must be shown that "two or
9 more persons [became] jointly or severally liable *in tort* for the *same injury to person or property or*
10 *for the same wrongful death. . .*" NRS 17.225. Absent from this case are any allegations that any
11 party to this dispute is a joint tortfeasor, as the claims are statutorily based and are unique to each
12 defendant, or that there has been a single injury to person or to property resulting from any defendants'
13 violation of the specific statutes referenced in this matter. There simply is no right of contribution
14 between the Defendants and any defendant that has settled its statutory liability to the Plaintiffs. In
15 their second and fourth affirmative defenses, these Defendants do not suggest any other way they
16 would be entitled to a credit for a settlement between the Plaintiffs and any other defendant. There
17 simply is not a right to a credit under the circumstances in this case. Accordingly, evidence of these
18 settlements should not be introduced at trial.
19

20 **b. Evidence of a Settlement of Any Kind is inadmissible to Disprove or to Prove** 21 **Liability.**

22 In accordance with NRS 48.105, "[e]vidence of. . . furnishing. . . or accepting a valuable
23 consideration in compromising. . . a claim which was disputed as to either validity or amount, is not
24 admissible to prove liability for *or invalidity of* the claim or its amount." (Emphasis added). The
25 Defendants here are seeking to offer evidence of settlements with other defendants to this matter to
26 offset their own liability, and thereby disprove that they are liable for Plaintiffs' damages. The
27 introduction of evidence of a settlement to disprove the Defendants' liability is impermissible. The
28 Court should not allow the Defendants to offer any evidence of settlement at any stage of this case or

1 to argue that the Defendants' liability is somehow offset or credited with any amounts arising from
2 settlements from other defendants. Such evidence and argument would be improper.

3 **c. Evidence of Settlements reached by Other Defendants in this Case is Irrelevant.**

4 Under NRS 48.015, "relevant evidence" is defined as "evidence having any tendency to make
5 the existence of any fact that is of consequence to the determination of the action more or less probable
6 than it would be without the evidence." Under NRS 48.025, "relevant evidence" is admissible at trial
7 while irrelevant evidence is inadmissible. In this case, evidence of a settlement of statutory claims
8 that created a unique set of statutory damages against a singular defendant prove nothing regarding
9 the claims raised against these Defendants. The claims raised against the Defendants are based solely
10 upon what these Defendants knew or should have known or whether these Defendants exercised
11 reasonable care under the provisions of NRS 645.252. A settlement with a defendant seller of property
12 whose liability is premised on NRS 113.150 proves nothing of consequence in the separate statutory
13 claims raised against these Defendants. There simply is no relevance supporting the admission of
14 evidence or argument related to any of the settlements reached with any other defendants in this matter.
15 Accordingly, the Court should exclude such evidence at trial.
16

17 **d. The Danger of Undue Prejudice outweighs any Probative Value found in the**
18 **Admission of Evidence or Argument related to Settlements with other Defendants.**

19 Plaintiffs can see only three reasons to submit evidence or argument related to settlements
20 reached with other defendants in this case, which include; (1) to unfairly prejudice the Plaintiffs; (2)
21 to confuse the issues; and (3) to mislead the jury. As such, evidence or argument related to settlements
22 reached with other defendants in this case should be inadmissible under NRS 48.035, because the
23 probative value of such evidence is outweighed by the three concerns associated with this evidence.
24 Evidence of a settlement with the Plaintiffs would unfairly prejudice the Plaintiffs because the jury
25 may determine that the Plaintiffs have received enough money because of these settlements, which is
26 not a proper basis to deny Plaintiffs' claims if Defendants violated NRS 645.252. The introduction of
27
28

1 this evidence would confuse the issues, in that the jury might believe that they must determine if the
2 Plaintiffs are entitled to any additional damages other than what they have received through
3 settlements, which is also not a proper basis for denying liability. Finally, the jury would be misled
4 by the introduction of evidence of settlements with other Defendants because the presentation of this
5 evidence serves no purposes but to make it appear as though Plaintiffs have been made whole, when
6 the damages that arise from Defendants' violations of NRS 645.252 are unique to these Defendants
7 and arise solely from their misdeeds and not from the misdeed of any other Defendant. Accordingly,
8 even if relevant (which it is not), evidence of settlements with other Defendants in this matter should
9 be excluded as overly prejudicial, confusing, and misleading.
10
11

12 **III. CONCLUSION**

13 For the reasons stated herein, the Court should not allow the introduction at trial of evidence
14 or argument that Defendants' liability may be credited or offset by any settlements reached with other
15 defendants in this matter. Evidence of such settlements also should not be introduced at trial.
16

17 **AFFIRMATION PURSUANT TO NRS 239B.030**

18 The undersigned attorney does hereby affirm that the preceding document does not contain the
19 social security number of any persons

20 DATED this 9th day of February, 2018.

21 MOORE LAW GROUP, PC

22
23 By 

24 John D. Moore, Esq.
25 Nevada State Bar No. 8581
26 3715 Lakeside Drive, Suite A
27 Reno, NV 89509
28 (775) 336-1600 telephone
(775) 336-1601 fax
john@moore-lawgroup.com
Attorney for Plaintiffs

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of Moore Law Group, PC, and that on
3 February 9, 2018, I caused the foregoing document to be served on all parties to this action by:

4 ☐ placing an original or true copy thereof in a sealed, postage prepaid, envelope in the
5 United States mail at Reno, Nevada.

6 ☐ personal delivery

7 ☐ facsimile (fax)

8 ☐ Federal Express/UPS or other overnight delivery

9 ☐ Reno/Carson Messenger Service

10 ☒ E-service via flex filing system

11 to the following:

12 C. Nicholas Pereos
13 1610 Meadow Wood Lane, Suite 202
14 Reno, NV 89502
15

16 

17
18 An Employee of Moore Law Group, PC
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INDEX OF EXHIBITS		
Exhibit Number	Description of Exhibit	No. of Pages
1	Answer to Second Amended Complaint	6

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2018-02-09 03:07:00 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 6525748 : yvilorla

EXHIBIT 1

EXHIBIT 1

1 CODE: 1140
2 C. NICHOLAS PEREOS, ESQ.
3 Nevada Bar #0000013
4 1610 MEADOW WOOD LANE, STE. 202
5 RENO, NV 89502
6 (775) 329-0678
7 ATTORNEY FOR DEFENDANTS
8 J. E. JOHNS & ASSOCIATES
9 & A. J. JOHNSON

6
7 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
8 **IN AND FOR THE COUNTY OF WASHOE**

9
10 JOHN LINDBERG, MICHAL LINDBERG,
11 JUDITH L. LINDBERG

12 Plaintiffs,

13 vs.

14 HARRY RICHARD REYNOLDS, DEANN
15 REYNOLDS, J. E. JOHNS & ASSOCIATES, A.
16 J. JOHNSON, KEN AMUNDSON, BRIAN F.
17 KINCANNON

18 Defendants.

Case No. CV15-00281

Dept. No. 3

19
20 **ANSWER TO SECOND AMENDED COMPLAINT**

21 Defendants, James E. Johns and A.J. Johnson answering the Second Amended
22 Complaint, admits, denies and avers as follows:

23 **THE PARTIES**

24 I

25 Defendants answering the "Parties" allegations of the Second Amended
26 Complaint on file herein admits, denies and avers as follows:

27 1. Admit that Reynolds were residents of Washoe County, Nevada. Admit
that James E. Johns was a resident of Washoe County, Nevada. These Defendants
are without knowledge or information sufficient to form a belief as to the truth of the

1 averments contained in paragraphs 2, 4, 7 through 11, inclusive to the Second
2 Amended Complaint.

3 **FACTS**

4 I

5 Defendants answering the "Facts" of the Second Amended Complaint on file
6 herein admits, denies and avers as follows:

7 1. Adopt by reference and make a part hereof each and all the admissions,
8 denials contained hereinabove.

9 2. Admit that J.E. Johns & Associates listed the property for sale on behalf of
10 the sellers. Deny each, and every and other averments contained in paragraphs 14,
11 17, 18, 20 through 29, inclusive.

12 **FIRST CAUSE OF ACTION**

13 I

14 Answering the "First Cause of Action" of the Second Amended Complaint, these
15 Defendants admits, denies and avers as follows:

16 1. Insofar as said first cause of action is not applicable to these Defendants,
17 Defendants denies the same.

18 **SECOND CAUSE OF ACTION**

19 I

20 Answering the "Second Cause of Action" of the Second Amended Complaint,
21 these Defendants admits, denies and avers as follows:

22 1. Insofar as the second cause of action is not applicable to these
23 Defendants, these Defendants denies the same.

24 **THIRD CAUSE OF ACTION**

25 I

26 Answering the "Third Cause of Action" of the Second Amended Complaint, these
27 Defendants admits, denies and avers as follows:

1. Insofar as this third cause of action is not applicable to these Defendants, these Defendants denies the same.

FOURTH CAUSE OF ACTION

1

Answering the "Fourth Cause of Action" of the Second Amended Complaint, these Defendants admits, denies and avers as follows:

1. Adopt by reference and make a part hereof each and all the admissions, denials contained hereinabove.

2. Deny each, and every and all of the averments contained in paragraphs 46 through 48 of the fourth cause of action.

FIFTH CAUSE OF ACTION

1

Answering the "Fifth Cause of Action" of the Second Amended Complaint, these Defendants admits, denies and avers as follows:

1. Adopt by reference and make a part hereof each and all the admissions, denials contained hereinabove.

2. Deny each, and every and all of the averments contained in paragraphs 50 through 54, inclusive of the fifth cause of action.

FIRST AFFIRMATIVE DEFENSE

Defendant James E. Johns is now deceased and this Court lacks jurisdiction.

SECOND AFFIRMATIVE DEFENSE

Plaintiffs have resolved its claim with regard to the remaining Defendants and these Defendants is entitled to a credit therefore.

THIRD AFFIRMATIVE DEFENSE

Plaintiffs were provided reports indicating problems with regard to the subject property and proceeded to close the escrow and assumed the risks by reason of the same.

III

1 **FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiffs received compensation for the losses alleged to have been sustained in
3 the purchase of the property and the claim has been satisfied.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 Plaintiffs has waived any rights to collect for issues as to these Defendants by
6 reason of the notice of deficiencies.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Said complaint fails to state a claim upon which relief can be granted.

9 **SEVENTH AFFIRMATIVE DEFENSE**

10 At all times herein mentioned, Plaintiffs negligently and carelessly conducted
11 themselves in and about the matters averred in said complaint which said negligence
12 and carelessness attributed to any and all lawsuits allegedly to be sustained by them.

13 **EIGHTH AFFIRMATIVE DEFENSE**

14 Plaintiffs engaged independent contractors and consultants and relied on the
15 materials provided to them.

16 **NINTH AFFIRMATIVE DEFENSE**

17 The duties owed to the Plaintiffs to adequately investigate and counsel the
18 Plaintiffs were not by these Defendants.

19 **TENTH AFFIRMATIVE DEFENSE**

20 The claims of the complaint are barred by justification.

21 **ELEVENTH AFFIRMATIVE DEFENSE**

22 The claims of the complaint are barred by unjust enrichment.

23 **TWELFTH AFFIRMATIVE DEFENSE**

24 The claims of the complaint are barred by failure to act in a commercially
25 reasonable manner.

26 **THIRTEENTH AFFIRMATIVE DEFENSE**

27 The claims of the complaint are barred by lack of consideration.

1 **FOURTEENTH AFFIRMATIVE DEFENSE**

2 The claims of the complaint are barred in whole or in part by waiver
3 acquiescence and/or estoppel.

4 **FIFTEENTH AFFIRMATIVE DEFENSE**

5 The claims of the complaint are barred by unclean hands and bad faith.

6 **SIXTEENTH AFFIRMATIVE DEFENSE**


7 Recession is the remedy available to the Plaintiff.

8 Wherefore, these Defendants pray that Plaintiffs take nothing from said
9 Complaint and that these Defendants have judgment against Plaintiffs for costs of suit
10 and reasonable attorneys fees.
11

12 **AFFIRMATION**

13 The undersigned affirms that the foregoing pleading does not contain a social
14 security number.

15
16 DATED this 17th day of JANUARY, 2018 C. NICHOLAS PEREOS, LTD.

17
18
19 By: 
20 C. NICHOLAS PEREOS, ESQ.
21 1610 MEADOW WOOD LANE, STE.202
22 RENO, NV 89502
23 ATTORNEY FOR DEFENDANTS
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25
26
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CERTIFICATE OF SERVICE BY ELECTRONIC FILING

PURSUANT TO NEVADA RULES OF CIVIL PROCEDURE 5 (b), I certify that I am an employee of C. NICHOLAS PEREOS, LTD., and that on the date listed below, I caused to be served a true copy of the foregoing pleading on all parties to this action by electronically filing the foregoing with the Clerk of the Court by using the CM/ECF system which served the following parties electronically:

John D. Moore, Esq.
MOORE LAW GROUP, PC
3715 Lakeside Drive, Suite A
Reno, NV 89509

DATED: _____

1/18/18



Iris M. Norton

Code No. 4185

IN THE SECOND JUDICIAL DISTRICT COURT
OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE
THE HONORABLE JEROME M. POLAHA, DISTRICT JUDGE

-oOo-

JOHN LINDBERG,)	
)	
Plaintiff,)	
)	
vs.)	Case No. CV15-00281
)	
)	
HARRY REYNOLDS,)	Dept. No. 3
)	
Defendant.)	
<hr/>)	

TRANSCRIPT OF PROCEEDINGS
TRIAL, VOLUME I
MONDAY, AUGUST 20TH, 2018; 10:30 A.M.
RENO, NEVADA

Joan Dotson, NV CSR #102

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A P P E A R A N C E S

For the Plaintiffs: JOHN MOORE
 Attorney at Law
 Reno, Nevada

For the Defendants: GLADE HALL
 Attorney at Law
 Reno, Nevada

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* I N D E X *

WITNESSES:	DIRECT	CROSS	REDIRECT	RECROSS
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For the Plaintiff:

JOHN LINDBERG	15	68	79	--
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AMINA JOHNSON JOHNS	80	142	147	--
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For the Defendant:

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1 MONDAY, AUGUST 20TH, 2018; RENO, NEVADA

2 -oOo-

3 THE COURT: Good morning. Be seated please.
4 This is CV15-00281, entitled John Lindberg versus Harry
5 Reynolds, et al.

6 This particular case involves Johns, Johnson.

7 And would you state your appearances please?

8 MR. MOORE: John Moore on behalf of the
9 plaintiffs.

10 MR. HALL: Glade Hall on behalf of the
11 remaining defendants, your Honor.

12 THE COURT: All right. Counsel, Mr. Moore,
13 your motion for sanctions, I just saw that ten minutes
14 ago. Okay. I'm not about to rule. And he has time to
15 file a response to it.

16 MR. MOORE: I understand, your Honor.

17 THE COURT: You may begin.

18 MR. MOORE: Okay. Great. Your Honor, this
19 case is a perfect example of why in Nevada consumers who
20 are purchasing real property rely on realtors and why
21 they hire realty agents.

22 It is also a perfect example as to why there
23 are statutes that are enacted by the Nevada legislature
24 to govern the practice of realtors and to outline what

1 they must do, things that they must disclose, things that
2 they must acknowledge, things of that nature.

3 Those statutes are established and they
4 create in Nevada on the parts of realtors to act with
5 reasonable care, to act in cases where they will disclose
6 information that is known to them or that should have
7 been known to them and where they also will act
8 reasonably with regards to all parties to the
9 transaction.

10 This case is different from an
11 attorney/client relationship where the attorney owes
12 certain duties to the Court, the attorney owes certain
13 duties to the opposing parties and the attorneys also owe
14 duties to their client.

15 In this case, realtors owed duties to
16 everybody in the transaction. Whereas in an
17 attorney/client privilege situation they may only owe --

18 THE COURT: Counsel, it sounds like you are
19 arguing your position.

20 MR. MOORE: I'm going forward with an opening
21 statement. Do you want me to limit my argument, your
22 Honor?

23 THE COURT: Well, argue at the end, not
24 before. Just tell me what you are going to prove.

1 MR. MOORE: Here in this case we are going to
2 establish and present evidence that in this situation the
3 remaining defendants that are here in this case knew or
4 should have known the exact square footage of the
5 property that was sold. The evidence will also show that
6 the remaining defendants were aware of the square footage
7 because prior to listing the property for sale, the
8 owners in this case obtained an appraisal. The appraisal
9 outlines many things, including the square footage of the
10 property.

11 The square footage of the living space found
12 here as shown in these documents will demonstrate that
13 the square footage is 3,640 square feet. But the listing
14 was in two instances for 3,880 square feet.

15 The original listing in September of 2012 has
16 that as a square footage for living space. And the
17 second real estate --

18 THE COURT: When you say has 'that,' that
19 refers to which figure?

20 MR. MOORE: 3,880, the larger amount. And
21 then in December of 2012 there was a second listing that
22 showed 3,880 square feet, which was incorrect. This
23 appraisal was in the possession of the remaining
24 defendants as shown by various documents including the

1 appraisal itself, including a listing input form prepared
2 by one of the remaining defendants in this case, as well
3 as an e-mail where this appraisal is referenced during
4 the negotiations between the parties.

5 So under the relevant statutes we will show
6 that the square footage was known to the remaining
7 defendants.

8 The second issue relates to an septic system
9 at the property. During the sales transaction the
10 evidence will show that my client had certain questions
11 related to the septic system. And it will be shown
12 through documents and other items that the disclosures
13 that were related to the septic system were improper.

14 Under what will be shown, it will show that
15 the disclosure of 15 -- the 15,000-gallon tank was done
16 in error.

17 And it will also be shown that the actual
18 size of the septic system is only a thousand gallons.
19 And after my clients purchased this property when they
20 became aware of this issue, they had an obligation put
21 upon them by Washoe County that they had to enlarge the
22 septic system so that it would comply with the applicable
23 codes that were in place related to the septic system.

24 So my clients will testify and John Lindberg

1 will testify about the specifics of this transaction;
2 that he did have questions; that prior to the purchase he
3 was not aware of the precise square footage.

4 He did not know that it was improperly
5 listed. He'll testify that when he first went to Washoe
6 County to try to move some electrical up to a barn or
7 shack on the upper part of the property a year after he
8 purchased the property, that Washoe County said, "Hey,
9 wait a minute. The barn you are proposing to take that
10 electrical to is not permanent. The mother-in-law
11 quarters where your mother is now living was not
12 permitted, and we need you to take steps to make this
13 right."

14 Initially the worry was that they might have
15 to tear all this down; that Washoe County might not allow
16 that to happen, those unpermitted portions of the
17 property to remain in place.

18 And so my clients went through that process.

19 They retained somebody who would help them,
20 who would help them put together what they needed to do
21 to make these two unpermitted pieces of property
22 permitted and legal according to Washoe County.

23 And they had to pay certain amounts of money.

24 They had to pay to enlarge the septic system

1 approximately \$27,000. They had to pay some additional
2 money to make the electrical system up to code, which are
3 amounts that we are not going to be looking to recover in
4 this case.

5 They also were required to go through and get
6 boundary line surveys and get architectural plans and
7 other items that were required by Washoe County before
8 they would allow them to enlarge the septic system. They
9 also purchased a piece of property thinking it was much
10 larger than it actually was, to the tune of approximately
11 240 square feet.

12 And so with all this evidence, your Honor,
13 coming back to why we hire realtors, we'll demonstrate
14 that in this case the realtors here just messed up. It
15 is that simple.

16 And we are looking for an opportunity to
17 present what we believe are the facts of this case and
18 to -- we thank you for your time here today, your Honor.

19 THE COURT: Did you sue the owners -- or the
20 sellers rather?

21 MR. MOORE: Yes.

22 THE COURT: And what happened with that?

23 MR. MOORE: The case was resolved.

24 THE COURT: For how much?

1 MR. MOORE: That's something you would like to
2 know? \$50,000.

3 THE COURT: Because you are saying that your
4 clients suffered X amount of dollars in damages.

5 MR. MOORE: Correct.

6 THE COURT: And you are not saying that they
7 are responsible for it 100 percent jointly and severally.

8 MR. MOORE: We argued and I think this court
9 has ruled that there are different claims that have been
10 raised here and there isn't joint and several liability.

11 THE COURT: Some of them are.

12 MR. MOORE: What we have presented is --
13 against the seller NRS 130 requires that the seller
14 disclose certain things.

15 THE COURT: Right.

16 MR. MOORE: And if they don't they can be
17 responsible for triple damages.

18 THE COURT: That's separately to the sellers.

19 MR. MOORE: Exactly. And we settled those
20 claims against that seller for \$50,000.

21 The claims raised against --

22 THE COURT: So you are saying the \$15,000 or
23 15 plus is part of the \$100,000 that you are saying they
24 are damaged?

1 MR. MOORE: No, we believe that, if we had
2 pursued our claims against the sellers all the way to
3 conclusion, because it cost more than the \$27,000 to fix
4 all the problems out there. It cost closer to \$40,000.
5 So our claims against the seller would have been \$120,000
6 under statute plus the cost to fix, \$160,000.

7 So, your Honor, we have settled those claims
8 with the seller. But those claims in and of themselves
9 aren't related to the failure to disclose under a
10 different statute. NRS 645 has different requirements.

11 And under that statute the realtor is
12 responsible for the costs associated with repairs that
13 are occasioned by a failure to disclose by the realtor.

14 THE COURT: So, in a nutshell, I'm sure you
15 will get into this. If I want to sell a house and I tell
16 the realtor it is 4,000 square feet, the realtor is
17 responsible under our law to measure it and make sure it
18 is 4,000 square feet?

19 MR. MOORE: That's not my argument. My
20 argument is, if the realtor knows that it's not
21 4,000 square feet, which the evidence in this case will
22 show, they have to disclose that it is not. So, if the
23 realtor knows it is not 4,000 square feet, regardless of
24 what their client has told them, they have an obligation

1 under the statute to disclose that.

2 THE COURT: All right. And as far as the
3 septic system, they don't have an obligation to dig it up
4 and test it?

5 MR. MOORE: No. We are not going to argue
6 that. What we'll present through an expert witness is
7 that under the facts of this case, you know the size of
8 the lot. You know that there are three buildings on the
9 lot. You know that there are significant additions that
10 have been made to this property.

11 Those are all red flags that should have led
12 the realtor to know that the septic system is only a
13 thousand gallon tank and was not appropriate. We are not
14 saying that they had to dig anything up. We are saying
15 all the evidence that was presented that was known to
16 this realtor should have led this realtor to also know
17 that the septic system was not appropriate in size.

18 THE COURT: But your clients had property
19 before this property that had a septic on it.

20 MR. MOORE: Correct.

21 THE COURT: Isn't a 15,000 gallon tank, that's
22 a pretty big tank.

23 MR. MOORE: It is very big. And, your Honor,
24 we didn't only sue the seller's realtor or in this case

1 we also brought claims against my client's realtor for
2 the same issues. The documents presented to both
3 realtors in this case should have led to a much different
4 result. That's why we brought a claim against our own
5 realtor. And we resolved that claim with our own
6 realtor.

7 THE COURT: For how much?

8 MR. MOORE: \$7,500.

9 THE COURT: All right.

10 MR. MOORE: And our realtor certainly,
11 certainly should have seen some red flags in the
12 documents that were disclosed to her and should have --
13 that's getting back to the beginning of my opening, that
14 is why we bring in realtors. That is why we hire them.
15 We hire them for a reason: To help us out, to get us
16 through all the minutia. And they owe us obligations.
17 They have to disclose things. And, if they fail to do
18 so, they are responsible for the damages associated with
19 it.

20 One of the elements of damages that we'll
21 seek to prove in this case, your Honor, is that -- the
22 price we paid for the house was about \$99 a square foot.

23 Under existing law we are entitled to an
24 abatement because we didn't buy that big of a house.

1 That's not the responsibility of our realtor. That's the
2 responsibility of the seller's realtor to pay that
3 amount. So, your Honor, we are here today, we are
4 seeking to present our case and will do so as
5 expeditiously as possible. And, if you have any other
6 questions, let me know.

7 THE COURT: Well, that abatement amount is
8 \$22,760.

9 MR. MOORE: \$23,000.

10 THE COURT: And you recognize that's against
11 the seller?

12 MR. MOORE: No. The agent. The agent.

13 THE COURT: All right.

14 Mr. Hall.

15 MR. HALL: My answer, your Honor, very quick
16 and simple. During the course of this escrow all of the
17 issues that are now raised by the plaintiff were raised,
18 dealt with in some manner and waived at close of escrow.
19 There is an ambiguous waiver. If you know it is there,
20 what do you want to do about it? You can demand that it
21 be fixed or you can walk. Those are the alternatives
22 that the buyer has.

23 And in each of the alleged disclosures of
24 misinformation, they were remedied. The square foot of

1 the septic was known. The square foot of each of the
2 structures was known.

3 THE COURT: Before closing?

4 MR. HALL: Before close of escrow. That's our
5 case, your Honor. Thank you.

6 THE COURT: All right. Mr. Moore, call your
7 first witness.

8 MR. MOORE: Your Honor, I would like
9 to exercise the exclusionary rule. Also I would like to
10 know who we have in the audience because I don't -- I
11 don't recognize anybody as being a part of the case.

12 THE COURT: Are there any witnesses out there?
13 I see -- all right. Do you have any witnesses, Mr. Hall?

14 MR. HALL: Not that I know of. Just family
15 and friends and a realtor.

16 MR. MOORE: No problem. Your Honor, we call
17 John Lindberg.

18 -oOo-

19 JOHN LINDBERG

20 produced as a witness on behalf of
21 the Plaintiff, being first duly sworn,
22 was examined and testified as follows:

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24 DIRECT EXAMINATION:

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BY MR. MOORE:

Q Good morning, John. Could you please state your full name and spell your last name for the record?

A John Charles Lindberg. Last name is L-i-n-d-b-e-r-g.

Q Mr. Lindberg, why are you here today?

A To recoup some of the damage I incurred by buying this property.

Q Getting to when you purchased the property, why were you in 2012, late 2012, looking to purchase another piece of property?

A We wanted a bigger place.

Q What were some of the things you were looking for?

A A place that had a mother-in-law quarter where we could bring my mom and put her up. A place big enough to put horses.

Q Why were those important to you?

A The place that we lived at before was a triplex. We lived in one unit, two bedrooms each, two-and-a-half bedrooms. My mom lived on the end. I rented out the middle one. And it was just really small and we wanted to bring mom along with us to help take

1 care of her.

2 Q And where were you looking to buy property?

3 A In the Washoe Valley area.

4 Q This property in particular when did you
5 first become aware that it was for sale?

6 A My wife saw it online sometime in October of
7 2012.

8 Q And what steps did you take after seeing it
9 online to look at the property?

10 A We looked at several different properties.
11 Drove by that one, decided we liked it. Just the way it
12 looked. And got a hold of a business acquaintance Brian
13 Kincannon to help us purchase the property.

14 Q And after you contacted Mr. Kincannon, did
15 you retain him?

16 A We did.

17 Q And what steps did you take -- before hiring
18 Mr. Kincannon, had you been by the property at all?

19 A Yeah. Like I said, we drove by it. Got the
20 little flier thing out of the box.

21 Q What about the property attracted you to it?

22 A The landscaping, the yard, the mother-in-law
23 quarters, the area in back where we could keep our horses
24 and the size.

1 Q And then you retained your realtor. What
2 steps did you take after retaining Mr. Kincannon to move
3 towards potentially purchasing the property?

4 A He took us in the house to look at it. We
5 went and looked at it. The owners weren't there. He had
6 a key for the lockbox on the front door. We looked at it
7 and kind of decided that we would like to move forward
8 with it.

9 Q And what steps did you take after you decided
10 that you would like to move forward with it?

11 A We just went forward with the buying process
12 and had Kincannon get a hold of their realtor. We did a
13 second walkthrough. Just I guess the normal stuff where
14 you make an offer and a counteroffer and that type of
15 thing.

16 Q We'll walk through all that as we're going.
17 But I just want to get the basics right now out. And
18 what we will next do is start looking at some of the
19 exhibits. Are these the exhibits for the witness?

20 THE CLERK: Yes.

21 MR. MOORE: May I approach the witness, your
22 Honor?

23 THE COURT: You may.

24 MR. MOORE: And, Mr. Lindberg, would you go

1 ahead and turn to Exhibit 1? Mr. Lindberg, do you
2 recognize Exhibit One?

3 A Yes.

4 Q What is it?

5 A It is a disclosure form.

6 Q On the last page of Exhibit One is it signed
7 by you?

8 A Yes.

9 Q And, Mr. Lindberg, when do you recall first
10 seeing this document?

11 A I guess it was in February, January, February
12 when we were going through the buying process.

13 Q Would it have been at the time approximately
14 when you signed the document?

15 A Yeah, there was quite a lot of stuff to look
16 at.

17 Q And that date is February 28th, 2013?

18 A That sounds right, yes.

19 Q In this disclosure is there anything of
20 concern to you that was disclosed?

21 A No.

22 Q Was there anything disclosed to you about any
23 discrepancies in the septic?

24 A No.

1 Q Was there anything disclosed to you in this
2 form that some of the work was not permitted?

3 A No.

4 Q Was there anything disclosed in this form
5 that perhaps the property listing incorrectly identified
6 the square foot of the property?

7 A No.

8 Q Anything in this form that caused you to
9 raise your eyebrows in any way at the time you were
10 buying the house?

11 A No.

12 Q During this process did you receive any
13 documents that caused you to question the listed size of
14 the square footage of the house?

15 A No.

16 Q During this process did you receive any
17 documents that caused you to question the size of the
18 septic?

19 A I had some questions. I got an e-mail that
20 said that there was a 15,000-gallon septic.

21 Q And we'll look at that e-mail as we are going
22 along. Anything else that was disclosed to you in this
23 form or any other documents that you saw and that you
24 reviewed that caused you to question any of the

1 information that had been disclosed to you?

2 A No.

3 Q Can you look at Exhibit 2, the next in order?

4 THE COURT: Do you want that in?

5 MR. MOORE: We would seek to move in the
6 exhibit.

7 THE COURT: Admitted.

8 BY MR. MOORE:

9 Q Perhaps should we just now --

10 Do we want to ask now, are there any
11 objections to any of our exhibits?

12 MR. HALL: Not that I am currently aware of.

13 MR. MOORE: Should I just go through the
14 process then with each exhibit, your Honor?

15 THE COURT: Well, if he is not going to
16 object, just start using them.

17 MR. MOORE: And if he does object --

18 THE COURT: If it comes along, we'll take it.

19 MR. MOORE: Thank you, your Honor.

20 THE COURT: Good.

21 BY MR. MOORE:

22 Q Can you turn over to Exhibit 2, John?

23 A I'm here.

24 Q John, do you recognize this document?

1 A I do.

2 Q What is it?

3 A I believe it is a listing, an MLS listing.

4 Q Did you see this document before closing?

5 A I don't recall. I think I did. Yeah. It
6 was on the website I believe.

7 Q Let's go ahead while we're on this exhibit.
8 Can you go ahead and turn to Exhibit 6?

9 A Okay.

10 Q John, do you recognize Exhibit 6?

11 A Yes.

12 Q Do you see your signature -- or your
13 initials?

14 A Yes.

15 Q Is this a listing similar to Exhibit 2 but in
16 a different form?

17 A Yes.

18 Q Is this a document that you saw during this
19 transaction?

20 A Yes.

21 Q And you initialled it; is that correct?

22 A Right. Yes.

23 Q Looking at Exhibit 2 and Exhibit 6, do you
24 see any material discrepancies between these two

1 exhibits?

2 A No.

3 Q They look the same but just a different form;
4 is that right?

5 A It is a different format.

6 Q We will rely more on Exhibit 6, because
7 that's the one that you have actually seen. You are at
8 Exhibit 6 now?

9 A Yes.

10 Q Do you see there listed on Exhibit 6 the
11 total square foot -- total living space of 3880 square
12 feet?

13 A I do.

14 Q Do you see that the source of that is from
15 the assessor?

16 A Yes.

17 Q Do you also see the acreage as 1.12 acres?

18 A That's correct, yes.

19 Q Do you also see that it is listed that it is
20 a single family residential structure?

21 A Yes.

22 Q Do you see that Jim Johns is listed as the
23 realtor?

24 A I do.

1 Q And looking at this document during the
2 closing process did you rely on this document?

3 A Yes.

4 Q And did you believe that the items listed
5 here were correctly listed?

6 A I did.

7 Q Go ahead and turn to Exhibit 3. Actually
8 let's start with Exhibit 4.

9 Do you recognize Exhibit 4?

10 A I do.

11 Q What is it?

12 A That's an offer, counteroffer.

13 Q So is this the offer that you and your wife
14 and your mother made to purchase the property?

15 A It is.

16 Q Is it signed by you on the last page of that
17 exhibit marked at the bottom KW 15?

18 A It is.

19 Q And how much did you offer to buy the house
20 for?

21 A We offered -- they wanted four. We counter
22 offered for 375.

23 Q So you made an initial offer for 375?

24 A Yes.

1 Q After you made this initial offer was there
2 ever a counteroffer made?

3 A Yes, they came back at 385.

4 Q Looking at Exhibit 3, do you recognize that
5 document?

6 A Yes, I do.

7 Q And is that -- what is that document?

8 A That's I believe their counteroffer.

9 Q And for how much is the counteroffer?

10 A 385.

11 Q During the negotiations did you become aware
12 from your realtor as to why a counteroffer was made?

13 A Yeah.

14 MR. HALL: Hearsay, your Honor.

15 MR. MOORE: Not offered for the truth of the
16 matter asserted.

17 THE COURT: Overruled.

18 BY MR. MOORE:

19 Q You can go ahead.

20 THE COURT: You are asking him what the other
21 people thought?

22 MR. MOORE: If he ever became aware during the
23 process of why a counteroffer was made. And I'm not
24 offering it for the truth of the matter asserted.

1 THE COURT: Okay.

2 THE WITNESS: Yes. I'm aware they came back
3 at 385.

4 BY MR. MOORE:

5 Q And did your realtor ever explain to you why
6 that was?

7 A I think they wanted to get as close to the
8 appraised value as they could get.

9 Q And during that process, as things were going
10 along, was the appraised value shared with you?

11 A Yes.

12 Q And did you notice that the appraised value
13 came in higher than the counteroffer?

14 A I did.

15 Q And so after knowing the appraised value what
16 steps did you take --

17 THE COURT: Excuse me, counsel. When you say
18 were you familiar with the appraised value, is that just
19 a number or did they see the appraisal?

20 MR. MOORE: It is a number and we are not sure
21 if the appraisal was ever shared with our realtor.

22 THE COURT: Ask him.

23 BY MR. MOORE:

24 Q Do you know if the appraisal in this case was

1 ever shared with your realtor?

2 A I don't know at what point it was, no, I
3 don't know.

4 Q But at some point you became aware that the
5 appraised value was at \$400,000?

6 A Yeah. I think he is the one that gave me the
7 appraisal when we were at his office during the offers
8 and counteroffers.

9 Q Did you look at the appraisal in any way to
10 determine the square footage of the property?

11 A I just looked at the value.

12 Q Did you look at it to determine if there was
13 anything irregular about the property?

14 A I glanced through it. But I'm not an expert
15 on any of that stuff.

16 Q So you saw the price. And what steps did you
17 take after that?

18 A We made the offer for 375. And then they
19 came back at 385.

20 Q And what did you do in response to this
21 counteroffer?

22 A We decided to go ahead and get the property.

23 Q So looking at Exhibit 3, did you sign this
24 document?

1 A No, not this one.

2 Q Exhibit 3.

3 A Exhibit 3. Yes, I did.

4 Q You signed it on January 4th, 2013?

5 A Yes.

6 Q And your wife also signed it on that date?

7 A That's correct.

8 Q After accepting this, what steps did you then
9 take to purchase the property?

10 A We went about getting the loan and coming up
11 with a down payment. Just decided to move on with buying
12 the property.

13 Q And when do you recall closing on the
14 property?

15 A I think it was about, oh, a month or so,
16 month-and-a-half later. I think February.

17 Q And what issues were reviewed during the
18 closing process?

19 A There was no issues reviewed during the
20 closing process.

21 Q Did you have any inspections done on the
22 property?

23 A We did.

24 Q What inspections did you have?

1 A The owner paid for them. But it was septic,
2 well, bug inspection. Home inspector guy.

3 Q Did any of these documents that you reviewed
4 during this process, did any of them alert you to the
5 true size of the property?

6 A No.

7 Q Did your realtor ever discuss any of these
8 documents with you to indicate to you that there might be
9 an issue with the listed size of the property?

10 A No.

11 Q I won't go through these inspections. They
12 are -- we would move to have them admitted as exhibits 8
13 and 7 -- 7, 8 and 9. And I may go with any others. I
14 just want to make sure since we are not going to go
15 through, them if there are any objections.

16 MR. HALL: One moment, please. No objection
17 to -- that was 7, 8 and 9?

18 THE COURT: Yes. 7, 8, 9.

19 MR. HALL: No objection.

20 BY MR. MOORE:

21 Q And you mentioned during this process,
22 Mr. Lindberg --

23 THE COURT: Admitted.

24

1 BY MR. MOORE:

2 Q -- that you raised some questions about the
3 septic?

4 A Right.

5 Q Do you recall what those questions were?

6 A I asked how big the septic tank was. How big
7 the leach line was.

8 Q Why did you raise those concerns?

9 A At the triplex where I was living currently I
10 have two 1,000-gallon tanks and about 85 feet of leach
11 line.

12 It is about \$700 per thousand gallon tank,
13 something like that, to pump them. So I was trying to
14 figure out maintenance costs in my head. Also at the
15 triplex I had not a whole lot of trees, but enough where
16 I had to have the -- they got into the leach line, the
17 roots, so I had to have it cleaned out.

18 So I was just concerned with this property,
19 kind of just wanted to know where the leach line was.
20 There is a ton more trees, probably 40 more trees, that
21 could have affected it. So I was just thinking, trying
22 to figure out what it would cost me down the road.

23 Q And when did you request information about
24 that? It was during the process of trying to buy the

1 home?

2 A Yes.

3 Q And what do you recall the responses being to
4 your question?

5 A They came back and said there was a 15,000
6 gallon septic tank and I think 70 feet of leach line or
7 something like that.

8 Q And did that cause you any concerns seeing
9 something that large?

10 A Yeah. Well, you know, I thought to myself,
11 "Well, Geez, it is going to cost \$7,000 to pump the
12 tank."

13 Q And what did you learn -- did you learn
14 during this process that the tank wasn't that large?

15 A I did.

16 Q When did you learn that?

17 A I got an e-mail response from my realtor that
18 came from the listing agent.

19 Q Did anybody in this process say to you
20 that -- well, the size of this tank may cause a concern?

21 A No.

22 Q Did anyone inform you that the tank might be
23 inappropriately sized for a structure that had two living
24 quarters on it, two separate living buildings?

1 A No.

2 THE COURT: Excuse me, counsel. You are
3 talking about misrepresentation as to size and then you
4 are talking about an inappropriate, insufficient size for
5 the property.

6 MR. MOORE: Right.

7 THE COURT: Exhibit 9 is an invoice from
8 Waters and it shows a thousand gallons.

9 MR. MOORE: Correct.

10 THE COURT: And it is signed by your client.

11 MR. MOORE: Yes.

12 THE COURT: So he was aware before close of
13 escrow that it was only a thousand gallons.

14 MR. MOORE: That's not our claim here, your
15 Honor. Our claim is that with all of this information
16 available to realtors, both of the realtors in this case,
17 there should have been red flags raised to them and they
18 should have realized and should have known during the
19 process that this septic system wasn't appropriate.

20 This has all been disclosed certainly. But
21 the last step is they should have known that this septic
22 wasn't appropriate for this property.

23 THE COURT: It is listed as a single family
24 residence, right?

1 MR. MOORE: But it has multiple structures on
2 it.

3 THE COURT: All right. Go ahead.

4 MR. MOORE: Okay.

5 Q When did you move into the property after you
6 purchased it?

7 A It was in February sometime or March,
8 beginning of March.

9 Q After you moved in was there a time when you
10 discovered that there were issues related to the
11 mother-in-law's quarters?

12 A Yeah.

13 THE COURT: Excuse me. I just thought of
14 something.

15 MR. MOORE: Yes.

16 THE COURT: If he was told that there was a
17 15,000-gallon tank and this report shows that there was a
18 thousand gallon tank and he is concerned about a
19 15,000-gallon leach line and the pumping expense, now he
20 finds out that there is a thousand gallons, didn't he ask
21 questions?

22 BY MR. MOORE:

23 Q Did you determine through this process that
24 it was a thousand gallons?

1 A Yes. This inspection came in probably 3 or
2 4 weeks after I asked the e-mail question. And I got the
3 e-mail question back that it was 15,000 and I said, "Holy
4 cow. That's really big. Are you sure"? And then I got
5 another e-mail response saying that, no, they were
6 incorrect with that.

7 Q Right. So you weren't necessarily concerned
8 in the difference between 15,000 and the 1,000; is that
9 right?

10 A Other than the fact of paying \$7,000 to empty
11 one versus \$700.

12 THE COURT: But you got the report?

13 THE WITNESS: After I got the e-mail
14 information.

15 THE COURT: But before close of escrow?

16 THE WITNESS: Yes.

17 MR. MOORE: So at this time he is not
18 concerned that it will cost a lot of money to clean it
19 out. But he has no idea that it's not appropriate for
20 the size.

21 THE WITNESS: To serve the mother-in-law
22 quarters.

23 BY MR. MOORE:

24 Q During this process before you moved into the

1 house, did you have any concerns about the size of the
2 septic?

3 A No.

4 Q When did you first learn that the size of the
5 septic might be inappropriate for this property?

6 A Well, about a year after I moved in, I went
7 to -- they had some -- not very well done electricity run
8 up to the barn, storage shed, whatever you want to call
9 it up above. So I pulled an electrical permit to upgrade
10 the electricity to do it right with a panel. And then I
11 was informed by the county that neither that structure
12 nor the mother-in-law quarters was permitted.

13 Q How did you find out that it wasn't
14 permitted? Was that someone at the county?

15 A Yes.

16 Q What did you do when you learned that it
17 hadn't been permitted?

18 A I called a friend of mine, a general
19 contractor friend of mine, and asked him for help.

20 Q Who did you call?

21 A Ron Cohen.

22 Q Why did you call Ron?

23 A I have known him for 20 years and he is a
24 general contractor and knows how to deal with the county

1 and building things and permits.

2 Q What kind of assistance were you looking for
3 when you hired Ron?

4 A Just all the logistical technical. I didn't
5 know how to begin or start the process to fix the
6 situation.

7 Q Had you ever in the past had to go to the
8 county and try to retroactively obtain a permit?

9 A No.

10 Q And what about the process was concerning to
11 you?

12 A It was just all a little overwhelming. I
13 didn't really know where to begin or what to do.

14 Q What did you think when you first heard from
15 the county that you had buildings on your property that
16 weren't permitted?

17 A I thought they were going to red tag my mom's
18 house and throw her out and make me tear down the upper
19 building.

20 Q Was that ever something that was of concern
21 to you that they might actually not approve this
22 construction?

23 A Absolutely.

24 Q So go ahead and turn to Exhibit 10, if you

1 would.

2 Actually let's start with Exhibit 11.

3 Mother-in-law quarters, do you recognize Exhibit 11?

4 A I do.

5 Q What is it?

6 A It is an invoice from Ron at Building
7 Tectonics.

8 Q What was the purpose of this invoice?

9 A To let me know the cost that I might be
10 incurring to correct this.

11 Q And what did Ron believe might be the cost
12 that you might incur to correct issues at the property?

13 A He said it could be anywhere from \$50,000 to
14 \$150,000 depending if they made me tear the one building
15 down.

16 Q Now, looking at this invoice from Building
17 Tectonics what were some of the things that he was
18 proposing to do? Was he proposing to do any construction
19 for you?

20 A That only came up if they were going to make
21 us tear down the upper house or the shed, barn.

22 Q So what is he disclosing here? Is he
23 disclosing the cost to you that might be incurred just to
24 get through the process of getting permits?

1 A Yes.

2 Q And what was the price that he thought it
3 might cost to do just that?

4 A I think that would be around \$50,000.

5 Q What was your response to that?

6 A I was stunned. Worried.

7 Q Looking at Exhibit 10, what did they tell you
8 at the county about the shop on the upper part of the
9 property?

10 A They said it was built illegally and was
11 never permitted.

12 Q And what did you ask Ron to do in regards to
13 the shop?

14 A Give me a cost for removal and replacement.

15 Q And what is Exhibit 10?

16 A Just exactly that. A cost for the demo and a
17 cost to put up new construction.

18 Q When you saw this, what were your thoughts?

19 A I was a little overwhelmed. That's a lot of
20 money.

21 Q Ultimately what happened with the shop?

22 A The county ended up letting us keep it. They
23 issued us an electrical permit once I met all the
24 requirements for the electrical permit.

1 Q So --

2 A They signed off on it.

3 Q Was Exhibit 10 a worst case scenario if the
4 county says, "We are not going to let this go through"?

5 A Yes.

6 THE COURT: Counsel, 11 is an invoice. But
7 that's not really an invoice, from what I heard.

8 MR. MOORE: It is an estimate.

9 THE COURT: An estimate. And then the \$80,000
10 or the \$90,000 from Exhibit 10.

11 MR. MOORE: Didn't end up happening.

12 THE COURT: That didn't happen either.

13 MR. MOORE: We are painting the worse case
14 scenario here and the thoughts going through my client's
15 mind.

16 THE COURT: But we don't compensate for that.

17 MR. MOORE: I get it, your Honor. I just want
18 a clear picture of everything that happened.

19 THE COURT: All right.

20 BY MR. MOORE:

21 Q After obtaining the worst case scenario from
22 Ron, what steps did you then take to get this
23 unpermitted -- these unpermitted structures permitted?

24 A We started going through the process with the

1 county, got a hold of them and found out what they needed
2 us to do.

3 Q And what was required of you to get an
4 appropriate permit?

5 A I had to hire an architect, make drawings. I
6 had to hire a survey company to come out and do
7 boundaries, map the septic tank, my well, the neighbor's
8 well, the neighbor's boundary lines.

9 I had to pay the closed out permits for my
10 mom's house. The mother-in-law quarters was originally
11 permitted as a garage.

12 And the people took it upon themselves to
13 just drop the permit process back in the 90's and turn it
14 into a mother-in-law quarters. So I had to pay all the
15 past late fees and all of that stuff from them not
16 closing out the permit.

17 Q Did you have to fill out any forms?

18 A Yeah. Quite a lot of them.

19 Q Did you have to attend any hearings?

20 A I did.

21 Q Did you have to follow the instructions of
22 Washoe County?

23 A I did. We had to get a septic guy on board
24 and make drawings for our new septic system and get that

1 approved through Health and Safety at the county.

2 Q Go ahead and look at Exhibit 12. What is
3 Exhibit 12?

4 A It is an e-mail from Ron telling me that I
5 needed to pay \$934.

6 Q What was that for?

7 A A permit.

8 Q And looking at Exhibit 13, did you pay that
9 permit?

10 A I did.

11 Q What is Exhibit 13?

12 A It is a credit card receipt.

13 Q And why was that required?

14 A So that the county would review our request.

15 Q Could you turn all the way to Exhibit 42?
16 Exhibit 42, do you recognize that?

17 A I do.

18 Q What is it?

19 A It is the permit.

20 Q Is that an application that you filled out to
21 get this property properly permitted?

22 A An application for the permit, yes.

23 Q And what did you have to disclose to the
24 county that you were going to do in this permit?

1 A Trying to get the mother-in-law quarters up
2 to code and in par with what the county wanted?

3 Q And what requirements did they make of you?
4 Did they require that you enlarge the septic system?

5 A They did. They required that we bring it up
6 to electrical code, fire and safety code. They required
7 that we abandon the downstairs living area and only use
8 it for storage. They required a survey, water testing to
9 make sure that the well wasn't contaminated.

10 Lots of fees, architects, things of that
11 nature.

12 Q Let's go ahead and look at Exhibit 14 as
13 well. And, John, what's Exhibit 14?

14 A It is an application for a variance.

15 Q What is the variance related to?

16 A Allowing the mother-in-law quarters to exist.

17 Q The variance, was it related to increasing
18 the size of the septic?

19 A Yes.

20 Q Do you see at the top of Exhibit 14 it says
21 \$934?

22 A I do.

23 Q Is that the \$934 that was paid that is shown
24 in Exhibit 13?

1 A Yes, I believe it was. There was a lot of
2 fees associated with the whole process. But, yes, that's
3 what that one was for.

4 Q Looking at Exhibit 15, the next exhibit, what
5 is Exhibit 15?

6 A That is from Tri-State Survey.

7 Q And what did Tri-State Surveying do for you
8 so you could obtain a variance related to the septic and
9 related to the mother-in-law quarters?

10 A They mapped out my well location, all the
11 neighbor's wells, the property lines, boundaries for
12 setbacks and certain distances for leach lines to other
13 people's wells.

14 Q Why did they do that?

15 A Because there was a health and safety concern
16 that, if I enlarged the septic tank, it might ruin
17 someone else's well.

18 Q Why was this survey a requirement?

19 A It was one of the things the county wanted.
20 Health and Safety wanted to move forward with the
21 approval of the variance.

22 Q And what was the total amount of the surveyed
23 amount that you -- that you paid to the surveyor?

24 A I don't recall. I just recall being angry

1 about it. I thought it was about \$5,000 total.

2 Q And if you add up the totals here, it adds up
3 to about \$4,500. Would you agree with that?

4 A Yeah.

5 Q And did you pay that amount?

6 A I did.

7 Q Next in order, Exhibit 16, do you see
8 Exhibit 16?

9 A I do.

10 Q What is it?

11 A It is invoices from the architectural firm.

12 Q And why was an architect brought in?

13 A To make drawings of the existing barn, shed,
14 the mother-in-law quarters. And eventually we had to do
15 a -- I don't remember if it was him that did it. We had
16 to basically do a topography of the property to show the
17 hills and all the trees and everything else for the
18 county.

19 Q Did they also indicate the location of the
20 septic and the proposed new septic system?

21 A They did.

22 Q And why did you have to bring an architect
23 into this?

24 A It was required by the county to have

1 drawings for review.

2 Q And what was the total paid to this architect
3 to prepare these drawings as required by the county?

4 A I want to say it was about \$5,000 or \$6,000.

5 Q And did you pay those amounts?

6 A I did.

7 Q Does Exhibit 16 show that those amounts were
8 paid?

9 A Yes.

10 Q Looking at Exhibit 17, what's Exhibit 17?

11 A It is a receipt from the county.

12 Q And what is it related to?

13 A The permitting.

14 Q Do you see at the top the applicant is Harry
15 and Deann Reynold? Do you know why that's listed as
16 such?

17 A Because the mother-in-law quarters that was
18 permitted as a garage was pulled by them. And I believe
19 these fees are what I paid from reopening it in 2014 back
20 to the 90's or whenever he abandon the process.

21 Q That's the first page of Exhibit 17. Exhibit
22 18, what is that?

23 A That's the permit.

24 Q The second page, LIND 0019 is Exhibit 17.

1 A Yes.

2 Q What does that show?

3 A Payment.

4 Q Is that your mother's signature?

5 A It is.

6 Q And is that to pay the \$1,830 to reopen an
7 old permit?

8 A Yes, it is.

9 Q Look at the next page of Exhibit 17. It is
10 marked L-I-N-D 002 at the bottom. Do you see that?

11 A I do.

12 Q This shows an additional -- what was this
13 document that we are looking at?

14 A It is a receipt.

15 Q What is it for?

16 A More of the permitting fees and plan check
17 and things to do with the county.

18 Q Looking at the next page -- what does that
19 show. The LIND 0021?

20 A A receipt for those fees paid.

21 Q And those amounts were paid?

22 A They were.

23 Q Could you turn to Exhibit 18? What is
24 Exhibit 18?

1 A It looks like a building permit.

2 Q And it is -- do you see in the middle permit
3 description where it outlines trip permit for brought
4 floors to attempt to final out expired permits
5 94-175996-3555?

6 A I do.

7 Q Were these two permits -- are those the
8 closed ones that you talked about earlier?

9 A I believe so. I think so. I don't remember
10 exactly which permit was for what.

11 Q And they outline in here a fee of \$90; is
12 that correct?

13 A That is right.

14 Q Could you turn to Exhibit 21? What is
15 Exhibit 21?

16 A A receipt.

17 Q For the \$90?

18 A Yes.

19 Q For this permit we are showing in 18?

20 A That's correct.

21 Q Looking at Exhibit 20, do you see Exhibit 20?

22 A I do.

23 Q Do you recognize it? What is it?

24 A It is something from the county about

1 corrections with reference to the permitting process.

2 Q And what are they noting as corrections here
3 in this document?

4 A That it wasn't -- it was supposed to be for a
5 detached garage, not a two-story accessory dwelling.

6 Q And it says there at the bottom, "Need to
7 apply for proper permits for this conversion." Do you
8 see that?

9 A Right.

10 Q Look at Exhibit 22. Do you recognize that
11 exhibit?

12 A I do.

13 Q What is it?

14 A It is more fees for the county.

15 Q And here they indicate that there has been a
16 \$1,200 payment made and there is a balance due of
17 \$5,095.77 on this permit.

18 Was that balance paid?

19 A Yes.

20 Q And for the work description on this document
21 what is being indicated would be done for this?

22 A We are going to convert the existing storage
23 building into a mother-in-law quarters.

24 Q And they also indicate that the size will be

1 reduced to 934 square feet?

2 A Right.

3 Q Looking at Exhibit 24, would you turn to that
4 exhibit?

5 THE COURT: Was the balance paid on that?

6 THE WITNESS: Yes. On the permitting, yes.

7 THE COURT: What exhibit is the receipt
8 showing -- the receipts are all in evidence?

9 MR. MOORE: I don't know if we have one. I'll
10 be honest about that one. I don't know if we have one.
11 If we do, we'll get to it for sure. I don't know that
12 there is a receipt.

13 THE WITNESS: I'm sure we have one somewhere.
14 They are not going to let you walk out of there without
15 paying.

16 BY MR. MOORE:

17 Q Looking at Exhibit 24, do you recognize that?

18 A I do.

19 Q What is it?

20 A That's a permit request.

21 Q Is that the original permit for the property?

22 A It is.

23 Q And in the permit description in the middle
24 of the first page of Exhibit 24, what does it say the

1 permit is for?

2 A It is for a garage and storage.

3 Q Go ahead and look at Exhibit 25. Do you
4 recognize this item?

5 A Yes. It is a permit application request from
6 the Reynoldes.

7 Q Are you on Exhibit 25?

8 A I believe I am. Yes.

9 Q Do you notice in there they notice a
10 violation. Do you see towards the bottom?

11 A I do.

12 Q Was this something that you received a notice
13 of a violation when you were first attempting to run
14 electrical up to the shop?

15 A I didn't get this violation, no.

16 Q But when you ran it up to try to run
17 electrical --

18 A Yes.

19 Q -- what did the county do? How did they
20 inform you that there was a problem?

21 A Well, my general contractor, Ron, did the
22 research. The county had lost all of their records,
23 paper records, for whatever reason. And Ronnie found
24 them. I don't know how. Microfilm or something. I have

1 no idea. But he found all of these old permits,
2 corrections from Sawyer, the guy that Reynolds brought it
3 from, assumed some of the permits in the middle of this
4 construction and never followed through with them.

5 Q Do you see on this document on 25 in the
6 middle where it talks about, "August 18th, 2015.
7 Inspector complaint appears to have never had been
8 investigated. Submittal receipt for panel and separate
9 meter at building. Unable to issue until complaint is
10 addressed."

11 How did the county inform you that there was
12 a problem when you first were trying to get electrical to
13 the building?

14 A That's right. Somebody a couple of doors
15 down had complained that he was doing illegal
16 construction that wasn't permitted. And I guess the
17 county went out and issued a violation against him. And
18 he never responded to that, stemming from the fact that
19 he never closed out the permits in the 09's or whatever.

20 Q What did the county tell you about this
21 issue? I think we have already covered it.

22 A That these structures were illegal.

23 Q Looking at the second page Lindberg 0042 down
24 at the bottom, were you also informed by the county that

1 there were potential issues with zoning in allowing for a
2 structure of this size at the property?

3 A I was told by them.

4 Q And what did they say?

5 A They said that when it was built you would
6 have had to go in front of the Board of Commissioners for
7 a variance. That they don't allow -- or they didn't at
8 that time -- mother-in-law quarters without specific
9 approval and it can only be half the size of your main
10 residence.

11 Q Did it also indicate here on this page that
12 you can only have one accessory building?

13 A Yes, it does.

14 Q At the property how many accessory buildings
15 are there?

16 A There are three.

17 Q And in this case the property was listed
18 as -- how was it listed? Was it listed as multi?

19 A Single family residence, dwelling, whatever
20 you call it.

21 Q Looking at the next Exhibit, Exhibit 25,
22 would you look at that?

23 A We are on Exhibit 25.

24 Q Sorry. 26. Do you recognize Exhibit 26?

1 A Yes.

2 Q What is that?

3 A That is a permit that was pulled by Sawyer.

4 Q In 1992?

5 A Yes.

6 Q Looking at Exhibit 27 -- do you see anywhere

7 on this, Exhibit 26, anything that indicates that there

8 will be a conversion of any property into residential?

9 A No.

10 Q 27. If you could look at 27? What's?

11 Exhibit 27?

12 A 27 is for what is now the mother-in-law

13 quarters permit.

14 Q Looking at it, it indicates in the middle

15 a 600-square-foot shop. Do you know what this is for?

16 A I believe it was for the house that

17 eventually became my mom's home.

18 Q And do you see anything in there indicating

19 that it will be residential?

20 A No.

21 Q Turn to Exhibit 29. What's Exhibit 29?

22 A Another receipt from the county.

23 Q And what's that related to?

24 A That is for the road impact fee.

1 Q What did the county require related to the
2 road impact fee?

3 A I had to buy these credits from developers in
4 order to I guess give them the money for the extra
5 traffic on the road for a mother-in-law quarters.

6 Q And what did you do in response to this
7 document?

8 A Bought the credits from a list of people they
9 said were selling them, developers. And then paid the
10 fees to the county.

11 Q And what is this? What is this document?

12 A It is a receipt.

13 Q And you paid this amount?

14 A I did.

15 Q Turn to Exhibit 30. What is Exhibit 30?

16 A That's an agenda.

17 THE COURT: Excuse me. Go back to 29. What's
18 the amount? 2129 or 3329.

19 MR. MOORE: 2129.

20 THE COURT: Is the total.

21 MR. MOORE: Is the total. And I believe they
22 take into account a previous amount paid of the \$1,200,
23 if you recall, your Honor, from a previous receipt.

24 THE COURT: The plan review. Okay. That was

1 part of the 6200?

2 THE WITNESS: Correct.

3 BY MR. MOORE:

4 Q What is Exhibit 30?

5 A This is an agenda for the meeting with the
6 Health and Safety Department on getting the variance
7 granted.

8 Q Why was this meeting held?

9 A For the -- to fix the septic system.

10 Q When was this meeting held?

11 A In February of 2016.

12 Q And when did you start the process of seeking
13 a variance, if you recall, in looking at all the variance
14 documents?

15 A Gosh, I don't know. The whole thing took a
16 couple of years. I want to say some time in 2015.

17 Q And was it all resolved in February of 2016?

18 A No.

19 Q Did you attend this meeting?

20 A I did.

21 Q And what was the result of this meeting?

22 A They gave us some specific instructions,
23 things to do, to accomplish. Tests to be done.

24 Q And those things --

1 A I had to resubmit stuff.

2 Q And the things they indicated, are those the
3 things that we talked about, you needed to get plans and
4 a survey?

5 A Right.

6 Q All of those things?

7 A Right.

8 Q And why were those required by the county?

9 A To bring it up to code, today's code.

10 Q Look at Exhibit 31. Do you recognize that?

11 A I do.

12 Q What is Exhibit 31?

13 A It is an e-mail from the guy at the county,
14 Wes, giving us a variance pack and telling us what other
15 things we need to do.

16 Q And what was this e-mail from the county in
17 response to?

18 A Me just kind of complaining about the time it
19 was taking.

20 Q And when did you send your e-mail about the
21 time that it was taking?

22 A In May.

23 Q Of 2016?

24 A Of 2016, yes.

1 Q And why were you expressing frustration?

2 A It had been going on for a couple of years.
3 I just didn't feel like it was moving fast enough.

4 Q Looking at Exhibit 32, what is Exhibit 32?

5 A These are those credits that I was talking
6 about earlier for the R T C.

7 Q And if you would turn to the third page of
8 Exhibit 23, does it indicate that you paid \$417.69 for
9 the remaining balance of those credits?

10 A Yes.

11 Q That amount was paid?

12 A Was.

13 Q Exhibit 33, do you recognize Exhibit 33?

14 A I do.

15 Q What is that?

16 A It is more stuff from the county approving
17 the variance with conditions.

18 Q And we have already talked about those
19 conditions, correct?

20 A Correct.

21 Q What's the date of this approval?

22 A June 1st, 2016.

23 Q Once you got approval from the county, what
24 steps did you take to move forward to complete the

1 conditions that they had set forth?

2 A I did what they told me to do. Got the
3 things that they needed and then called for inspections.

4 Q Looking at Exhibit 34, what is that document?

5 A That is a cashed check from me to the county.

6 Q And what's the amount?

7 A \$2129.23.

8 Q Was this check to pay items that we have
9 looked at already?

10 A Yes.

11 Q Looking at Exhibit 35 --

12 THE COURT: Is that for the variance process
13 and making the conditions met?

14 MR. MOORE: I believe it is part of the
15 permit, your Honor. It says at the bottom 15-1410. I
16 think it is finalizing the permit?

17 THE WITNESS: That was the permit.

18 MR. MOORE: For the variance. Yes.

19 BY MR. MOORE:

20 Q Exhibit 35 can you turn there?

21 A I'm there.

22 Q What is Exhibit 35?

23 A That is an estimate from the septic system.

24 Q Did you end up using this company to replace

1 the septic?

2 A I did. He subbed it out to a guy that does
3 his dirt work.

4 Q Did you end up paying \$8,500?

5 A I believe I paid a little bit more than that.
6 But, yes.

7 Q Exhibit 36. What is Exhibit 36?

8 A That is -- for some work I had done on the
9 well.

10 Q Why did you do that work on the well?

11 A I put a hand pump on the well.

12 Q Was that required by Washoe County?

13 A No.

14 Q That's not something that we are looking at.
15 Look at Exhibit 38.

16 A I do.

17 Q What is Exhibit 38?

18 A That is for the septic tank installation, the
19 guy that was subbed out to install, and dirt work.

20 Q What is the total amount of this invoice for
21 the dirt work?

22 A I believe it was 9750?

23 \$6,500 extra is 3,250 and another \$550.

24 So -- closer to ten grand I think.

1 Q Now --

2 A That is not a very good copy.

3 Q It is not. And eventually though looking at
4 Exhibit 39 I want to show some checks that you paid to
5 Montner Excavating?

6 A Okay.

7 Q Do you see these checks?

8 A I do.

9 Q Does this represent the amount you paid to
10 Montner Excavating to install the enlarged septic system?

11 A Yes, I believe so.

12 Q And it totals \$7,050?

13 MR. MOORE: Montner was just paid the \$7,050.
14 But from everything -- all the records we have --

15 THE COURT: That sounds about right. All
16 right.

17 MR. MOORE: So the \$8,500 was not actually
18 paid. My client got a better deal.

19 THE COURT: All right.

20 BY MR. MOORE:

21 Q Looking at Exhibit 40, what is that?

22 THE COURT: Excuse me, counsel. This is a --
23 if you are starting a new thing, let's take our lunch
24 break at this time. Be back at one o'clock.

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(At this time the noon recess was taken.)

THE COURT: Mr. Moore, you may continue.

MR. MOORE: Thank you, your Honor.

Q John, right before we recessed for lunch we were going to turn to Exhibit 40. Could you go ahead and turn there?

A I'm there.

Q Do you recognize Exhibit 40?

A I do.

Q What is it?

A It is an invoice from Tectonics.

Q What is the purpose of this invoice?

A It was to pay Ron Cohen for his assistance in getting me through all this permitting and dealing with the county.

Q Earlier we looked at a document that showed that Ron gave you an estimate of what might be necessary to the tune of \$50,000. Why did you end up only paying \$5,000?

A I paid all the fees associated with the construction and the county and the upgrades and stuff. And this is what he told me I owed him for his help.

Q What exactly did Ron do to help you?

1 A Made numerous contacts with the County,
2 county officials. Helped me fill out the permits. Sent
3 e-mails. Attended meetings with me. Just offered his
4 expertise.

5 Q Could you turn to Exhibit 45? Do you
6 recognize this document, these documents?

7 A Yes.

8 Q What is Exhibit 45?

9 A Invoices from your law office.

10 Q And what are they dated from?

11 A March of 2016 starting in March and then the
12 months thereafter all the way through January of 2017.

13 Q And were these invoices paid?

14 A No.

15 Q Why not?

16 A Because you are taking this case on a
17 contingency.

18 Q Looking at Exhibit 46. Do you see
19 Exhibit 46?

20 A Yes.

21 Q What is Exhibit 46?

22 A Invoices from Sean Brohan's office.

23 Q And how are they dated?

24 A March 2015, November 2015, all the way

1 through November of 2016.

2 Q And were these invoices paid?

3 A Yes.

4 Q And do you know offhand the total amount you
5 paid to Mr. Brohan?

6 A I think it was somewhere around \$12,000 or
7 \$15,000.

8 THE COURT: What did he do?

9 MR. MOORE: Off the record?

10 THE COURT: On the record. What did he do?

11 MR. MOORE: He screwed up the case. I got in
12 this case, your Honor, in March of 2016. It was at the
13 point where it was going to be dismissed by a court
14 appointed arbitrator. Not court appointed, but a court
15 annexed arbitrator. The case was not appropriate for
16 arbitration. I took multiple steps to get it taken out
17 of that program. He didn't show up at the arbitration.

18 THE COURT: You are not charging the defendant
19 for the fees, are you?

20 MR. MOORE: We are arguing that attorney's
21 fees and costs are -- were caused by the issues that are
22 related to this case. So --

23 THE COURT: Wasn't he disbarred?

24 MR. MOORE: Essentially, yes.

1 THE WITNESS: He is only suspended.

2 THE COURT: For how long?

3 MR. MOORE: For 18 months. An 18-month
4 suspension is essentially disbarment unless he can prove
5 to the Bar that he is entitled to be brought back.

6 THE COURT: Isn't that a result of picking a
7 bad lawyer basically?

8 MR. MOORE: Unfortunately. Unfortunately.

9 THE COURT: All right. Go ahead.

10 BY MR. MOORE:

11 Q Let's go ahead and look at Exhibit 48. Do
12 you recognize Exhibit 48?

13 A I do.

14 Q What is it?

15 A It is the drawing -- and topography from the
16 architect, the buildings and what appears to be where we
17 propose to put the septic.

18 Q That was going to be my next question. What
19 does it show related to the septic?

20 A It shows a future back-up system. Topography
21 where we plan to do the improvements for the septic tank
22 and it shows my mother's house, the in law's quarters and
23 the storage building up above.

24 Q Are these plans that you paid for to obtain

1 the permit?

2 A They are.

3 Q To get the mother-in-law quarters legal?

4 A That's correct.

5 Q Let's look at Exhibit 50. Do you recognize
6 Exhibit 50?

7 A I do.

8 Q What is Exhibit 50?

9 A Invoices from your office.

10 Q And have those invoices been paid?

11 A Yes.

12 THE COURT: Counsel, the redactions, what are
13 they?

14 MR. MOORE: The majority of those were
15 communications between attorney/client.

16 THE COURT: You have the client's name
17 redacted. Why would you do that?

18 MR. MOORE: Just to not -- reveal any
19 privileged information, your Honor.

20 THE COURT: But you are sending it to John
21 Lindberg.

22 MR. MOORE: Correct.

23 THE COURT: Why would you redact his name if
24 that's his name in the document?

1 MR. MOORE: But it is -- not redacted from the
2 bill-to section, your Honor. I'm only redacting items
3 that may have revealed attorney-client communications or
4 strategies of my office.

5 THE COURT: All right.

6 BY MR. MOORE:

7 Q And these invoices from which date until
8 when?

9 A It looks like February '17 through December
10 of '17.

11 Q Have you received any invoices from my office
12 after December of 2017?

13 A I don't believe so.

14 THE COURT: What's the total of 50?

15 MR. MOORE: I don't know offhand, your Honor.
16 I believe it is -- I can just do it real quickly.

17 THE COURT: Do you have a receipt for these or
18 just the billings?

19 MR. MOORE: These are just the billings.

20 THE COURT: Don't worry about it. Was he
21 paying as he goes or are you doing it in the end?

22 MR. MOORE: Costs are being paid, your Honor.

23 THE COURT: Are these all costs?

24 MR. MOORE: No. Attorney's fees are not being

1 paid. As he said previously, I'm -- I've been retained
2 on a contingency.

3 THE COURT: Am I going to get a number for the
4 costs?

5 MR. MOORE: The costs are -- in exhibit -- the
6 two exhibits we looked at from my office. We can break
7 those out for your Honor. No problem. They are in
8 there.

9 BY MR. MOORE:

10 Q John, during this transaction do you know
11 what the realtors were paid as a commission?

12 MR. HALL: Objection, relevance.

13 MR. MOORE: Your Honor, under the
14 circumstances, payment of a commission to these realtors
15 we believe is something that was inappropriate and, if
16 need be, we would request that those be returned to my
17 client.

18 THE COURT: All right. For that purpose I'll
19 let that in. But the transaction was completed. You are
20 saying they just did it the wrong way.

21 MR. MOORE: Right.

22 THE COURT: For what it's worth, what is it
23 worth?

24 THE WITNESS: I believe Brian Kincannon got --

1 THE COURT: Don't you have a record of it
2 rather than 'believe?'

3 MR. MOORE: We do.

4 THE COURT: Please. Go with the record.

5 BY MR. MOORE:

6 Q I'll show that to our next witness, your
7 Honor. Under the circumstances I don't believe I have
8 any further questions.

9 THE COURT: All right. Cross examine.

10 CROSS EXAMINATION

11 BY MR. HALL:

12 Q Sir, the billings that you have been showing
13 us here for the last few exhibits are 2017 billings?

14 A Whatever the date is of any of these
15 billings.

16 Q And how long ago was the real estate
17 transaction closed, escrow closed?

18 A I believe February of 2013.

19 Q And when did you first start discovering the
20 problems that you have been describing?

21 A About a year after I closed on the property
22 when I tried to pull an electrical permit.

23 Q So the problem was with some electrical
24 component on your property that wasn't functioning?

1 A It wasn't that it wasn't functioning. It
2 just wasn't done correctly. There was PVC conduit
3 running underground from my mom's electrical box along
4 the fence up to the upper house. And just ran into the
5 house, didn't run into its own panel. Didn't have its
6 own wires to the upper house, which I'm calling the barn,
7 the shed.

8 And so I wanted to make that safe.

9 Q And it was a year after you got into the
10 property that you discovered this situation?

11 A Correct. When I pulled the permit I
12 discovered a lot of things.

13 Q That you hadn't known about before?

14 A That's correct.

15 Q And they were defects in the property itself,
16 correct?

17 A Yeah, I guess. I don't know if the property
18 was a defect. Just the way that everything was done.

19 THE COURT: When you say property, what do you
20 mean? The property is the land and the improvements are
21 the buildings. Are you talking about the buildings or a
22 combination?

23 BY MR. HALL:

24 Q Did you want me to clarify?

1 A Yes.

2 THE COURT: So he understands what the
3 question is. Because I don't.

4 BY MR. HALL:

5 Q I'm speaking about the real estate now. The
6 problems that you have been describing here were problems
7 that were found in the structures on the real estate that
8 you purchased in the subject transaction?

9 A Yeah. With the permitting process, to speak
10 to the permitting process, yes.

11 THE COURT: Tell us again in simple terms.
12 You are on the property for a year, I take it?

13 THE WITNESS: Right.

14 THE COURT: Then you say, "Hey, I want to fix
15 something with the mother-in-law quarters."

16 THE WITNESS: Yes.

17 THE COURT: You got a permit to do it?

18 THE WITNESS: I applied for a permit.

19 THE COURT: You applied for a permit. They
20 came out and said no?

21 THE WITNESS: The county came out and told me
22 what I needed to do. I did what they asked me to do.
23 They came out and said that the property wasn't -- the
24 building wasn't permitted. There was a complaint on the

1 property from 2010 or whatever it was, whatever year, and
2 that I had to correct all the issues with the building
3 and the mother-in-law quarters before I could get --
4 before I could even move any further. They told me 'no'
5 on the permit for the electrical upgrade and said, "Oh,
6 by the way, the mother-in-law quarters is built illegally
7 as well."

8 THE COURT: Okay. That started the nightmare,
9 right?

10 THE WITNESS: That started the whole can of
11 worms.

12 BY MR. HALL:

13 Q And what do you recall of that issue being
14 discussed during the period of time within which the real
15 estate purchase between the Reynoldes and the Lindbergs
16 occurred?

17 A There was no discussion about any of that.

18 Q So that was just something that you
19 discovered after the transaction was over?

20 A Correct.

21 Q Okay. Did the problem with the initial
22 misidentification of the size of the septic system have
23 any affect on the issues that you are now describing?

24 A Other than I had to bring everything up to

1 code and get it permitted for what it actually was
2 instead of what it was supposed to be. It was supposed
3 to be a garage.

4 Q In your Complaint you have alleged that one
5 of the bases for your right to recover damages is that it
6 was misrepresented initially to you what the size of the
7 septic tank was.

8 A That was 1 of 3 issues. It was mislisted as
9 far as I was concerned. The septic tank was not correct.

10 Q But the size of the tank was revealed to you
11 before you closed escrow on the transaction?

12 A That's correct. But I learned a lot about
13 the whole process going through it. I had no idea what
14 size a septic tank needed to be for three bedrooms versus
15 four bedrooms.

16 Q Right. Understood. But my point is there is
17 no logical connection between the problem determining the
18 size of the septic tank and these issues that you are now
19 finding as defects in the structures on the property
20 itself?

21 A It goes to speak for a pattern of not doing
22 your duty of care as far as I'm concerned. That's
23 what -- did it affect me? Yes, of course.

24 Q Well, even assuming that there was a breach

1 in the duty of care during the real estate transaction,
2 if the duty of care breach relates to the septic system
3 and you have a problem with the electric system in one of
4 the homes, how does that entitle you to damages under the
5 rules that apply in the real estate transaction?

6 MR. MOORE: Objection. Argumentative.

7 THE COURT: Sustained. It asks for a legal
8 conclusion.

9 BY MR. HALL:

10 Q During the real estate transaction, there
11 were appraisals done, correct?

12 A I believe so, yes.

13 Q And your purchase price was 385,000?

14 A That was their counteroffer, yes.

15 Q And that was --

16 A What we paid.

17 Q Right there with the two appraisals that went
18 on the property, correct?

19 A I made the counteroffer at Brian Kincannon's
20 office based on the appraisal he had received from the
21 broker. I never had a copy of the appraisal until after
22 the whole transaction was completed.

23 Q Are you aware now that the --

24 THE COURT: Wait a minute. Before you said

1 you had the appraisal before the close of escrow.

2 THE WITNESS: Brian Kincannon showed me the
3 proposal in his office and said, "Look, it is worth
4 \$400,000. The appraisal came back \$400,000." I said,
5 "We'll offer \$375." They came back with \$385,000.

6 THE COURT: You knew about it before you
7 closed escrow?

8 THE WITNESS: I knew about the appraisal for
9 \$400,000.

10 THE COURT: And you saw it?

11 THE WITNESS: Yes.

12 BY MR. HALL:

13 Q Actually you were -- if we accept the
14 appraisal report as true, you made a good deal for the
15 \$10,000 or are \$15,000?

16 A That was my impression at the time, yeah.

17 Q And were you aware that the appraisal that
18 was made was based on the square footage of the single
19 family residence structure home?

20 A No.

21 MR. MOORE: Object to form.

22 THE COURT: What was that?

23 MR. MOORE: Object to form. I don't know that
24 it's clear, your Honor.

1 THE COURT: You can repeat it or rephrase it.

2 BY MR. HALL:

3 Q Let me just -- if I can clarify.

4 You have had the appraisal report for some
5 time now?

6 A Yes.

7 Q And you have read it now?

8 A Right. I have looked at it.

9 Q Do you think you understand it?

10 A Pretty much.

11 Q Isn't it true that the appraisal value only
12 takes into account the square footage value of the single
13 family residence on the property?

14 MR. MOORE: I believe it misstates the
15 document, your Honor. That would be my objection.

16 THE COURT: Well, I don't know. I don't have
17 the appraisal. He is asking the person who read it.

18 THE WITNESS: The listing showed pictures of
19 all of the rooms of the mother-in-law quarters and it
20 even listed the upper house barn as a bonus room/office.

21 So all the pictures of those areas were
22 listed on the MLS. I didn't know to compare all of that
23 and look at the square footage. I wasn't aware of the
24 square footage being less than it actually was until the

1 can of worms got opened.

2 BY MR. HALL:

3 Q But when the can of worms got opened, it got
4 closed back up with an accurate measurement, correct?

5 A It was over a year after the purchase was
6 done.

7 Q That you got the accurate measurement?

8 A That I knew that the square footage was not
9 what it was.

10 Q You say that you knew the square footage was
11 not what you thought it was?

12 A A year after I closed.

13 Q What is the square footage?

14 A I believe it is 3640. The listing said 3880.
15 And then, if you take away the bottom of the
16 mother-in-law quarters that we were forced to abandon,
17 that takes a couple hundred more square feet off the
18 complete square footage of the house.

19 Q If I may ask it this way?

20 You had an appraisal on the home, the entire
21 property. The appraiser was aware, was he not, that the
22 uses -- the two additional structures or at least one of
23 the additional structures was improper?

24 MR. MOORE: Calls for speculation.

1 THE COURT: Again, you are talking about a
2 document that I don't have. And maybe it is speculation.
3 Maybe it is not. It depends how it was written up. But
4 you said something that surprised me. The square
5 footage, 3640, you are saying that that also included the
6 mother-in-law quarters area?

7 THE WITNESS: I'm saying that it showed all of
8 these rooms in the mother-in-law quarters, in the main
9 house and the upper barn and shed as part of the sale.

10 THE COURT: And you believed that all of them
11 were 3640?

12 THE WITNESS: Yeah. I believed it was what
13 the listing said, which was 3880 total square footage.

14 THE COURT: That's 240 extra. The
15 mother-in-law quarters is bigger than that, right?

16 THE WITNESS: Yeah. The mother-in-law
17 quarters I think is 1400 or something like that square
18 feet. It has an upstairs and downstairs.

19 THE COURT: How big is your house?

20 THE WITNESS: Mine is 2180 I think.

21 MR. MOORE: There are two houses, your Honor.
22 One is 2180 and the other one is about 1460. We will go
23 over this with Miss Johnson during her testimony.

24 THE COURT: That's -- there are two houses on

1 the property.

2 MR. MOORE: That's the whole problem; that the
3 second house, the mother-in-law quarters, was not
4 permitted.

5 THE COURT: I thought you were talking about a
6 little structure. You are talking about a big -- two
7 buildings?

8 THE WITNESS: There are actually three
9 buildings.

10 MR. MOORE: And, your Honor, it showed in the
11 Origins A architectural plans, it shows both buildings.

12 THE COURT: You went through all that so fast
13 I didn't get a chance to look at it.

14 MR. MOORE: I'm sorry, your Honor.

15 THE COURT: The trier of fact has to digest.
16 We are talking about two buildings?

17 THE WITNESS: Yes.

18 THE COURT: That's 48, I guess.

19 BY MR. HALL:

20 Q Are you ready?

21 A Yes.

22 Q My real point here is -- let me frame it to
23 you as a question.

24 Is there anything in the issue that arose

1 during the real estate transaction when my client was a
2 broker in that action that had any effect on the expenses
3 that you are now incurring to make improvements to the
4 property you bought?

5 A Nothing during the transaction.

6 Q That's all the questions I'll ask.

7 THE COURT: All right.

8 REDIRECT EXAMINATION

9 MR. MOORE: may I proceed, your Honor?

10 THE COURT: Go ahead.

11 BY MR. MOORE:

12 Q I believe that last question that you were
13 asked, you did not learn of anything during the
14 transaction that was disclosed to you that caused you to
15 incur these expenses going forward?

16 A That is correct.

17 Q Everything about this transaction that was
18 not disclosed to you during the transaction you learned
19 after the transaction itself?

20 A After I pulled the electrical upgrade permit
21 for the barn/shed everything came out.

22 Q Which is one year approximately after you
23 purchased the property?

24 A That is correct.

1 MR. MOORE: No further questions.

2 MR. HALL: Nothing further from me, your
3 Honor.

4 THE COURT: All right. Thank you, sir. You
5 may step down.

6 MR. MOORE: Your Honor, we would call A J
7 Johnson.

8 THE COURT: Those three names they are all the
9 same entity or what?

10 MR. MOORE: Your Honor, there are three
11 remaining defendants. I'll let the witness be sworn
12 first.

13 -oOo-

14 AMINA CARMAZZI JOHNSON JOHNS
15 produced as a witness on behalf of
16 the Plaintiff, being first duly sworn,
17 was examined and testified as follows:

18
19 DIRECT EXAMINATION:

20
21 MR. MOORE: J E Johns & Associates is an
22 entity. There has been a default entered against that
23 entity. A J Johnson, the defendant, who is a realtor in
24 this transaction and her deceased husband, James E Johns,

1 for which --

2 THE COURT: For which there is a default.

3 BY MR. MOORE:

4 Q Good afternoon, Miss Johnson.

5 A Good afternoon.

6 Q Would you please turn to Exhibit 2? It
7 should be right in front of you.

8 A --

9 THE CLERK: Counsel, can I have the witness
10 spell her first and last name for the record?

11 THE WITNESS: Sure. My complete legal name is
12 Amina, A-M-I-N-A, Marie Carmazzi Johnson Johns,
13 C-A-R-M-A-Z-Z-I.

14 BY MR. MOORE:

15 Q Is it all right if I call you Miss Johnson?

16 A Sure.

17 Q Thank you. Miss Johnson, are you looking at
18 Exhibit 2?

19 A I am.

20 Q Looking at Exhibit 2 do you see in the middle
21 it indicates total living space as 3880 square feet?

22 A I do.

23 Q That's for two buildings on the structure,
24 correct?

1 A Yes.

2 Q One is in the approximate amount of
3 2180 square feet, correct?

4 A Well, I believe that this is including three
5 separate buildings, the square footage.

6 Q I'll get to that in a moment. So it is your
7 belief that this is three separate buildings?

8 A Correct. And this, understand, is not my
9 listing; but, yes.

10 Q This listing is by James E Johns?

11 A Yes.

12 Q And Mr. Johns though he was the listing agent
13 in this case didn't do much work in this case; is that
14 right?

15 A No. He did all of the work in this case.

16 Q You acted as the realtor in this case for the
17 most part?

18 A I was the agent that listed the listing prior
19 to this listing. And I communicated on behalf of
20 Mr. Johns while he was sick, yes, and through e-mails to
21 Mr. Kincannon and Miss Tammy Kincannon -- or Miss Tammy
22 Kincannon, yes.

23 Q Isn't it true that most of the e-mails
24 produced in this case are from you to Mr. Kincannon?

1 A The first transaction before the offer was
2 received, yes.

3 Q There was a transaction before the offer in
4 this case was received?

5 A No. There was -- there was an offer on this
6 property and the people couldn't qualify so we didn't get
7 that far. But when I refer to the transaction before,
8 Mr. Kincannon and I had conversations and e-mails back
9 and forth before he wrote an offer on Mr. John's listing
10 asking me questions, yes.

11 Q I'm curious. I'm curious. You just said
12 some things that caught my attention. You said there was
13 an offer made on this case before my clients made an
14 offer; is that correct?

15 A Right. It just was an offer. They submitted
16 a pre-approval letter. They couldn't qualify, so it
17 never went any further.

18 Q Was it a written offer?

19 A I believe it was.

20 THE COURT: What's your relationship with
21 Mr. Johns?

22 THE WITNESS: He was my husband.

23 THE COURT: Husband. And he was the broker?

24 THE WITNESS: He was the broker and I was the

1 licensed real estate agent, yes.

2 BY MR. MOORE:

3 Q Miss Johnson, you recall responding to
4 discovery in this case, don't you?

5 A Responding to discovery. Please -- I don't
6 understand what you are asking.

7 Q Through your former attorney's office, Nick
8 Pereos, there were times when you were asked to make
9 documents and other things available in this case?

10 A Yes.

11 Q And he on your behalf responded to discovery;
12 isn't that right?

13 A I assume so.

14 Q Did you review his responses before they were
15 sent out?

16 A The discovery and a lot of the information
17 went to my deceased husband, Jim. I picked this up at
18 the end.

19 Q And is there any reason to believe that after
20 your husband had died that you did not respond or review
21 discovery responses in this case?

22 A Honestly, during that time after my husband
23 passed, I was in no position or condition to do anything.
24 But I would assume that Mr. Pereos had communicated with

1 my husband, who was my broker and received everything.
2 So I got to Mr. Pereos anything that I may have had.

3 Q After your husband died did you deal with
4 Mr. Pereos directly?

5 A Yes. Only for a short period of time.

6 Q Your husband died in 2017; isn't that
7 correct?

8 A He died in 2016.

9 Q 2016. So you've been dealing with this case
10 yourself since 2016?

11 A Yes. For about a year -- because I was
12 incapacitated for about a year.

13 Q So from 2017 until now you have been dealing
14 with this case?

15 A Yes.

16 Q Do you recall responding to discovery in
17 early 2018 in this case?

18 A Yes.

19 Q Do you recall reviewing any discovery
20 responses that were sent out by your attorney, Nick
21 Pereos, before they were sent out?

22 A Not all of them, no. That was the problem
23 that we had was communication.

24 Q Do you recall being informed by Mr. Pereos

1 that at some time during this transaction that you were
2 requested to produce all offers the defendant Harry and
3 Deann Reynolds received from any prospective buyers
4 located at the property at 2957 Eaton that were received
5 on or after September 1st, 2012, until the close of
6 escrow on or about February 28th, 2013?

7 A I can't remember. Possibly. But I can't
8 remember.

9 Q If you had been asked that question by
10 Mr. Pereos would you have produced the offer that we were
11 just talking about right now?

12 A Absolutely.

13 Q In looking at your response prepared by your
14 attorney, Nick Pereos, if you would like to turn to
15 Exhibit 72, you could.

16 THE COURT: Is that in the book?

17 MR. MOORE: It is in the new book. I
18 apologize. I'll approach the witness with the second
19 book.

20 BY MR. MOORE:

21 Q And if you could turn to Request For
22 Production number 3? It is on page two of Exhibit 72.
23 Do you see that?

24 A Yes.

1 Q In that request for production I'm going to
2 go ahead and read into the record the request for
3 production and response. The request for production
4 number three.

5 "Produce all offers of the defendants Harry
6 and Deann Reynolds receive from any prospective buyers of
7 the property located at 2957 Eaton that were received on
8 or after September 1st, 2012, until the close of escrow
9 on or about February 28th, 2013."

10 And your response to number three is,
11 "None." Did I read that correctly?

12 A Yes, you did.

13 Q Do you see the last page on this request. Is
14 that signed by Nick Pereos?

15 A I would assume so. I have no idea.

16 Q Actually it is page four. Do you see where
17 there is a signature for Mr. Pereos?

18 A Yes.

19 Q Do you see that it's signed?

20 A Yes.

21 Q Do you see where it is indicated that he is
22 the attorney for the defendant?

23 A Yes.

24 Q Getting back to Exhibit 2. Let's look at

1 this listing. It indicates that the agent is James E.
2 Johns; is that correct?

3 A Hold on just a moment. Yes.

4 Q He is your broker; isn't that right?

5 A He was, yes.

6 Q The listing price is \$399,900?

7 A Yes.

8 Q And on the first page where it says zoning
9 actual, it says single family; is that correct?

10 A Correct.

11 Q And the source of the zoning is the assessor;
12 is that correct?

13 A Yes.

14 Q Looking at the square footage, source of the
15 square footage on this listing, you also indicate that it
16 is the assessor?

17 A He did, yes.

18 Q And that it's 1.12 acres; is that right?

19 A Correct.

20 Q Turning to the next page, if we could look at
21 that. This states in the middle there is a section for
22 some comments. And right in the middle of that section
23 in the second sentence it says, "Three separate units on
24 the property. In-law quarters or guest house, office or

1 studio or tack room or office." Do you see that?

2 A Yes.

3 Q That's actually correct, isn't it? There are
4 three separate units?

5 A Buildings, yes.

6 Q You understand the zoning requirements for
7 this area, don't you?

8 A I go off of the assessor's, yes.

9 Q You understand for this area that there is
10 only permitted one residential building and one accessory
11 building in this location; isn't that right?

12 A No.

13 Q Looking at Exhibit 54, if we could. That's
14 in the first binder.

15 A Okay.

16 Q Looking at 54 the first two pages is
17 essentially the same as Exhibit 2 that we just looked at;
18 is that correct?

19 A Correct.

20 Q And in Exhibit 2 -- and you can refresh
21 yourself, if you need to, here on Exhibit 54. In the
22 first two pages -- it doesn't split up how the square
23 footage was identified, does it?

24 A Not in his listing, no.

1 Q But there was a listing from September; isn't
2 that true?

3 A That is correct.

4 Q And that was done by you?

5 A That is correct.

6 Q It is dated September 21, 2012; is that
7 correct?

8 A That is correct. Is it in here?

9 Q Look at the third page of Exhibit 54. Do you
10 see the listing by you?

11 A Yes.

12 Q It says bedroom, number of bedrooms. Lists
13 the square footage?

14 THE COURT: What's the Bates number?

15 MR. MOORE: The Bates number is R E Y 0003 and
16 4, your Honor.

17 THE COURT: Go ahead.

18 BY MR. MOORE:

19 Q Do you see there it also shows the total
20 living space is 3880 square feet?

21 A Actually this one shows 2180.

22 Q Are you looking at R E Y 000003? It is at
23 the bottom. Do you see the little numbers R E Y?

24 A Am I missing something? I'm sorry. R E Y.

1 00003. Yes.

2 Q Do you see a 3880?

3 A Yes.

4 Q And the source of the square footage is the
5 assessor?

6 A Sort of, yes.

7 Q And the acreage is 1.12 acres?

8 A Correct.

9 Q And it is listing zoning actual is single
10 family?

11 A Yes.

12 Q And source of the zoning is the assessor?

13 A Yes.

14 Q And it is dated September 21, 2012, correct?

15 A Correct.

16 Q At 3:52 p.m.?

17 A Correct.

18 Q And the listed price is 399,999?

19 THE COURT: Where is that date, counsel?

20 MR. MOORE: It is at the bottom, your Honor,
21 on the right side, listing date. Towards the middle
22 actually of the document under listing date, September
23 21st, 2012.

24 THE COURT: Got it. And you asked her if this

1 is your listing?

2 THE WITNESS: Correct.

3 THE COURT: This is before your husband died?

4 THE WITNESS: Correct.

5 THE COURT: Okay.

6 BY MR. MOORE:

7 Q And in this listing the first page is almost
8 identical to Exhibit 2, right?

9 A Mr. Johns?

10 Q Right.

11 A Yes.

12 Q The only real difference is it lists him as
13 the agent in the first one and you as the agent in the
14 next?

15 A Incorrect.

16 Q There are a few other differences?

17 A Right.

18 Q But there is nothing huge or materially
19 different?

20 A On mine it outlines the square footage of
21 each unit. His does not.

22 Q I was going to get to that next. The first
23 page though of these two is pretty close?

24 A Correct.

1 Q The next page of your listing R E Y 00004,
2 says two homes for the price of one, correct? Is that a
3 yes?

4 A That is correct.

5 Q It does not say three units, correct?

6 A Correct.

7 Q Also it indicates that the main house is
8 2180 square feet?

9 A Correct.

10 Q And the in-law quarters is 1700 square feet
11 which adds up to 3880?

12 A Correct.

13 Q Where did you obtain that information?

14 A Well, when I took this listing, the seller
15 gave me the information on the square footage because
16 they had had permits and had the in-law quarters
17 completed. It is on the seller's real property
18 disclosure statement. So I had a concern with it. So I
19 called my board and the attorney for the Reno Board of
20 Realtors and asked them how I was to do this.

21 And they said that, if the seller gave me the
22 overall square foot, I could put it in there. But to
23 cover my bottom I should outline what the seller is
24 giving me for the other square footage in my listing.

1 Q Do you see anywhere in here that the seller
2 gave you this?

3 A It is in my listing.

4 Q Is it?

5 A It is.

6 Q Where?

7 A It is in my listing input form.

8 Q Okay. But it is not in the listing itself?

9 A Because when the computer picks it up it
10 doesn't tell you where you get it. The assessor gave me
11 the information for the zoning. And that's why my
12 listing will say assessor. In my listing it will also
13 say the seller gave me the information on the square
14 footage and the appraiser in my listing gave me the
15 value.

16 Q But, Miss Johnson, you changed this listing
17 within a couple of hours, didn't you?

18 A Because when I put it -- a couple of hours?
19 Possibly. Because when I put it in at the 2188 it was
20 before I had the opportunity to talk with the attorney to
21 the Board of Realtors, Linda Conger, who was with our
22 board -- because the seller was upset because I did not
23 put in the square footage she gave me.

24 Q You originally put in 3880; isn't that

1 correct?

2 A On -- well, there was -- there was a dispute
3 going back and forth. Yes. Yes.

4 Q So on September 21, 2012 at 3:52 p.m. you
5 listed the total living space as 3880?

6 A Correct.

7 Q But you then changed it two hours later to
8 2180?

9 A That's correct.

10 Q And it stayed -- this listing -- until it was
11 removed in December; isn't that correct?

12 A That is correct.

13 Q And you removed it in December to list the
14 higher square footage because you wanted to attract more
15 buyers; isn't that right?

16 A No. Incorrect. No. This was changed --
17 that's square footage -- the first square footage was on
18 September 21, at 352.

19 The second square footage was on September 21
20 at 552. That's when I was able to -- I had a concern of
21 putting it in for the square footage. And he put it in
22 at 388.

23 I had a concern until I was able to talk to
24 the board and my attorney for the Reno Board of Realtors.

1 I changed it back at which time Mr. Johns did
2 it at the 3880 because they told us as long as we
3 identified it. If the seller stated that, we could put
4 it in at that.

5 Q It was listed for three months at 2180 square
6 feet?

7 A No.

8 Q September 2012 until December 2012.

9 A It is right here on mine. September 12th,
10 2012 at 352 for 3880 until December 1st.

11 Q But then two hours later you lowered it to
12 2180?

13 A Because I was not able to get back with the
14 attorney for the Reno Board of Realtors. Actually what
15 it is, is they just said either way I would be okay. So
16 both of those listings have it outlined in the square
17 footage. I had a discrepancy with it because the seller
18 was giving me that information.

19 Q Prior to this transaction even being listed
20 you had received an appraisal in this case; isn't that
21 correct?

22 A Prior to my listing, yes.

23 Q You had received an appraisal?

24 A I never received it personally, no. Never.

1 Q Let's go ahead and turn in the second binder,
2 Exhibit 60.

3 A Exhibit?

4 Q Exhibit 60.

5 A Okay.

6 THE COURT: Counsel, the close of escrow was
7 2013?

8 MR. MOORE: February 28th, 2013.

9 THE COURT: Who was acting on which listing?

10 MR. MOORE: The December listing. But we'll
11 go into some documents that go further on that shows
12 Miss Johnson's further involvement.

13 Q Exhibit 60, Miss Johnson, I'm showing you for
14 identification. This is residential listing info form?

15 A That's correct.

16 Q It is your handwriting mostly?

17 A That is correct.

18 Q And it is three pages, correct?

19 A That is correct.

20 Q On the third page is your signature at the
21 very bottom?

22 A That is correct.

23 Q In this form -- this form is dated September
24 21st, 2012; is that correct?

1 A That is correct.

2 Q The same date you did the initial listing?

3 A Correct. But I held it for a few days, yes.

4 Q And the same day that you did the second
5 listing?

6 A Correct.

7 Q Looking at this document it shows the price
8 that you will try to list it for is \$399,999, correct?

9 A Correct.

10 Q It lists the total living space as
11 2180 square feet and 1700 square feet; is that correct?

12 A Plus 600.

13 Q 600 is the barn, isn't it?

14 A That's just the square footage the seller
15 gave me. He said he added 600 square feet onto the back
16 of the in-law quarters.

17 Q But your listing, the first two listings from
18 September 21st of 2012, Exhibit 54, both show the 2180
19 for the main house and 1700 for the living quarters; is
20 that correct?

21 A That's incorrect.

22 Q Look at --

23 A It does say 1740. And it doesn't add the
24 600. Because the 600 was a converted tack room into an

1 office with electricity to it, power, yes.

2 Q That's at the very top of the property, is it
3 not?

4 A It is.

5 Q That's not attached to the living quarters?

6 A No. Neither is the guest house.

7 Q All right. It is not attached to the guest
8 house either?

9 A Correct.

10 Q I'm just clarifying what you just stated on
11 direct.

12 2180 square feet you listed as for the main
13 house?

14 A Which I got off of the assessors.

15 Q And 1700 square feet as the guest house?

16 A Which I got from the seller, correct.

17 Q 600 square feet is -- the barn?

18 A I'm assuming that came from the seller, yes.

19 Q But it is the barn?

20 A It is the office/tack room, which the
21 pictures will show in the appraisal.

22 Q So you mentioned in this form that you got
23 the 2108 square feet from the assessor?

24 A Yes.

1 Q And the 1700 from your client. Looking at
2 this form, source of square feet, you check owner and
3 appraiser, don't you?

4 A Correct.

5 Q You don't check assessor?

6 A No, because when you input it into the
7 computer it picks up -- on this form.

8 Q My question is a yes or no, ma'am.

9 A Show me where you are asking me the question.
10 Which page?

11 Q Under the source of square footage you do not
12 check the box?

13 THE COURT: What page is that?

14 MR. MOORE: The very first page of Exhibit 60.
15 Marked at the bottom REY 27 --

16 A I put owner and appraiser.

17 Q You did not say assessor?

18 A No. The commuter picks it up.

19 Q This is hand marked.

20 THE COURT: What am I looking at here?

21 THE WITNESS: The listing.

22 MR. MOORE: If you see the total living space,
23 2180 and 1700.

24 THE COURT: Yes.

1 MR. MOORE: And 600. Right next to that is
2 source of square feet and it is marked owner and praiser
3 but not assessor.

4 THE COURT: All right.

5 THE WITNESS: The assessor is actually in the
6 listing, in the MLS listing sheet.

7 Q But you didn't put it on this form?

8 A Not on this form, nope.

9 Q Because you never went and checked with the
10 assessor; isn't that right?

11 A That's incorrect.

12 Q Let's go ahead and look at the next page, if
13 we could -- the third page that you signed at the end, it
14 says main house 2180 approximately.

15 And, your Honor, for your reference it is
16 towards the upper third of that last page. It is in
17 handwriting.

18 THE COURT: Got it.

19 BY MR. MOORE:

20 Q Is that correct?

21 A 2180 approximately, yes.

22 Q And the second house 1700 approximately?

23 A Correct.

24 Q And the garage 600 approximately?

1 A Yes.

2 Q On that third page it also says underneath
3 all that handwriting -- this is your handwriting, right?

4 A Yes.

5 Q It says underneath that, "Agent requests
6 appraisal be done to verify pertinent info." Do you see
7 that?

8 A Yes.

9 THE COURT: Wait. I don't see that. Where is
10 that?

11 MR. MOORE: It is right under the main house,
12 2180, approximately. I read that correctly?

13 THE WITNESS: Correct.

14 BY MR. MOORE:

15 Q This document is listed below R E Y 27229.
16 Do you know who produced this document in this case?

17 A This particular document?

18 Q Yes.

19 A That came from me.

20 Q This came from you?

21 A Uh-huh (affirmative). When I sit down and
22 take a listing with the seller, I write it out for the
23 seller. I ask them questions; they give me answers. For
24 instance, is there any H O A, amenities, stains, drapes,

1 dishwasher. We check off the boxes together, yes.

2 Q I will represent to you that this document,
3 this copy of this document, was not produced by you. It
4 was produced by the Reynoldes, the sellers, in this case.
5 Do you have any reason to believe otherwise?

6 A This document was produced by the Reynoldes.
7 They got a copy of it. They could have produced it.

8 Q I'll show you the parts of this form that you
9 produced to us, Exhibit 68.

10 A Okay.

11 Q Looking at Exhibit 68, do you see that
12 document?

13 A Yes.

14 Q Do you see at the bottom it has different
15 numbers. JJVL 004. Do you see that?

16 A Yes.

17 Q Not REY 00027. Do you see that?

18 A Yes.

19 Q I'll represent to you in this case that these
20 were the documents that we received from your attorney
21 -- and there are only two of the three pages. Do you see
22 that?

23 A Yes.

24 Q Do you have any reason to believe that your

1 attorney did not produce the third page in this case?

2 A I do not. But -- even this is my
3 handwriting. This information is typed in here. I will
4 honestly -- this is not the listing agreement. And the
5 biggest problem that Mr. Pereos and I had is he was
6 losing documents.

7 Q Do you see right in the middle where the
8 total living space is identified? Do you see that?

9 A It looks like -- it is difficult, but it
10 looks like 2160 plus 600 something underneath.

11 Q Do you know why that's blacked out?

12 A No.

13 Q Did you black that out?

14 A No.

15 Q Did your attorney black that out?

16 A Not that I know of, no. It looks like
17 somebody highlighted.

18 Q Do you see there is no third page produced by
19 your attorney?

20 A I do.

21 Q The third page that was provided by the
22 Reynoldes in this case indicates that the main house has
23 a certain square footage and the second house has a
24 certain square footage. And that the agent did ask for

1 an appraisal. Do you know why you would not produce the
2 third page in this matter?

3 A Unless Mr. Pereos lost it, I have no idea.
4 But this -- I can't answer that. I don't know.

5 Q Do you know why anyone would try to mark out
6 the actual total living space shown in this form?

7 A I don't know.

8 THE COURT: Counsel, I see 2180, 17 something
9 and 600.

10 MR. MOORE: Fortunately, you can somewhat see
11 it. But if we hadn't had the other form, your Honor, I
12 don't know that we would have been able to. Looking at
13 it --

14 THE COURT: I can see 17. 1700 and 600.

15 MR. MOORE: I agree. The one I'm looking at I
16 can't see it. It might just be me. I don't know.

17 Q But in this case the third page, do you know
18 why your attorney wouldn't produce the third page of this
19 form?

20 A No. Because he had it on the other --

21 Q Would you turn to page Exhibit 63?

22 A Okay.

23 Q Do you see this document?

24 A Do I see it?

1 Q Yes.

2 A Yes.

3 Q Do you see how it is Bates stamped -- the
4 numbers at the bottom are REY, again. Do you see that?

5 A Yes.

6 Q It goes from 6 to REY --

7 THE COURT: 89.

8 MR. MOORE: 89. Thank you, your Honor.

9 Q REY 89.

10 Do you recognize this document?

11 A I received this document through this
12 lawsuit, yes.

13 Q You had never seen it before?

14 A No.

15 Q The appraisal is about 22 or 23 pages long.
16 It goes from 67 to 89?

17 A I would assume so. Okay.

18 Q Do you see here under -- it is the fourth
19 page of that exhibit, 63, it is marked at the bottom REY
20 000070. Do you see that?

21 A Yes.

22 Q Do you see in here where it lists -- in the
23 middle on the left side -- gross living area, 2180 square
24 feet. Do you see that?

1 A Yes.

2 Q Then at the bottom of this appraisal you see
3 there is a bunch of written-out information. In the
4 second paragraph it says, "The subject also has the
5 utility of a guest house. The guest house is 1460 square
6 feet. Washoe County assessor shows the guest house and a
7 loft above the guest house. Over time the guest house
8 has been improved to be more in line with the quality of
9 the main residence. However, the improvements may or may
10 not be legal. And for appraisal purposes we are living
11 it little value. With that said since the market
12 improved area typically has outbuildings, unfinished or
13 unfinished barns, guest houses, the improvement to the
14 subject are conforming to the area and they contribute to
15 the overall marketability of the subject property." Did
16 I read that correct?

17 A Correct.

18 Q Also in here he also lists a price per square
19 foot, doesn't he. The appraiser?

20 A Where do you see that?

21 Q I'll go ahead and show you. It is up towards
22 the middle third of the document.

23 It says, "The sales price 138.33 dot per
24 square foot." Do you see that?

1 A 138.33, yes.

2 Q If you multiply 138.33 by 2100 that does not
3 equal 399,000, does it?

4 A --

5 Q 2180 times 138.33.
6 301,559.40. Isn't that correct?

7 A I would assume so. I didn't do this.

8 Q I'm going through that exercise because your
9 attorney said earlier this appraisal didn't take into
10 account the guest house.

11 Clearly it didn't; isn't that correct?

12 A It says gross living area, 20 -- he gave
13 little to no value to the guest house. It was
14 2180 square feet that he did the gross living space. It
15 says, although there are two properties on the property,
16 the guest house is 1460. He didn't give the whole value.
17 He gave it little to no value -- actually, I'm sorry. I
18 believe I saw that on the buyer's appraisal.

19 Q If you divided \$399,999, which was the listed
20 price, the appraisal price in this case actually comes in
21 higher, doesn't it?

22 A Appraisals are out of my area of expertise.
23 I can only go by what they tell me is the value of the
24 property.

1 Q The appraisal came in at about \$406,000?

2 A That is what my sellers conveyed to me.

3 That's why I told them to have an appraisal done.

4 Q That equals to an amount in excess of \$185 a
5 square foot, isn't that correct, if it were 2180 square
6 feet.

7 A Again, I'm not an appraiser. I would assume
8 what you are saying is correct.

9 Q So would you also assume that this appraiser
10 gave some value to the 1460-square foot guest house?

11 A I assume he gave it some value.

12 Q To the tune of \$98,000; is that correct?

13 A I would not know that. I'm not an appraiser.
14 May I tell you how this all came about?

15 Q I haven't asked that question.

16 A Okay.

17 Q And he goes through this appraisal. He has
18 various items that he shows comparables. He shows the
19 size. He shows photos, other items. He then at the very
20 end shows where he got the 2180 square feet at the
21 document that says REY 00083. And then beyond that at
22 REY 000086 --

23 A Let me see what 83 is please.

24 Q It is an assessor's page. And then he

1 went --

2 THE COURT: Is it an exhibit?

3 MR. MOORE: At REY 00083.

4 Q And then at REY 00086 he actually goes
5 through measurements, doesn't he?

6 A I have not seen this. But -- 86. I would
7 assume so. That's his job.

8 Q And he lists square footage for the living
9 area as 2180 square feet at the bottom?

10 A Correct.

11 Q And 1740 for the remaining square footage,
12 right?

13 A This is -- I assume so, yes.

14 Q That's actually -- that's -- sorry. I
15 apologize, your Honor. I misspoke. 1740 plus 440 is the
16 total square footage of the one building?

17 A I'm sorry. 1740 is the total square footage
18 and 440 is what?

19 Q If you add 1740, which is the certain area of
20 the house, and then a second area, the living area of the
21 house, is 440. So total added up is 2180. And then he
22 has the math --

23 A I'm confused.

24 So the 2120 -- 2180 is the main house. 1740

1 is the guest house?

2 Q That's -- I misspoke. I misspoke. He breaks
3 out the living area of the main house as 2180 square feet
4 total. And then he shows his math to the right of that
5 which is 1740 square feet plus 440 which totals 2180 if
6 you add it up. Strike -- let's not look at that section
7 anymore. I butchered that and I'll admit it.

8 Let's go ahead and -- he has the guest house
9 delineated. It is on REY 000086.

10 A Okay. It is all cut off. That's why -- you
11 can't see it.

12 THE COURT: Mine is cut off too.

13 BY MR. MOORE:

14 Q Do you see in the middle where it says the
15 guest house has two levels. One is 20 feet by 50 feet?

16 A I'm sorry. Where do you see that?

17 Q It is on the right side.

18 A Okay. 20 feet by 50 feet.

19 Q It is the larger portion of the guest house.

20 A I don't know how to read this. It says 20 by
21 22 --

22 Q We will move on. Do you know who produced
23 this document in this case?

24 A Who produced to the sellers?

1 Q Exhibit 63, after this lawsuit was filed, do
2 you know who produced this?

3 A After this lawsuit was filed who produced it?
4 I would assume the sellers.

5 Q And if you had produced the appraisal, that
6 would mean that it was in your file; is that correct?

7 A I never had this appraisal in my file. I
8 have never even seen this appraisal until this lawsuit.

9 Q Looking at the next exhibit, Exhibit 65 --

10 A Yes.

11 Q -- I'll represent to you that this has
12 certain portions of the appraisal that was produced by
13 the Reynoldes but excludes certain portions including the
14 calculation of square footage items that we just
15 reviewed.

16 A Okay.

17 Q That other items appear to be highlighted or
18 darkened on certain pages.

19 A It is not -- I can't read those areas that
20 are blacked out.

21 Q Do you see at the bottom JJVL 0031 to JJVL
22 045? 31 through JJVL 45.

23 A I see 31.

24 Q Do you see all the way through 45,

1 Exhibit 64?

2 A Yes.

3 Q This document was produced by your attorney
4 in this case. Do you know that?

5 A He probably got it from the other attorney.
6 He didn't get it from me.

7 Q Did you know it was represented as part of
8 your file?

9 A No, it was not. It was never in my file.

10 Q Do you know why portions that we just read
11 about the property as built is in a condition where you
12 are unable to read it?

13 A I'm sorry. I don't understand what you just
14 said.

15 Q Do you understand why on page three there are
16 portions that are darkened out?

17 A No, I don't.

18 Q Do you know why there is no information
19 related to the calculations done by this appraisal in
20 Exhibit 64?

21 A No, because I have never seen this. When an
22 appraisal is done for somebody, it is the property of the
23 person who it is done for. For instance, when the
24 appraisal is done for the Lindbergs to get financing for

1 their property, it doesn't go to other agents. They
2 purchased it. If the Reynoldes purchased this appraisal
3 then it was their property. It didn't come to me or
4 Mr. Kincannon. It was their property. And the purposes
5 for this appraisal was to determine price, because I did
6 not believe that that property was valued -- the value
7 that they wanted to list it for. So what I did is I
8 recommended that they get an appraisal done, which I gave
9 them three names: Richard Lace, Jim Bailey and John
10 Rafael. They chose the person they wanted to have the
11 appraisal done with. And it was for purposes of value of
12 the property only.

13 They had already been adamant about their
14 square footage. So when they received this they called
15 me up. That's why I was holding the listing out. And
16 they said the property appraised for \$400,000. So I
17 believed them. If it did or did not, I do not know.

18 What I told them to do is, "Fine. Leave a
19 copy of that appraisal on your table so any potential
20 buyer can see it sitting there." That's what I advise
21 all my clients to do. But they never sent it to me.

22 Q In the listing form that we looked at it is
23 in your handwriting though, Miss Johnson. You indicate
24 that you verified the information in the listing form

1 with -- from an appraisal?

2 A No, I got --

3 Q Is that a yes or no?

4 A Yes, from them, from the sellers.

5 Q Thank you.

6 A Appraisal, yes.

7 Q In this case you communicated with Brian
8 Kincannon and you informed him that you had an appraisal;
9 isn't that right?

10 A What I said is that there is an appraisal
11 available if they had issues regarding the price.

12 Yes. And we would be happy to supply them --
13 meaning the sellers when I said 'we' -- if they wanted to
14 see a copy. But they had already seen it because that
15 was the brochure information sitting on the table when
16 any potential buyer went and looked at the property, yes.

17 Q How do you know they had seen it? Did you
18 hear Mr. -- Mr. Lindberg testify that he saw it when he
19 went in the house because it was left on a counter?

20 A No, he said that he saw some fliers. I don't
21 do fliers on my property. So the only flier that he
22 could have seen would have been the MLS listing which he
23 signed on or this appraisal. I don't do fliers on my
24 property.

1 Q He also testified that he received -- at
2 least the pricing information about this appraisal from
3 his realtor; is that correct?

4 A Possibly. I don't represent Mr. Lindberg nor
5 did I.

6 Q Let's go ahead and look at Exhibit 69 if we
7 could. Do you see Exhibit 69 marked at the bottom JJVL
8 048?

9 A I do.

10 Q It goes from 48 to 52; is that correct?

11 A That is correct.

12 Q Look at the last page of that document, JJVL
13 052. Do you see that?

14 A Yes.

15 Q It is an e-mail from you?

16 A It is.

17 Q To Brian Kincannon, correct?

18 A Yes.

19 Q Dated January 4th, 2013; is that right?

20 A Yes.

21 Q I'm going to go ahead and read it.

22 "January 4th, 2013. Brian, I'll be your
23 point of contact on this file for Jim Johns. The sellers
24 have elected to counter only because the, paren, the

1 wall, septic -- "

2 A 'Well.'

3 Q "Well, septic, buildings and pellet stoves
4 are all in good condition," close paren. "They have an
5 appraisal for \$400,000 and are willing to share with the
6 buyers. Thank you. AJ. Paren, see attached." Do you
7 see that?

8 A Yes.

9 Q Did I read that correctly?

10 A Yes.

11 Q You attached that to the appraisal?

12 A No.

13 Q How did Mr. Kincannon get portions of this
14 appraisal through this transaction?

15 A I would assume through the lawsuit. I did
16 not have access to this appraisal.

17 Q Your e-mail references the appraisal and says
18 see attached, does it not?

19 A But it doesn't say attached is the appraisal,
20 yes. It was mentioning probably this attachment, the
21 answer to his questions, after I got a response from the
22 seller.

23 Mr. Kincannon sent me an e-mail prior to them
24 making an offer at Mr. Kincannon asking these questions

1 on behalf of his seller. This was in January. I
2 contacted the seller because she is busy and she is a
3 doctor. And this is my handwriting.

4 I asked him these questions. How many tanks?

5 He tells me one tank, 15,000. Obviously it
6 was 1500, not 15,000. An error on my part. We go on and
7 answer all these questions. The attachment wee these two
8 pages, I'm assuming. There was no appraisal ever
9 attached to this document.

10 Q The document we are looking at, the one
11 that's important for this discussion right now, JJVL 052,
12 it says nothing about, "Here is my response to your
13 questions about the septic," does it?

14 A No.

15 Q I will --

16 A I think you are confusing the two.

17 THE COURT: We'll take a break at this time.

18 MR. MOORE: I want to find the actual e-mail.

19 THE COURT: We'll take a break until 2:30.

20 (At this time a recess was taken.)

21 THE COURT: Be seated. Continue.

22 MR. MOORE: Thank you, your Honor.

23 Q Miss Johnson, just before we left we were
24 looking at Exhibit 69 and you expressed your belief that

1 the information that is indicated as being attached to
2 the e-mail we were looking at from January 4th, 2013, is
3 information about the septic system, correct?

4 A No. What I said is the exhibit the JJVL 049,
5 which they asked the questions for on the 3rd, when I
6 answered his e-mail on the 4th, that page was attached.

7 Q JJVL 049?

8 A Correct.

9 Q And so you are saying that you are providing
10 information responsive to the request about the septic in
11 your January 4th e-mail that is listed at the bottom of
12 JJVL 052?

13 A I'm saying that that one document is the
14 attachment that you are probably seeing. I cannot be
15 100 percent positive. But I would have sent it back to
16 him with the answers. That's how that got back to him.

17 Q You answered issues about the septic tank the
18 day before, did you not?

19 A I'm confused.

20 Q Look at Exhibit 70, if you would.

21 A Exhibit 70?

22 Q Yes.

23 A Okay.

24 Q The first page we have -- a fax from you

1 dated January 3rd, 2013?

2 A Uh-huh.

3 THE COURT: Instead of saying 'uh-huh,' you a
4 say yes or no.

5 THE WITNESS: Yes.

6 BY MR. MOORE:

7 Q And it is directed to Deann Reynolds?

8 A Yes.

9 Q And there are a number of questions about the
10 septic system that are on page two of that exhibit,
11 correct?

12 A That is correct.

13 Q And that was also faxed to Miss Reynolds?

14 A It was probably e-mailed, correct, or faxed
15 yes. I am sorry.

16 Q And then the next page we have some
17 handwriting about these issues. That is your
18 handwriting, right?

19 A That is right.

20 Q Miss Reynolds called you and informed you of
21 the issues; is that right?

22 A You mean responded to these questions?

23 Q Yes.

24 A Mr. Reynolds did.

1 Q You wrote down his responses?

2 A That is correct.

3 Q Go ahead and look at JJVL 110.

4 A Yes.

5 Q In this e-mail you actually respond to all
6 the questions outlined by my clients about the septic,
7 about the pellet stove, about other items that are listed
8 in this e-mail to you from January 3rd; isn't that
9 correct?

10 A Yes.

11 Q You outline that the tank is 15,000 gallons?

12 It serves both houses. There is 200 plus
13 feet of leach line. It was last cleaned out two years
14 ago. And it is located on the west side of the house?

15 A That would have come from the seller,
16 correct.

17 Q And you also indicated that there were items
18 responsive about the well and propane and other items?

19 A That is correct.

20 Q And you don't have any attachment to this
21 e-mail, do you?

22 A No.

23 Q Miss Johnson, in this case how much of a
24 commission did you earn?

1 A Me? I didn't get any commission.

2 Q How much of a commission did JE Johns &
3 Associates earn?

4 A I would say approximately \$11,000.

5 Q Do you know by percentage what it is?

6 A Probably two-and-a-half percent.

7 Q And looking at 71 if we could. You have that
8 document in front of you?

9 A Yes.

10 Q Looking at these interrogatories, these
11 are -- if you look at the third page of these
12 interrogatories, it is the 10th day -- I believe that's
13 as of January, 2018. Do you see that on the last page?

14 A Where it says affirmation?

15 Q Yes.

16 A Yes.

17 Q And it is verified by you, correct?

18 A That is correct.

19 Q And you signed this document under penalty of
20 perjury; is that right?

21 A That is correct.

22 Q And in this document in response to
23 interrogatory number three, you are asked to identify the
24 commission you received as a result of this realty

1 transaction?

2 A Correct.

3 Q Response number three is, "I personally
4 received no commission. J E Johns & Associates received
5 a 2.5 commission."

6 A Yes.

7 Q Did I read that correctly?

8 A Yes.

9 Q A 2.5 percent commission would be about
10 \$9,600; is that right?

11 A I would -- but I doubt that that's correct
12 because that's not what the title company -- 11,500.

13 Q I just did math here and it shows that you --
14 for a commission, if it were two-and-a-half percent of
15 385,000 it would be \$9,625. Do you have any reason to
16 disagree with that?

17 A I wouldn't. But I was not the broker.

18 Q You were -- JE Johns & Associates was
19 actually paid a three percent commission; is that
20 correct?

21 A That is not correct.

22 Q Looking at Exhibit 66 -- what do you have in
23 front of you?

24 A My information from my file. The offer and

1 acceptance, the reports. They are all in the -- in the
2 stuff that was given to you?

3 Q May I see it?

4 A It is up to my counsel.

5 Commission and title instructions from the
6 title company out of my file that they were provided.

7 Here is the buyer's inspection report that
8 they got a structural inspection done prior to closing
9 escrow. And my notes, which you would have received my
10 notes, footnotes to myself. That's in here.

11 MR. MOORE: May I approach, your Honor?

12 THE COURT: Yes.

13 MR. MOORE: Your Honor, there are items here I
14 don't recognize. May I request to make copies?

15 THE WITNESS: I had to redo my file because
16 Mr. Pereos wouldn't supply them to me. So those are
17 documents that I provided to him; that I brought with me
18 that I could basically have.

19 MR. HALL: I don't object to them making a
20 copy.

21 MR. MOORE: I don't know how to do this.
22 Should I keep these documents and make copies and bring
23 back the originals tomorrow? Or -- get in touch with my
24 staff and see if we can get them done today?

1 MR. HALL: If you take them out, I would like
2 to number them.

3 MR. MOORE: I agree.

4 THE COURT: What are they?

5 THE WITNESS: All of those documents -- but
6 probably three them -- they are footnotes to me. But all
7 those documents are documents that are in all these that
8 Mr. Pereos was given.

9 One is the offer and acceptance and the
10 counteroffer.

11 One is the appraisal from Mr. Lace that I
12 retrieved -- that I received during the court process
13 that I was able to retrieve.

14 One is a partial appraisal from the buyer's
15 appraiser.

16 One is a title report from the title company
17 that's in here.

18 They are just documents that were in my files
19 that Mr. Pereos should have given to you.

20 MR. MOORE: There is more than that?

21 THE WITNESS: The only thing that is new
22 that's in there is a recent -- a certified market
23 analysis so that I could show you what Mr. Lindberg may
24 have seen from his agents and to show what the value of

1 the property is today. That's the only thing that you
2 would not have.

3 MR. MOORE: Notes and other things, your
4 Honor.

5 THE WITNESS: They are just notes to myself.

6 THE COURT: You are mumbling.

7 MR. MOORE: They are notes and other things.

8 THE COURT: I'll return them to the witness.

9 THE WITNESS: They are just notes to myself so
10 I could remember things. Thank you.

11 BY MR. MOORE:

12 Q So we were asking about a commission. Isn't
13 it accurate in this case that JE Johns & Associates
14 received a three percent commission?

15 A No. And, Mr. Moore, I was not the broker.
16 The commission goes to the broker. Mr. Johns was the
17 broker. It was up to him how he was -- I cannot discuss
18 commissions with anybody. It is up to the broker to
19 decide those commissions. It is listed in the MLS as
20 2.5.

21 Q And you signed a document in this case,
22 verified under oath, under penalty of perjury that JE
23 Johns & Associates received a two-and-a-half percent
24 commission. They received a three percent commission.

1 A That is not correct.

2 Q Let's go ahead and look at Exhibit 66.

3 THE COURT: Isn't the ordinary, customary six
4 percent?

5 THE WITNESS: Some companies offer five
6 percent. In this case I don't know why Mr. Johns
7 wouldn't have offered two-and-a-half, two-and-a-half.
8 The standard commission is six percent. Sometimes if you
9 have a seller that is purchasing another home or you --
10 for whatever reason -- the broker, not the agent, can
11 decide what the commission is going to be. But it goes
12 to the brokerage not to the agent.

13 THE COURT: Okay. Look at that exhibit that
14 shows 11 percent -- or six percent. \$11,000 each?

15 THE WITNESS: And again --

16 MR. MOORE: Look at the next page, Miss
17 Johnson. That's your signature on it?

18 THE WITNESS: That's actually my signature
19 for Mr. Johns, correct.

20 Q You are saying your husband forged your
21 signature?

22 A No. That's my signature.

23 Q Okay. Signed by you?

24 A Yes.

1 Q The listing input form that we looked at
2 earlier -- and you can turn there if you need to -- shows
3 that you are going to be the agent in this case, right?

4 A On this case?

5 Q Yes.

6 A No. Mr. Johns was the agent.

7 Q We'll go ahead and look at that.

8 A Okay.

9 Q --

10 A Mr. Kincannon wrote that offer to me under
11 Mr. John's listing.

12 Q Let's look at Exhibit 60.

13 A Yes.

14 Q Third page of Exhibit 60. Signed by you,
15 correct?

16 A And Mr. Johns, yes.

17 Q As your broker?

18 A Yes.

19 Q The first page of Exhibit 60 says agent name,
20 AJ Johnson?

21 A Yes.

22 Q It lists your e-mail?

23 A That is correct.

24 Q An e-mail with which you have been

1 communicating with Mr. Kincannon?

2 A Both myself and Mr. Johns, yes.

3 Q Are you saying Mr. Johns sent some e-mails on
4 your account?

5 A Yes.

6 Q He signed it off as AJ?

7 A He signed it as AJ.

8 Q If he did that, he would have done that with
9 your knowledge and consent?

10 A He was my husband.

11 Q Yes or no.

12 A Yes.

13 Q So in this case JE Johns & Associates
14 actually earned a three percent commission, correct?

15 A Let me see where the commission is. It says
16 2.5.

17 THE COURT: Where does it say 2.5?

18 THE WITNESS: On the listing agreement.

19 BY MR. MOORE:

20 Q Looking at Exhibit 66?

21 THE COURT: What's she looking at? What are
22 you looking at?

23 THE WITNESS: My listing input agreement.

24 THE COURT: Is that an exhibit?

1 MR. MOORE: It is Exhibit 60.

2 THE COURT: 60?

3 THE WITNESS: If you look on the MLS listing
4 it will show that each party is offered -- it will show
5 2.5.

6 THE COURT: Commission 2.5?

7 THE WITNESS: Right.

8 THE COURT: Okay.

9 BY MR. MOORE:

10 Q But that's not what happened in this case,
11 right?

12 A No -- I don't know.

13 THE COURT: Exhibit 66.

14 BY MR. MOORE:

15 Q If you would look at Exhibit 66, which you
16 signed, it shows a commission of \$11,500, right?

17 A Yes, and I don't know why that would have
18 been.

19 Q But you signed it?

20 A Yes.

21 Q And JE Johns was paid that amount?

22 A I would assume so, yes. I'll have to see the
23 sales price.

24 Q 385,000.

1 A Again this was a broker. I don't know what
2 kind of deals he made with the Reynoldes. He is the
3 broker.

4 Q Let's look at additional e-mails from this
5 case. Look at Exhibit 55 in the first binder.

6 Go ahead and look at 55.

7 A All of 55? All three pages?

8 Q Yes.

9 A Okay.

10 THE COURT: Which pages are you interested in?
11 What's your question?

12 BY MR. MOORE:

13 Q Looking at all these documents that you have
14 produced just now, all of these e-mails are from your
15 e-mail account; is that correct?

16 A That's correct.

17 Q The majority of these are signed off by AJ?

18 A That's correct.

19 Q The majority of these, if not all, are sent
20 by you?

21 A Probably, yes.

22 Q These are multiple processes?

23 A Yes.

24 Q Let's look at Exhibit 70 which is in the

1 second binder that you just had. Again, these are e-mails
2 from you, faxes, e-mails from your account to Brian
3 Kincannon; isn't that right?

4 A Yes.

5 Q Do you see any e-mails in anything that we
6 have just looked at in either Exhibit 55 or Exhibit 70
7 that is from your husband's e-mail account to Brian
8 Kincannon?

9 A No. Because AJ or JJ -- or AJ -- while he
10 was out in the field, because I was bedridden, so they
11 would have come from my laptop.

12 Q And you were responding to the majority of
13 Mr. Kincannon's questions?

14 A That's correct.

15 Q There are dozens of e-mails in Exhibit 70; is
16 that not right?

17 A That is correct. Including Tammy
18 Kincannon's. His wife was responding to me, as his
19 assistant, to me, yes, off of Mr. Kincannon's e-mail
20 address also.

21 Q So in responding to these e-mails you were
22 acting as a realtor in this matter?

23 A I was acting as assistant to the broker, yes.
24 Yes, I have to have a real estate license, yes.

1 Q You are licensed in the State of Nevada?

2 A I am.

3 Q You have taken classes related to your
4 requirements as a realtor?

5 A I have.

6 Q And you have taken classes that indicate that
7 you shouldn't disclose information unless you are
8 absolutely certain about it?

9 A Actually, in the offer and acceptance that a
10 buyer submits to us, if it's in our area of expertise or
11 it if it comes from the seller we can disclose that
12 information. If it is out of our area of expertise, as
13 Mr. Kincannon -- as the buyer pointed out, he went to his
14 gentleman, his architect or whoever, to get his expertise
15 on it.

16 We have to comply with those contracts. So
17 if it's out of our area of expertise, meaning if he asks
18 questions from a seller, I can ask the seller those
19 questions and say, "Do you have any information
20 pertinent to this?"

21 Is it correct? I don't know. It is coming
22 through the seller.

23 But through the contract that was submitted
24 inside these forms, which I got from my file, there is an

1 offer and acceptance in there that was sent by the buyers
2 to the sellers stating the terms of which they want to
3 comply with.

4 In that form is all their inspections. In
5 that form is also stating -- if I may, your Honor, can I
6 read it?

7 THE COURT: Okay.

8 THE WITNESS: And I believe you have a copy of
9 this, Mr. Moore, in here.

10 "Any the offer, that is the buyer's offer,
11 when they submit and say they want certain inspections
12 done within a 21-day period, that's coming from the buyer
13 stating to the seller that they are going to have those
14 inspections done. Any and all correspondence or
15 information that's a part of this transaction is in this
16 contract." And it says verification of information.

17 "Any information relating to square footage,
18 land or its use and/or improvements of the land are
19 approximates or estimates only. And neither the seller
20 nor the brokers involving may make any representations --
21 the brokers involved make any representations or
22 guarantees regarding the accuracy. Any oral or written
23 representations by the sellers or the brokers regarding
24 age or improvements, size or square footage and parcel

1 buildings or location of properties may not be accurate.
2 Apparent boundary lines indicate such as fences, hedges,
3 walls, barriers may not represent the true boundary
4 lines. Brokers are not obligated to investigate the
5 status or permits, zoning or code compliances. Buyers
6 dissatisfied any conditions or concerns that may --
7 may -- conditions with that of any important or critical
8 element to the purchasers decisions. Buyer has not
9 received or relied upon any representation by either
10 broker or the seller with respect to the condition of the
11 property. Buyer has not received or relied on -- buyer
12 has for the property contained in this agreement or any
13 attachments. The information contained it the multiple
14 listing service, computer advertisement and feature
15 sheets pertaining to the property are not warranted or
16 guaranteed by the brokers. Errors and/or omissions of
17 inputting information while uncommon or possible buyer
18 shall be responsible for verifying and securing accuracy
19 of pertinent information."

20 And then deposits of all funds shall be
21 deemed final acceptance. In this form this buyer asked
22 for inspections to be done.

23 He asked for a pest, which was done, which
24 had a lot of issues on it. He asked for a home

1 inspection to be done which would have addressed his
2 issue with the electrical. It would have addressed any
3 of that.

4 He asked -- he waived his heating, his
5 cooling. He waived -- he asked for a well. He asked for
6 well quality, which had some issues with the quality of
7 the water and it had some issues with the well, which was
8 repaired by the seller. He waived his survey. The
9 septic report he had done was given to him. However, the
10 buyer never, ever was at any of these inspections other
11 than the structural and the pest. He and his agent did
12 not attend the inspections for the well, septic -- the
13 septic or the well pumping or the water quality. They
14 were not there.

15 Q Move to strike, your Honor. It is
16 nonresponsive.

17 MR. HALL: I think it was responsive, your
18 Honor. It was extensive, but it was responsive.

19 THE COURT: You asked her and you have taken
20 classes that indicate that you shouldn't disclose
21 information unless you are absolutely certain about it.
22 And then she went on and asked if she could read it and I
23 said go ahead. So it will stick.
24

1 BY MR. MOORE:

2 Q Could you answer my question?

3 A I'm sorry?

4 Q Do you take classes that indicate as a
5 realtor that you are only supposed to disclose
6 information not in your area of expertise if you know it
7 for certain?

8 A We are only able -- to answer your question,
9 again. We are only able to communicate within our area
10 of expertise, not on information that is given to us by a
11 seller.

12 Q You said something a moment ago that my
13 client ordered the septic inspection in this case; is
14 that right?

15 A He requested the septic inspection in his
16 offer. The seller unfortunately -- because they have to
17 pay for it. They will only allow them to order it. But
18 it was a buyer's inspection.

19 Q So it was requested by my client, but it was
20 not paid for by him?

21 A I don't know. No. It was paid for by the
22 seller.

23 Q And you received a copy of that report,
24 correct?

1 A At this time Mr. Johns was at the inspection.
2 But, yes, the buyer's agent and then eventually the
3 seller's agent would get a copy if there were any issues.

4 Specifically for the well and septic there
5 were issues at the site. So I believe they addressed
6 them at the site.

7 Q You e-mailed that septic report to Brian
8 Kincannon?

9 A I did.

10 Q So you later received a copy of it?

11 A I did.

12 Q And it was indicated that it was sent to your
13 client?

14 A Right. It was sent to Miss Reynolds and
15 title, yes.

16 Q And it also lists that it was received by JE
17 Johns & Associates?

18 A And Mr. Kincannon should have gotten a copy
19 of it.

20 Q When you received this and saw that the
21 septic only had a thousand gallons that didn't cause any
22 red flags?

23 A No, it did not. Because I forwarded it on to
24 the person who wanted the report. It was Mr. Kincannon

1 and his buyer's report.

2 Q Earlier in this case your client had told you
3 it was a 15,000-gallon tank?

4 A Correct. But I didn't actually see the
5 septic report. It was sent to me by title and I
6 forwarded it on to make sure that Mr. Kincannon got it.
7 I didn't actually look at the report. Because Mr. Johns
8 was handling this.

9 Q It was in your file though?

10 A Yes.

11 Q And after the septic report was received and
12 it showed the size, you didn't take any steps to try to
13 correct any issues or any misinformation that had been
14 provided; is that right?

15 A Inside the buyer's offer and acceptance under
16 information regarding -- and you have this -- private
17 well and septic, it specifically states, "If you are
18 buying a home with a private well and/or septic it is the
19 buyer's responsibility to have the system checked by a
20 licensed professional and to verify costs associated with
21 it. It is the buyer's advise to check with your
22 appropriate agencies."

23 That is out of my area of expertise.

24 Q And you took no steps to correct any

1 misinformation that was provided about the septic?

2 A I forwarded it on to the buyer. I have sold
3 properties in the past with a thousand gallon tank on a
4 four bedroom house. So, no, it was up to the buyer to
5 research it. He said he had property in Washoe Valley.
6 He was familiar with septic tanks and how many they
7 needed. He stated he had two on his of a thousand gallon
8 tanks. It is out of my area of expertise. That's why a
9 buyer hires professionals. I can't do appraisals. I
10 can't walk off square footage. It is out of my area of
11 expertise. I am not a structural home inspector.

12 I am not a pest inspector. I can advise
13 these people if they were my clients.

14 Mr. Kincannon and Mrs. Kincannon and his
15 mother were not my clients.

16 Q You would agree with me that under the
17 statutes of Nevada you owe obligations to everybody in
18 this transaction?

19 A Once I found out about it I forwarded it on
20 to Mr. Kincannon.

21 Q You keep wanting to answer different
22 questions.

23 A Okay. I'm sorry.

24 Q My question is you understand that in Nevada

1 you owe obligations to everybody in this transaction?

2 A I do.

3 Q You have to disclose to everybody in this
4 transaction information that you know?

5 A I did.

6 Q Okay. Is that a yes or no?

7 A Yes.

8 Q And you also have to disclose all information
9 that you should have known?

10 A I didn't know it before this inspection.

11 Q But you should have known. My question is
12 you have an obligation as a realtor to disclose all
13 information that you should have known?

14 A If I would have known.

15 Q My question, ma'am --

16 A Yes, yes. If I would have known, yes.

17 Q No. It is not if you would have known. It
18 is that you should have known; is that right?

19 A It is out of my area of expertise. I had to
20 rely on the seller.

21 Q Under Nevada law you are required to disclose
22 all information that you should have known?

23 A Yes, you are absolutely correct.

24 Q I am going to review my notes, your Honor. I

1 may be done.

2 THE COURT: Go ahead.

3 MR. MOORE: No further questions, your Honor.

4 THE COURT: All right.

5 MR. HALL: May I have just a moment, your
6 Honor?

7 THE COURT: Sure.

8 CROSS EXAMINATION

9 BY MR. HALL:

10 Q I'll ask you, somewhere in these six forms
11 that go into a real estate transaction, is there some
12 language about wells and septic tanks in specific?

13 A That was the one I was explaining. This is a
14 form that is attached to a buyer's offer. And it
15 explains to them in this form that real estate agents are
16 not -- we are not well people. We are not septic people.
17 So they need to refer to people who have that area of
18 expertise.

19 So if a buyer came to me and said, "I want
20 to have a septic report -- or I want to have a septic
21 done," I would say, "Let's call a professional. Let's
22 get it done." I knew nothing about septics. There are
23 houses with four bed rooms that are on a thousand gallon
24 septic system. I have closed three of them. I'm like,

1 "Are they grandfathered in? What are they?"

2 I don't know. So when you order a well
3 report or a septic report, you have to rely on the
4 information that you receive from that expert. An
5 example is when a buyer comes to me -- and, again, I was
6 representing -- or Jim was representing the seller.

7 These reports are imperative because we are
8 not the experts in these areas. We market a property to
9 sell it. All we can rely on is the information that we
10 get from a seller and pray to God that it's accurate.

11 If it's not accurate then they have to have
12 an appraisal to get a loan, then they find the accuracy
13 there. On the septic tank specifically, when it was
14 done, there were no issues with the septic. The septic
15 people never said, "There is another unit. How are you
16 taking care of this?"

17 Even when the county -- Mr. Reynolds, he had
18 all of his permits. On his Sellers of Property
19 Disclosure Statement he said all of his permits were
20 placed.

21 The county never came out and said, "Your
22 septic was not big enough." They still gave him and
23 approved his permits.

24 On the duties owed presented by the buyer and

1 his agent, it specifically says in here, "Advise the
2 client to obtain advice from an expert relating to
3 matters which are beyond the expertise of the licensee."

4 THE COURT: Let me ask you this. Do you have
5 a copy of the document she is looking at?

6 MR. MOORE: It is the offer.

7 THE COURT: That's in your exhibits?

8 MR. MOORE: Yes.

9 THE COURT: Okay.

10 THE WITNESS: And there is also a --

11 THE COURT: What exhibit is that?

12 MR. MOORE: The offer is Exhibit 4.

13 THE COURT: Thank you. Any reference to any
14 document make sure you include the Exhibit Number,
15 because that's the official record.

16 THE WITNESS: And I don't know where they are
17 in here. Mr. Pereos would not give me a copy of the
18 file. So I don't know where they are.

19 THE COURT: It is Exhibit 4.

20 THE WITNESS: Okay.

21 THE COURT: Are you finished with that
22 question? I wanted to make sure that this is an exhibit
23 that's here.

24 THE WITNESS: There are like four exhibits.

1 MR. HALL: I'm not hearing what's going on
2 here. I'm sorry.

3 THE COURT: Are you finished with that
4 question?

5 MR. HALL: No. I wanted to ask an additional
6 question.

7 Q Is it also not true that there is a statute
8 in the State of Nevada that provides that real estate
9 agents or brokers are not to conduct inspections of the
10 condition of the property?

11 A There is. And it is also in our professional
12 and ethical things. We are not allowed. It is under
13 Article 11 of ours. We are not allowed to go out of our
14 area of expertise.

15 Our job is to market. We use the marketing
16 tools of a C M A, certified market analysis, or profile,
17 which I have, to market the property. The information
18 that we receive is strictly from an appraiser once it
19 gets appraised or any inspections a buyer has or from the
20 seller because they know their property better than I.

21 So I can sit there and fight with the seller
22 all day long and say, "You are wrong."

23 But I don't know the square footage. In the
24 old days the brokers used to be able to do -- they used

1 to be able to measure the square footage. They no longer
2 allow you to do that. You can't go out and measure
3 where -- it is against our protocol in our industry. You
4 can't go out and measure properties. You can't -- you
5 have to give them environmental contact lists, which this
6 agent did.

7 In fact this agent even gave the Lindbergs a
8 copy of the listing agreement and some sort of document
9 that they pulled up because this isn't our form and they
10 signed off on it as a check and --

11 As a checklist for -- check and balance thing
12 at the end of the transaction before it closes, the
13 escrow officer -- and she did this in this case -- asked
14 the buyers if they received these documents, if they read
15 them and accepted them.

16 And they initialled on every page. On the
17 well, the septic, the structural report, the pest report
18 the certificate for the wood stove, they said yeah. And
19 she said, "Are you ready to close? Bring your funds to
20 the able."

21 MR. HALL: I think that's all the questions I
22 have, your Honor.

23 REDIRECT EXAMINATION

24

1 BY MR. MOORE:

2 Q Looking at Exhibit 4 I think it is in front
3 of you -- and you read a bunch of waiver items --

4 A Excuse me. Let me pull up Exhibit 4.

5 Q Does this offer that you looked at and the
6 waiver provisions that you just read at length waive any
7 damages arising from a failure to disclose information
8 that is known to a realtor?

9 A Under -- that is known to a realtor?

10 Q Yes.

11 A It says it holds us -- only the verbiage that
12 I explained to you; that we are not held responsible for
13 any of this.

14 Q Now, does it -- and you can answer my
15 question.

16 A I'm not a lawyer.

17 Q Or you can continue to answer your own.

18 A I don't know.

19 Q Does the offer waive damages arising from a
20 failure to disclose information that is known to a
21 realtor?

22 A I don't believe there is a waiver in here.

23 Q What about Exhibit 3, the counteroffer, does
24 that include any such language?

1 A No. Not that I --

2 Q The offer is one page?

3 A But you asked me to look at the offer also.
4 So I would like to refer to it if I may.

5 All it says is, "The real estate broker is
6 qualified to advise on real estate. The parties are
7 advised to consult with appropriate professionals,
8 including engineers, appraisers, lawyers, CPA's or others
9 before finalizing this deal." So, no.

10 Q So your previous answer stands?

11 A It is no. It doesn't say anything about
12 damages.

13 Q Does the offer waive damages arising from a
14 failure to disclose information that a realtor should
15 have known?

16 A Again, no. Not that I know.

17 Q What about the counteroffer in Exhibit 3?

18 A It wouldn't be in the counteroffer.

19 Q My client obtained appropriate inspections in
20 this case, right?

21 A By his agent, with his agent, yes.

22 Q None of those disclosed that the square
23 footage was incorrectly listed, right?

24 A Actually, not -- correct. This is a document

1 that I believe came from your file, which is not my
2 document, that was pulled by either Mr. Lindberg or his
3 agent where he was aware of the fact that the main house
4 was 2880 and then he signed off on the difference of the
5 3880 on both of these pages on Mr. Johns's listing. That
6 came from your file.

7 Q This isn't my client that signed the listing
8 in this case?

9 THE COURT: Counsel, which document?

10 MR. MOORE: I apologize, your Honor. I
11 believe it is Exhibit 6.

12 THE COURT: So whatever she was talking about,
13 these documents, that's Exhibit 6?

14 MR. MOORE: I believe so.

15 THE COURT: Okay.

16 THE WITNESS: Yes.

17 THE COURT: Make sure.

18 MR. MOORE: I will.

19 THE COURT: It needs to be on the record.

20 THE WITNESS: One of those documents are not
21 in Exhibit 6 because I don't know why.

22 BY MR. MOORE:

23 Q The first two pages are Exhibit 6. I don't
24 recognize the third document. It is possible that it is

1 in our file. But all it is, it shows living area, 2180,
2 acreage, single family. L D S and it is signed by my
3 clients?

4 THE COURT: By whom?

5 MR. MOORE: By my clients, both of them.

6 Q That document right there doesn't waive any
7 rights, does it?

8 A It is part of their due diligence. I don't
9 think so. I don't know.

10 Q Is there anything in any of these three
11 documents that would waive any rights that you see?

12 MR. HALL: Your Honor, I object. I think
13 that's a legal question.

14 THE COURT: What's that? It is not
15 necessarily objectionable. It is obvious what you are
16 asking.

17 But my concern is that document that your
18 client signed, if that's not in there. That should be in
19 there. Do you want it in?

20 MR. MOORE: The third document?

21 THE COURT: The third document.

22 MR. HALL: Yes.

23 THE COURT: Sure. Why don't we have that
24 marked. Whatever it is.

1 MR. MOORE: We could go 77. Next in order.

2 THE CLERK: That's correct. Exhibit 77.

3 THE COURT: Have that marked 77 and we'll put
4 that in.

5 BY MR. MOORE:

6 Q So getting back to my question, is there
7 anything disclosed to my client that showed that the
8 square footage was anything other than 3880 square feet?

9 A His appraisal and that document that you just
10 put in on 77 that was attached to his offer.

11 Q I am not sure about their appraisal.

12 MR. HALL: I have nothing further.

13 THE COURT: Ma'am, you may step down.

14 THE WITNESS: Thank you.

15 MR. MOORE: Your Honor, I anticipated that we
16 would go a little longer today. So my next two witnesses
17 are scheduled for tomorrow. I believe they will be
18 short.

19 THE COURT: Okay.

20 MR. MOORE: I hope to be done by noon. If not
21 a little afternoon.

22 THE COURT: Fair enough. Mr. Hall.

23 MR. HALL: I will welcome an early close. I
24 was up until three o'clock this morning to get everything

1 done.

2 THE COURT: So we'll take an adjournment
3 until -- tomorrow I have the criminal calendar.

4 MR. MOORE: Should we starts at 10:30 again?

5 THE CLERK: Your Honor, we have approximately
6 12 hearings tomorrow.

7 THE COURT: There are eight sentencings.

8 MR. MOORE: Do you want to start at 1:00?

9 THE COURT: Why don't we do that.

10 THE CLERK: One o'clock tomorrow.

11

12

13 (At this time the foregoing proceedings concluded.)

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1 STATE OF NEVADA)
2 COUNTY OF WASHOE)

3

4 I, Joan Marie Dotson, Certified Shorthand
5 Reporter of the Second Judicial District Court of the
6 State of Nevada, in and for the County of Washoe, do
7 hereby certify:

8 That I was present in Department No. 3 of
9 the above-entitled Court and took stenotype notes of the
10 proceedings entitled herein, and thereafter transcribed
11 the same into typewriting as herein appears;

12 That the foregoing transcript is a full,
13 true and correct transcription of my stenotype notes of
14 said proceedings.

15 DATED: At Reno, Nevada, this 8th of April,
16 2019.

17

18 /s/ Joan Marie Dotson

19 Joan Marie Dotson, CSR No. 102

20

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