

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

DAVID J. MITCHELL, BARNET
LIBERMAN, ET AL.,
Appellants,
vs.
RUSSELL L. NYPE, REVENUE PLUS, LLC,
AND SHELLEY D. KROHN,
Respondents.

No. 80693

Electronically Filed
Mar 31 2020 11:12 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District Eighth Department 11
County Clark Judge Elizabeth Gonzalez
District Ct. Case No. A-16-740689-B

2. Attorney filing this docketing statement:

Attorney H. Stan Johnson Telephone 702-823-3500
Firm Cohen Johnson Parker Edwards
Address 375 E. Warm Springs Rd. #104
Las Vegas, NV 89119

Client(s) David Mitchell, Las Vegas Land Partners, LLC, (See Attached)

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney John W. Muije Telephone 702-386-7002
Firm Las Offices of John W. Muije & Associates
Address 1840 E. Sahara Ave #106
Las Vegas, NV 89104

Client(s) RUSSELL L. NYPE, REVENUE PLUS, LLC, SHELLEY D. KROHN

Attorney _____ Telephone _____

Firm _____

Address _____

Client(s) _____

(List additional counsel on separate sheet if necessary)

Clients:

David J. Mitchell, Las Vegas Land Partners, LLC, Meyer Property Ltd., Zoe Property, LLC, Leah Property, LLC, Wink One, LLC, Aquarius Owner, LLC, LVLP Holdings, LLC, Live Works Tic Successor, LLC, & Casino Coolidge LLC.

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input checked="" type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

None.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

In re: Las Vegas Land Partners, LLC, Debtor. BK-S-19-15333-MKN. United States Bankruptcy Court, District of Nevada. This case is ongoing.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This case involves ongoing efforts by Plaintiffs to collect a previously awarded judgment. Plaintiffs brought claims for constructive trust, fraudulent conveyance, civil conspiracy, declaratory relief, and alter ego. After a bench trial on this matter, the Court entered a judgment against Defendants in a total amount of \$19,641,515.90.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether the amount awarded under a claim for civil conspiracy can exceed the damage caused by the overt acts to the plaintiff.
2. Whether damages awarded under civil conspiracy can exceed the injury to the plaintiff produced by specific overt acts.
3. If the underlying tort or action is time barred in a claim for civil conspiracy, then the claim for civil conspiracy is also time barred.
4. Whether transfers which are time barred for the purpose of fraudulent conveyances can be the underlying tort or action which forms the basis for the civil conspiracy.
5. Whether false testimony or false evidence can be the basis for civil conspiracy or any other civil actions.
6. Whether acts undertaken during litigation and discovery can form the basis of a civil conspiracy.
7. Whether the Court erred in finding alter ego between the various entities in this matter.
8. Whether the Court erred in awarding attorney's fees as special damages.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

None.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This case seeks clarifications of Nevada law regarding civil conspiracy, alter ego, and special damages that have not been addressed in the published opinions of this Court.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

This matter is presumptively retained by the Supreme Court per NRAP 17(a)(9) and NRAP 17(a)(11) as it originated in business court and involves questions of first impression.

14. Trial. If this action proceeded to trial, how many days did the trial last? 6

Was it a bench or jury trial? Bench

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?

No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from January 17, 2020

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served January 17, 2020

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☒ NRCP 52(b) Date of filing February 14, 2020

☒ NRCP 59 Date of filing February 14, 2020

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion Has not been filed yet.

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed February 26th, 2020

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

Defendants Casino Coolidge LLC and Barnet Liberman- February 25th, 2020

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)

☐ NRS 38.205

☐ NRAP 3A(b)(2)

☐ NRS 233B.150

☐ NRAP 3A(b)(3)

☐ NRS 703.376

☐ Other (specify) _____

(b) Explain how each authority provides a basis for appeal from the judgment or order:

This is an appeal from a final judgment entered in an action or proceeding commenced in the court in which the judgment was rendered.

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

Russell L. Nype; Revenue Plus, LLC; David J. Mitchell; Barnet Liberman; Las Vegas Land Partners; Meyer Property LTD; Zoe Property, LLC; Leah Property, LLC; Wink One, LLC; Aquarius Owner, LLC; LVLP Holdings, LLC; Mitchell Holdings, LLC; Liberman Holdings, LLC; 305 Las Vegas, LLC; Live Works TIC Successor, LLC; Casino Coolidge, LLC

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

Mitchell Holdings, LLC- The court did not enter judgment against Mitchell Holdings

Liberman Holdings, LLC- Dismissed by stipulation of the parties

305 Las Vegas, LLC- Court granted Motion for Directed Verdict after Plaintiffs' case in chief

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiffs- constructive trust, fraudulent conveyance, civil conspiracy, declaratory relief, and alter ego

Defendants- none

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

David Mitchell, et al.

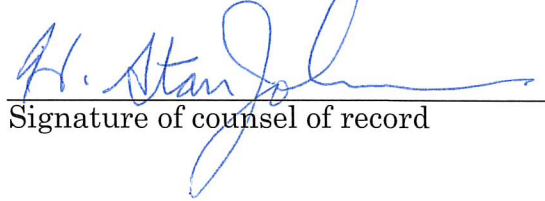
Name of appellant

3/25/2020

Date

H. Stan Johnson, Esq.

Name of counsel of record



Signature of counsel of record

Clark County, Nevada

State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 26th day of March, 2020, I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☒ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

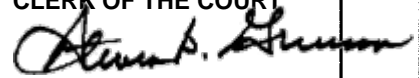
John W. Muije & Associates
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1840 E. Sahara Ave., #106
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Blut Law Group, P.C.
Elliot S. Blut, Esq.
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Las Vegas, NV 89101

Dated this 26th day of March, 2020



Signature



ACOMP
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Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC,
DOES I through X; DOES I through X; DOE
CORPORATIONS I through X; and DOES
PARTNERSHIPS I through X,

Plaintiffs,

vs.

DAVID J. MITCHELL; BARNET LIBERMAN;
LAS VEGAS LAND PARTNERS, LLC; MEYER
PROPERTY, LTD.; ZOE PROPERTY, LLC;
LEAH PROPERTY, LLC; WINK ONE, LLC;
LIVE WORK, LLC; LIVE WORK MANAGER,
LLC; AQUARIAS OWNER, LLC; LVLP
HOLDINGS, LLC; MITCHELL HOLDINGS,
LLC; LIEBERMAN HOLDINGS, LLC; 305 LAS
VEGAS LLC; LIVE WORKS TIC SUCCESSOR,
LLC; FC/LIVE WORK VEGAS, LLC; CASINO
COLLIDGE, LLC; DOES I through III, and ROE
CORPORATIONS I through III, inclusive,

Entity Defendants.

CASE NO: A-16-740689-B

DEPT. NO: XV

AMENDED COMPLAINT FOR:

1. CONSTRUCTIVE TRUST;
2. FRAUDULENT CONVEYANCE;
3. CONSPIRACY TO DEFRAUD;
4. DECLARATORY RELIEF; AND
5. ALTER EGO

ARBITRATION EXEMPT
(EQUITABLE RELIEF)

COMES NOW, Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC, as and for
causes of action against the Entity Defendants, DAVID J. MITCHELL; BARNET LIBERMAN;
LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC;
LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER,
LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC;
LIEBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR,

1 LLC; FC/LIVE WORK VEGAS, LLC, and CASINO COLLIDGE, LLC alleges and shows as
2 follows:

3 **GENERAL FACTUAL ALLEGATIONS**

- 4 1. Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC (hereinafter "NYPE"),
5 a New York Limited Liability Company.
- 6 2. Defendant, DAVID J. MITCHELL (hereinafter "Mitchell), is an adult resident of
7 New York.
- 8 3. Defendant, BARNETT LIBERMAN (hereinafter "Liberman), is an adult resident of
9 New York.
- 10 4. LAS Vegas Land Partners (hereinafter "LVLP") is a Delaware limited liability
11 company registered to do business in Nevada, but currently in default status.
- 12 5. Aquarius Owner, LLC is or was a Delaware limited liability company registered to
13 do business in the State of Nevada in November, 2004, and maintained its
14 registration through and including approximately November, 2009.
- 15 6. On information and belief, Aquarius Owner LLC was owned and directed by
16 Mitchell, Liberman, and/or LVLP.
- 17 7. In that context, various real property and ownership equity transfers took place
18 between LVLP and/or Aquarius Owner, LLC, during the operative time, and on
19 information and belief, financial distributions and transactions occurred between
20 Aquarius Owner LLC and its principals on a recurring basis, most of which were
21 never disclosed in publicly available records or documents.
- 22 8. In that context, various real property transfers and ownership equity took place
23 between LVLP and/or Aquarius Owner, LLC during the operative time, and on
24 information and belief, financial distributions and transactions occurred between
25 Aquarius, LLC and its principals on a recurring basis, most of which were never
26
27
28

disclosed in publicly available records or documents, is a Delaware limited liability that first registered to do business in Nevada in approximately February, 2011, and continues to operate and do business, in good standing, through and including this date. FC/LW Vegas is or was a Delaware limited liability company registered to do business in the State of Nevada in February 2011 which has maintained registration through the present.

9. FC/LW VEGAS, LLC, on information and belief, is an entity jointly owned and operated by Liberman, Mitchell, LVLP, and non-party Forest City Enterprises, for purposes of developing and managing various real property interest in Southern Nevada.

10 In that context, various real property and ownership equity transfers took place between LVLP and/or FC/LW, LLC, during the operative time, and on information and belief, financial distributions and transactions occurred between Aquarius Owner LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents.

11. In that context, various real property and ownership equity transfers took place between LVLP and/or FC/LW, LLC during the operative time, and on information and belief, financial distributions and transactions occurred between

12. Aquarius, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents, is a Delaware limited liability that first registered to do business in Nevada in approximately February, 2011, and continues to operate and do business, in good standing, through and including this date.

13. In that context, various real property and ownership equity transfers took place between LVLP and/or Leah Property, LLC during the operative time, and on information and belief, financial distributions and transactions occurred between

14. Aquarius, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents, is a Delaware limited liability

1 that first registered to do business in Nevada in approximately February, 2011, and
2 continues to operate and do business, in good standing, through and including this
3 date.

4 15. Leah Property, LLC is a Delaware limited liability that first registered to do business
5 in Southern Nevada in approximately February, 2005, and continued to be active and
6 operate in the Southern Nevada area through and including February, 2015.

7 16. On information and belief, Leah Property LLC is owned, managed, and operated by
8 Liberman, at all relevant times.

9 17. In that context, various real property and ownership equity transfers took place
10 between LVLP and/or Leah Property, LLC, during the operative time, and on
11 information and belief, financial distributions and transactions occurred between Leah
12 Property, LLC and its principals on a recurring basis, most of which were never
13 disclosed in publicly available records or documents.

14 18. In that context, various real property and ownership equity transfers took place
15 between LVLP and/or Live Work, LLC, during the operative time, and on information
16 and belief, financial distributions and transactions occurred between Leah Property,
17 LLC and its principals on a recurring basis, most of which were never disclosed in
18 publicly available records or documents.

19 19. Live Work LLC is a Delaware limited liability company who first became active in
20 Southern Nevada in or about April, 2015, and in fact was a plaintiff in the original
21 underlying lawsuit with LVLP versus the plaintiffs herein. Live Work, LLC, on
22 information and belief, continued to be active and operating in Southern Nevada
23 through and including approximately April, 2012.

24 20. On information and belief, Live Work, LLC was owned, operated, and managed by
25 Liberman, Mitchell, LVLP, Live Work Manager, LLC, and/or Mitchell Holdings, and
26 was an active participant in various real property transactions involving non-party
27 Forest City Enterprises.
28

- 1 21. In that context, various real property and ownership equity transfers took place
2 between LVLP and/or Live Work, LLC, during the operative time, and on information
3 and belief, financial distributions and transactions occurred between Live Work, LLC
4 and its principals on a recurring basis, most of which were never disclosed in publicly
5 available records or documents.
- 6 22. In that context, various real property and ownership equity transfers took place
7 between LVLP and/or Live Work, LLC, during the operative time, and on information
8 and belief, financial distributions and transactions occurred between Live Work
9 Manager, LLC and its principals on a recurring basis, most of which were never
10 disclosed in publicly available records or documents.
- 11 23. Livework Manager, LLC was a Delaware Limited Liability that first registered to do
12 business in the State of Nevada in approximately April, 2005, and continued active
13 and in business in Southern Nevada through approximately February, 2012.
- 14 24. Live Work Manager, LLC was owned, operated and managed by, on information and
15 belief, by Liberman, Mitchell, and/or LVLP.
- 16 25. In that context, various real property and ownership equity transfers took place
17 between LVLP and/or Live Work Manger, LLC, during the operative time, and on
18 information and belief, financial distributions and transactions occurred between
19 Livework Manager, LLC and its principals on a recurring basis, most of which were
20 In that context, various real property transfers and ownership equity took place
21 between LVLP and/or Live Work, LLC during the operative time, and on information
22 and belief, financial distributions and transactions occurred between Live Work, LLC
23 and its principals on a recurring basis, most of which were never disclosed in publicly
24 available records or documents, is a Delaware limited liability that first registered to
25 do business in Nevada in approximately February, 2011, and continues to operate and
26 do business, in good standing, through and including this date. FC/LW Vegas is or
27 was a Delaware limited liability company registered to do business in the State of
28 Nevada in February 2011 which has maintained registration through the present.

never disclosed in publicly available records or documents.

26. Zoe Property, LLC is a Delaware Limited Liability Company that first registered and became active in Southern Nevada in or about November 2004, and in fact was one of the original plaintiffs along with Live Work, LLC and LVLP versus the plaintiffs herein. On information and belief, Zoe Property, LLC operated and continued to be active in Southern Nevada through approximately November, 2007.

27. Zoe Property, LLC was owned, operated and managed by, on information and belief, by Liberman, Mitchell, and/or LVLP.

28. In that context, various real property and ownership equity transfers took place between LVLP and/or Zoe Property, LLC, during the operative time, and on information and belief, financial distributions and transactions occurred between Zoe Property, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents.

29. In that context, various real property and ownership equity transfers took place between LVLP and/or Zoe Property, LLC, during the operative time, and on information and belief, financial distributions and transactions occurred between Zoe Property, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents.

30. Wink One, LLC is a Delaware limited liability company that registered to do business in the State of Nevada in approximately April, 2008, and remained active, according to Secretary of State records, through and including approximately April, 2009. Wink One, LLC, on information and belief, was owned, operated and managed by Liberman, Mitchell, and/or LVLP.

31. Wink One, LLC was owned, operated and managed by, on information and belief, by Liberman, Mitchell, and/or LVLP.

32. In that context, various real property and ownership equity transfers took place between LVLP and/or Wink One, LLC, during the operative time, and on information and belief, financial distributions and transactions occurred between Wink One, LLC

1 and its principals on a recurring basis, most of which were never disclosed in publicly
2 available records or documents.

3 33. In that context, various real property and ownership equity transfers took place
4 between LVLP and/or Wink One, LLC, during the operative time, and on information
5 and belief, financial distributions and transactions occurred between Wink One, LLC
6 and its principals on a recurring basis, most of which were never disclosed in publicly
7 available records or documents.

8 34. Casino Coolidge, LLC is a Delaware limited liability company that first registered to
9 do business in Southern Nevada in or about October, 2014.

10 35. On information and belief, Casino Coolidge, LLC is owned, operated and managed
11 by Liberman, Mitchell, LVLP, and/or LVLP..

12 36. In that context, various real property and ownership equity transfers took place
13 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on
14 information and belief, financial distributions and transactions occurred between
15 Casino Coolidge, LLC and its principals on a recurring basis, most of which were
16 never disclosed in publicly available records or documents and continues to operate
17 and be active in Southern Nevada through the present.

18 37. In that context, various real property and ownership equity transfers took place
19 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on
20 information and belief, financial distributions and transactions occurred between
21 Casino Coolidge, LLC and its principals on a recurring basis, most of which were
22 never disclosed in publicly available records or documents.

23 38. 305 Las Vegas. LLC is a Delaware limited liability company that first registered and
24 qualified to do business in Southern Nevada in approximately April, 2007, and
25 remains active and doing business in Southern Nevada through the present.

26 39. On information and belief, 305 Las Vegas, LLC was originally owned, operated and
27 managed by Liberman, Mitchell, and/or LVLP.

28 40. In that context, various real property and ownership equity transfers took place

1 between LVLP and/or 305 Las Vegas, LLC, during the operative time, and on
2 information and belief, financial distributions and transactions occurred between 305
3 Las Vegas, LLC and its principals on a recurring basis, most of which were never
4 disclosed in publicly available records or documents and continues to operate and be
5 active in Southern Nevada through the present.

6 41. In that context, various real property and ownership equity transfers took place
7 between LVLP and/or 305 Las Vegas, LLC, during the operative time, and on
8 information and belief, financial distributions and transactions occurred between 305
9 Las Vegas, LLC and its principals on a recurring basis, most of which were never
10 disclosed in publicly available records or documents.

11 42. On information and belief, unbeknownst to Plaintiffs, in approximately 2012
12 305 Las Vegas, LLC engaged in an internal transaction resulting in the acquisition of
13 the beneficial interest of Mitchell by a Mr. Win Churchill, and a monetary distribution
14 benefitting Mitchell to the tune of \$7.5 million, all of which Plaintiff has only learned
15 at very recent times.

16 43. On information and belief, MEYER PROPERTY, LTD., is fictitious entity that was
17 involved for a relatively short period of time with LEAH PROPERTY, LLC, and in
18 the context thereof participated in real estate transactions resulting in net financial
19 gain to Leah and/or Liberman, Mitchell, and/or LVLP, the specifics of which financial
20 gains were never disclosed nor reasonably discoverable by Plaintiffs herein.

21 44. In that context, various real property transfers took place between LVLP and/or Meyer
22 Property, LLC, during the operative time, and on information and belief, financial
23 distributions and transactions occurred between Meyer Property, LLC and its
24 principals on a recurring basis, most of which were never disclosed in publicly
25 available records or documents and continues to operate and be active in Southern
26 Nevada through the present.

27 45. In that context, various real property transfers and ownership equity took place
28 between LVLP and/or Meyer Property, LLC during the operative time, and on

information and belief, financial distributions and transactions occurred between Meyer Property, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents, is a Delaware limited liability that first registered to do business in Nevada in approximately February, 2011, and continues to operate and do business, in good standing, through and including this date. FC/LW Vegas is or was a Delaware limited liability company registered to do business in the State of Nevada in February 2011 which has maintained registration through the present.

46. On information and belief, Mitchell Holdings, LLC is a Delaware limited liability company that never qualified to do business within the State of Nevada, but was used by Defendant Mitchell for purposes of owning Mitchell's equity or beneficial interest in various other defendants, and fuddling money back and forth between such entities, in a matter that would not be detectable or readily discoverable by Plaintiffs or other creditors.

47. In that context, various real property and ownership equity transfers took place between LVLP and/or Mitchell Holdings, LLC during the operative time, and on information and belief, financial distributions and transactions occurred between Mitchell Holdings, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents, is a Delaware limited liability that first registered to do business in Nevada in approximately February, 2011, and continues to operate and do business, in good standing, through and including this date.

48. In that context, various real property transfers and ownership equity took place between LVLP and/or Mitchell Holdings, LLC during the operative time, and on information and belief, financial distributions and transactions occurred between Mitchell Holdings, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents, is a Delaware limited liability that first registered to do business in Nevada in approximately February,

2011, and continues to operate and do business, in good standing, through and including this date. FC/LW Vegas is or was a Delaware limited liability company registered to do business in the State of Nevada in February 2011 which has maintained registration through the present.

49. On information and belief, Liberman Holdings, LLC is a Delaware limited liability company that never qualified to do business within the State of Nevada, but was used by Defendant Liberman Holdings, LLC for purposes of owning Liberman's equity or beneficial interest in various other defendants, and fuddling money back and forth between such entities, in a matter that would not be detectable or readily discoverable by Plaintiffs or other creditors.

50. On information and belief, Liberman Holdings, LLC was owned and directed by Mitchell, Liberman, and/or LVLP.

51. In that context, various real property and ownership equity transfers took place between LVLP and/or Liberman Holdings, LLC during the operative time, and on information and belief, financial distributions and transactions occurred between Liberman and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents, is a Delaware limited liability that first registered to do business in Nevada in approximately February, 2011, and continues to operate and do business, in good standing, through and including this date.

52. Live Works TIC Successor, LLC, on information and belief, is a fictitious entity in which Liberman, Mitchell, and/or Las Vegas Land Holdings had substantial equity or beneficial interest, and was the ultimate recipient of financial proceeds, monies, emoluments and benefits deriving from Live Work LLC, and a tendency and common agreement entered into between Live Work, LLC and non-party Forest City Enterprises, through contractual and financial arrangements, referred to as the tenancy in common agreement, and numerous subsequent amendments thereto.

53. In that context, various real property and ownership equity transfers took place

between LVLP and/or Live Works TIC Successor, LLC, during the operative time, and on information and belief, financial distributions and transactions occurred between Live Works TIC Successor, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents and continues to operate and be active in Southern Nevada through the present.

54. In that context, various real property and ownership equity transfers took place between LVLP and/or Live Works TIC Successor, LLC during the operative time, and on information and belief, financial distributions and transactions occurred between Live Works TIC Successor, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents, is a Delaware limited liability that first registered to do business in Nevada in approximately February, 2011, and continues to operate and do business, in good standing, through and including this date.

55. Entity Defendants, MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIEBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LIVE WORK VEGAS, LLC, are believed to be Delaware limited liability companies and/or corporations which have conducted business in the State of Nevada, and are alleged on information and belief to be owned and/or controlled by Defendants, LAS VEGAS LAND PARTNERS, LLC, DAVID MITCHELL and BARNET LIBERMAN.

56. LVLP, LLC, Mitchell, and Liberman, created the various Entity Defendants, LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIEBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LIVE WORK VEGAS, LLC, on

information and belief, and used multiple sophisticated counsel for purposes of secreting, hiding, and conveying away valuable assets that were available to satisfy creditors such as Plaintiffs as alleged more specifically hereinafter (hereinafter referred to as the "Asset Protection Scheme").

57. That Plaintiffs do not at present know the true names and identities of those Entity Defendants, both corporate and individual, herein joined by fictitious names, but is informed and believes and therefore alleges that said Entity Defendants, are agents, employees, servants and representatives of the named Entity Defendants, or persons and entities acting in concert with the named Entity Defendants with respect to the premises herein plead, who are liable to the Plaintiffs by reason thereof, and the Plaintiffs pray leave to amend this Complaint to insert their true names and identities with appropriate allegations when the same becomes known.

58. Upon information and belief, part of the Asset Protection Scheme contemplated that the majority of the purported equity interests in the asset protection entities referred to two paragraphs above be held in the name of LAS VEGAS LAND PARTNERS, LLC, or an associated entity, all of which were and are in reality controlled by DAVID J. MITCHELL and BARNET LIBERMAN.

59. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC received its equity interests in the asset protection entities gratuitously, or for wholly inadequate consideration.

60. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC is the nominal holders of the alleged interests, in the entity defendants, and takes its direction from DAVID J. MITCHELL and BARNET LIBERMAN, in managing and operation in the asset protection entities, which exist merely to help Entity Defendants, LAS VEGAS LAND PARTNERS, LLC, DAVID J. MITCHELL and BARNET LIBERMAN protect the assets of LAS VEGAS LAND PARTNERS, LLC from judgment creditors such as Plaintiffs.

61. Plaintiff is informed and believes, that the Entity Defendants are the recipients of

fraudulent transfers of real property, monies, and other valuable assets as hereinafter alleged.

62. Nype obtained a judgment against LVLP on or about April 10, 2015, and initiated post-judgment collection and discovery efforts during the Summer of 2015.

63. The first post-judgment discovery documentation received by NYPE were various tax returns and limited related information for LVLP, subsequently followed by various bank statements and financial ledger documentation, which production occurred from approximately late August, 2015 through and including November 2015.

64. Most of the documentation so produced was already stale dated even when produced, (for example, the bank statements only being current through early 2014, despite producing documentation in late 2015.

65. While the documentation produced in the latter half of 2015 disclosed some suspicious circumstances and questionable transactions, it became clear that substantial additional source documents would be required to flesh out and understand precisely what had occurred.

66. Based on a preliminary review of the newly disclosed bank statements and ledgers, it was noted that there was a comingling of funds related to various payments that appear to be made on behalf of other entities. Although not all of the canceled checks were provided, the bank statements of Las Vegas Land Partners, LLC located at Bates LVLP01-00001 to LVLP 08-00016 are indicative of usage by numerous related party entities. An example of the comingling can be found at LVLP 07-00047, more specifically checks number 1287, 1288 and 1289 payable to the Clark County Treasurer for parcels that do not appear to be recorded in the name of Las Vegas Land Partners, LLC and LVLP07-00048 more specifically checks number 1292 and 1293 payable to Delaware Secretary of State to register other entities.

67. Documents provided by Las Vegas Land Partners, LLC consisting of a simple check register covering the period 1/13/11 to 4/27/15 also supports that conclusion with the same date, payee and dollar amount information found on the checks.

68. A review of the full tax returns of LVLP Holdings, LLC provided at Bates LVLP09-00001 to LVLP17-0064 Forms 1065 for calendar years 2005 to 2013 was first possible in the late fall of 2015 as well. The tax returns are indicative of a combination and consolidation of several related party Limited Liability Companies.
69. The organizational documents located at Bates LVLP18-00001 to LVLP19-00202 indicate that Las Vegas Land Partners, LLC is the single equity member of Wink One, LLC and Livework Manager, LLC (who is the sole equity member of Livework, LLC).
70. The members of Las Vegas Land Partners, LLC are Barnet Liberman and David Mitchell (Bates LVLP19-00033-35).
71. There is no explanation for the usage of "LVLP Holdings, LLC" as the filing entity for the tax returns. There are numerous real estate parcels, equity interests and sources of income arising from the various consolidated entities listed on the tax returns of LVLP Holdings, LLC that are not traceable to the ledgers provided by Las Vegas Land Partners, LLC.
72. Additionally there are numerous known sources of cash flow for example arising from Wink One, LLC related to the RTC Lease that are not traceable to the accounting records.
73. During the Summer of 2016, NYPE again promulgated detailed specific written discovery requests to LVLP, which requests were partially complied with in the form of additional tax returns and ledger documentation, but mostly objected to.
74. NYPE found it necessary to file a Motion to Compel discovery, and an Order resulting from many months of contested discovery disputes was finally entered by the Court on or about February 2, 2017.
75. A substantial volume of additional documentation was ultimately produced, after repeated efforts by NYPE, which disclosed additional improprieties, misconduct, and transactions by LVLP and its principals designed to effectively render LVLP insolvent

...

1 and unable to respond in damages, which transactions will be discussed, in part,
2 hereinafter.

3 76. To date, however, the Order Compelling Discovery of February 2, 2017 has only been
4 partially complied with and there remain substantial deficiencies and blocks of
5 documentation that could and should have been produced, but was not. NYPE intends
6 to seek the missing documentation and discovery information required to fully flesh
7 out NYPE's allegations and complaint through supplemental discovery proceedings
8 in the original case, as well as through discovery activity in this newer case.

9 77. Even the documents produced from January through March, 2017, are inherently
10 contradictory and do not match the data reported on the tax returns.

11 78. As one key example, however, of the importance of having accurate and complete
12 source records, attached hereto as Exhibit "1" and by this reference incorporated
13 herein is a certification by LVLP's New Jersey CPA for the first time disclosing that
14 various affiliated and associated entities are disregarded for tax and accounting
15 purposes, and are all reported through LVLP Holdings, LLC's business tax return.

16 79. The partial and incomplete documentation produced in both the fall of 2015, and
17 2017, does show extensive co-mingling, a failure to keep separate and adequate
18 accounting records for various affiliates and associated companies, a decided lack of
19 concrete detail, and an absolute failure to account for and explain various cash flow
20 entries.

21 80. Gain the incomplete documentation produced to date, Plaintiff is unable to
22 determine where LVLP's cash flow is coming from, or where the resulting cash flow
23 is being applied.

24 81. On information and belief, the documentation available shows that LVLP, its
25 affiliates and associated entities are shifting money between one entity and the other
26 to pay bills and cover expenses as needed, and not in any coherent or recurring logical
27 form.
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- 1 82. The data that has been provided does not match LVLP tax returns, for example
2 failing to disclose substantial income.
- 3 83. Part of the data provided appears to account for, in part, the financial transactions
4 and relationship between LVLP and its joint venture partner (the entity which Nype
5 procured to provide financing for LVLP's projects), Forest City Enterprises.
- 6 84. The data available to date appears to show that arrangements were made with
7 Forest City to utilize LVLP's share of revenue and cash flow to reduce debt and build
8 equity, resulting in an absence of actual cash receipt by LVLP.
- 9 85. Despite what those records are showing, however, the tax returns are wholly silent
10 and fail to disclose the accrual of any imputed income or equity with respect to the
11 Forest City Joint Ventures, despite the fact that the joint venture documents suggest
12 that LVLP's share of revenue is being used to pay down debt and build equity, which
13 would legally result in the accrual of taxable income which the law requires to be
14 accurately reported .
- 15 86. Indeed, until the preliminary information was received in the Fall of 2015 as
16 supplemented by the early 2017 production, LVLP, based on the tax returns and
17 documentation it had previously supplied, continued to operate, appeared to have
18 assets, appeared to be paying taxes as accrued, and continued to vigorously defend
19 itself.
- 20 87. One particular item first disclosed in the late Winter of 2017 is a statement by the
21 acknowledged accountant for LVLP that numerous of the other defendant entities
22 herein are "disregarded for tax purposes", meaning, on information and belief, that
23 their revenue and expenses, as well as income and liabilities, while being nominally
24 contained in a separate legal entity, are a practical matter, and as recognized by
25 Federal Taxing Authorities, one and the same as LVLP.
- 26 88. Additional discovery information fleshed out in 2016 and early 2017 includes the fact
27 that LVLP is at the present time effectively insolvent, despite showing millions of
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dollars of networth on its tax returns, and has been forced to pay its attorneys in both the prior litigation and the present litigation through personal checks and credit cards of Mitchell and/or Liberman, or through affiliate entities.

89. Much of the newly received financial data also discloses that corporate filing fees for numerous of the defendants herein had been paid, *ad hoc*, from LVLP bank accounts, interchangeably, despite said entities nominally maintaining or claiming separate legal status.

90. Plaintiffs RUSSELL L. NYPE and the REVENUE PLUS, LLC (hereinafter collectively referred to as "Nype") were Defendants in a case originally initiated by current Defendants, LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC and ZOE PROPERTIES, LLC in the Eighth Judicial District Court in Clark County, Nevada under Case No. A551073, which case commenced on or about November 2, 2007 (hereinafter the "First Case").

91. Nype counterclaimed in that case with regard to his prior business dealings with LAS VEGAS LAND PARTNERS, LLC, its associate entities, and its principals, BARNET LIBERMAN (hereinafter "Liberman") and DAVID J. MITCHELL (hereinafter "Mitchell"), seeking compensation which he had been promised and which he had earned during the course of the parties ongoing business dealings regarding the development of numerous Las Vegas real estate holdings.

92. On information and belief, during the pendency of those proceedings, and after defaulting on their obligations to Nype, Liberman and Mitchell undertook the process of creating various affiliated and associate entities, including but not limited to several of the asset protection entities alleged hereinabove, utilizing sophisticated corporate and asset protection counsel.

93. After years of protracted litigation, Nype ultimately obtained a judgment against LAS VEGAS LAND PARTNERS, LLC on or about April 10, 2015 in the principal amount of \$2,608,797.50.

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94. As alleged hereinabove, upon information and belief, pursuant to the Asset Protection Scheme, on various dates spanning 2007 through the present, Defendant LAS VEGAS LAND PARTNERS, LLC commenced multiple real property and equity ownership transfers to convey its valuable property interests, to one or more the asset protection entities which asset protection entities continue to hold the subject property or which have subsequently transferred such to additional entities in which Liberman, Mitchell, and or LVLP hold substantial beneficial interests.
95. In addition to the numerous real property conveyances alleged hereinabove, and totally unbeknownst to Nype at the time LAS VEGAS LAND PARTNERS, LLC transferred literally millions of dollars in monies and liquidated funds to its principals, LIBERMAN and MITCHELL, during a time that LAS VEGAS LAND PARTNERS, LLC, knew or reasonably should have known of Nype's substantial monetary claims against it.
96. The real estate and monetary transfers alleged hereinabove effectively rendered LAS VEGAS LAND PARTNERS insolvent, and unable to pay its debts on a regular basis as they matured, including but not limited to the monies that the Eighth Judicial District Court has determined are owed to Nype.
97. Upon information and belief, the aforesaid actions of all Defendants were undertaken consciously, knowingly, willfully, and specifically in an effort to defeat and avoid Plaintiff's rights which were being pursued in the First Case.
98. Upon information and belief, Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, **LIBERMAN AND MITCHELL** were and are the alter ego of LAS VEGAS LAND PARTNERS, LLC, that said Defendant did and still does dominate, influence and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework

1 which LAS VEGAS LAND PARTNERS, LLC used and still use to conduct their
2 business affairs; that each such entity is and remains inadequately capitalized; and that
3 an injustice and fraud upon Plaintiff will result if the theoretical separateness of LAS
4 VEGAS LAND PARTNERS, LLC entity is not disregarded and the said Defendant
5 held liable for all relief being caught herein.

6 99. Upon information and belief, Plaintiff is informed and believes and thereon alleges
7 that at all times herein mentioned Defendants, **MEYER PROPERTY, LLC** was and
8 is the alter ego of MEYER PROPERTY, LLC, that said Defendants did and still do
9 dominate, influence and control of MEYER PROPERTY, LLC, that there existed and
10 still exists a unity of ownership between them; that the individuality and separateness
11 of each entity was and remains non-existent; that each such entity was and remains a
12 mere shell and naked framework which LAS VEGAS LAND PARTNERS, LLC,
13 MITCHELL and LIBERMAN used and still use to conduct their business affairs; that
14 each such entity is and remains inadequately capitalized; and that an injustice and
15 fraud upon Plaintiff will result if the theoretical separateness of MEYER PROPERTY,
16 LLC entity is not disregarded and the said Defendant held liable for all relief being
17 caught herein.

18 100. Upon information and belief, Plaintiff is informed and believes and thereon alleges
19 that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**
20 **LLC, LIBERMAN and MITCHELL** were and are the alter ego of ZOE
21 PROPERTY, LLC, that said Defendants did and still do dominate, influence and
22 control of **ZOE PROPERTY, LLC**, that there existed and still exists a unity of
23 ownership between them; that the individuality and separateness of each entity was
24 and remains non-existent; that each such entity was and remains a mere shell and
25 naked framework which LAS VEGAS LAND PARTNERS, LLC, MITCHELL and
26 LIBERMAN used and still use to conduct their business affairs; that each such entity
27 is and remains inadequately capitalized; and that an injustice and fraud upon Plaintiff
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- will result if the theoretical separateness of **ZOE PROPERTY, LLC** entity is not disregarded and the said Defendant held liable for all relief being caught herein.
101. Upon information and belief, Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC, LIBERMAN and MITCHELL** were and are the alter ego of **LEAH PROPERTY, LLC**, that said Defendants did and still do dominate, influence and control of **LEAH PROPERTY, LLC**, that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which **LAS VEGAS LAND PARTNERS, LLC, MITCHELL and LIBERMAN** use and still use to conduct their business affairs; that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon Plaintiff will result if the theoretical separateness of **LEAH PROPERTY, LLC**, if entity is not disregarded and the said Defendant held liable for all relief being caught herein.
102. Upon information and belief, Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC** were and are the alter ego of **WINK ONE, LLC**, that said Defendant did and still does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which **WINK ONE, LLC** used and still use to conduct their business affairs; that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon Plaintiff will result if the theoretical separateness of **WINK ONE, LLC** if entity is not disregarded and the said Defendant held liable for all relief being caught herein
103. Upon information and belief, Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**

- 1 LLC were and are the alter ego of **LIVE WORK, LLC**, that said Defendant did and
2 still does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**,
3 that there existed and still exists a unity of ownership between them; that the
4 individuality and separateness of each entity was and remains non-existent; that each
5 such entity was and remains a mere shell and naked framework which **LIVE WORK,**
6 **LLC** used and still use to conduct their business affairs; that each such entity is and
7 remains inadequately capitalized; and that an injustice and fraud upon
8
9 104. Plaintiff will result if the theoretical separateness of **LIVE WORK, LLC** if entity is
10 not disregarded and the said Defendant held liable for all relief being caught herein.
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12 105. Upon information and belief, Plaintiff is informed and believes and thereon alleges
13 that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**
14 **LLC** were and are the alter ego of **LIVE WORK MANAGER, LLC**, that said
15 Defendant did and still does dominate, influence and control of **LAS VEGAS LAND**
16 **PARTNERS, LLC**, that there existed and still exists a unity of ownership between
17 them; that the individuality and separateness of each entity was and remains non-
18 existent; that each such entity was and remains a mere shell and naked framework
19 which **LIVE WORK MANAGER, LLC** used and still use to conduct their business
20 affairs; that each such entity is and remains inadequately capitalized; and that an
21 injustice and fraud upon Plaintiff will result if the theoretical separateness of **LIVE**
22 **WORK MANAGER, LLC** entity is not disregarded and the said Defendant held
23 liable for all relief being caught herein.
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25 106. Upon information and belief, Plaintiff is informed and believes and thereon alleges
26 that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**
27 **LLC**, was and are the alter ego of **AQUARIUS OWNER, LLC**, that said Defendant
28 did and still does dominate, influence and control of **LAS VEGAS LAND**
PARTNERS, LLC, that there existed and still exists a unity of ownership between
them; that the individuality and separateness of each entity was and remains non-

1 existent; that each such entity was and remains a mere shell and naked framework
2 which **AQUARIUS OWNER, LLC** used and still use to conduct their business
3 affairs; that each such entity remains inadequately capitalized; and that an injustice
4 and fraud upon Plaintiff will result if the theoretical separateness of **AQUARIUS**
5 **OWNER, LLC** entity is not disregarded and the said Defendant held liable for all
6 relief being caught herein.

7 107. Upon information and belief, Plaintiff is informed and believes and thereon alleges
8 that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**
9 **LLC** were and are the alter ego of **LVLPHOLDINGS, LLC**, that said Defendant did
10 and still does dominate, influence and control of **LAS VEGAS LAND PARTNERS,**
11 **LLC**, that there existed and still exists a unity of ownership between them; that the
12 individuality and separateness of each entity was and remains non-existent; that each
13 such entity was and remains a mere shell and naked framework which **LVLPHOLDINGS, LLC**
14 used and still use to conduct their business affairs; that each such
15 entity is and remains inadequately capitalized; and that an injustice and fraud upon
16 Plaintiff will result if the theoretical separateness of **LVLPHOLDINGS, LLC** entity
17 is not disregarded and the said Defendant held liable for all relief being caught herein.

18 108. Upon information and belief, Plaintiff is informed and believes and thereon alleges
19 that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**
20 **LLC**, were and are the alter ego of **MITCHELL HOLDINGS, LLC**, that said
21 Defendant did and still does dominate, influence and control of **LAS VEGAS LAND**
22 **PARTNERS, LLC**, that there existed and still exists a unity of ownership between
23 them; that the individuality and separateness of each entity was and remains non-
24 existent; that each such entity was and remains a mere shell and naked framework
25 which **MITCHELL HOLDINGS, LLC** used and still use to conduct their business
26 affairs; that each such entity is and remains inadequately capitalized; and that an
27 injustice and fraud upon Plaintiff will result if the theoretical separateness
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MITCHELL HOLDINGS, LLC entity is not disregarded and the said Defendant held liable for all relief being caught herein.

109. Upon information and belief, Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC** were and are the alter ego of **LIEBERMAN HOLDINGS, LLC**, that said Defendant did and still does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which **MITCHELL HOLDINGS, LLC**, used and still use to conduct their business affairs; that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon Plaintiff will result if the theoretical separateness of **MITCHELL HOLDINGS, LLC** entity is not disregarded and the said Defendant held liable for all relief being caught herein.

110. Upon information and belief, Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**, were and are the alter ego of **305 LAS VEGAS, LLC**, that said Defendant did and still does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which **305 LAS VEGAS, LLC**, used and still use to conduct their business affairs; that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon Plaintiff will result if the theoretical separateness of **LAS VEGAS LAND PARTNERS, LLC** entity is not disregarded and the said Defendant held liable for all relief being caught herein.

111. Upon information and belief, Plaintiff is informed and believes and thereon alleges

that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**, was and are the alter ego of **LIVE WORKS TIC SUCCESSOR, LLC**, that said Defendant did and still does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which **LIVE WORKS TIC SUCCESSOR, LLC** used and still use to conduct their business affairs; that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon Plaintiff will result if the theoretical separateness of **LAS VEGAS LAND PARTNERS, LLC** entity is not disregarded and the said Defendant held liable for all relief being caught herein.

112. Upon information and belief, Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**, were and are the alter ego of **FC/LIVE WORK VEGAS, LLC**, that said Defendant did and still does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**, that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which **FC/LIVE WORK VEGAS, LLC** used and still use to conduct their business affairs; that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon Plaintiff will result if the theoretical separateness of **LAS VEGAS LAND PARTNERS, LLC** entity is not disregarded and the said Defendant held liable for all relief being caught herein.

113. Upon information and belief, Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS, LLC**, were and are the alter ego of **CASINO COOLIDGE, LLC**, that said Defendant did and still does dominate, influence and control of **LAS VEGAS LAND**

PARTNERS, LLC, that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which **CASINO COOLIDGE, LLC** used and still use to conduct their business affairs; that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon Plaintiff will result if the theoretical separateness of LAS VEGAS LAND PARTNERS, LLC entity is not disregarded and the said Defendant held liable for all relief being caught herein.

114. This New Case is effectively an extension and development of the first litigation, and is an effort by Plaintiffs to avoid the wrongful misconduct of Defendants and each of them, in attempting to avoid NYPE's creditor rights and protect the assets of LAS VEGAS LAND PARTNERS, LLC, which were, are, and should be available to satisfy Plaintiff's claims.

FIRST CLAIM FOR RELIEF

(Constructive Trust)

115. Plaintiff incorporates by reference paragraphs 1 through 114 as though fully set forth.
116. Pursuant to the pending litigation in the First Case, it was understood that options or equity in various Real Estate parcels owned by LAS VEGAS LAND PARTNERS, LLC in or about 2006, as well as "Choses In Action" such as equity ownership in various affiliated entities, would be available to satisfy Plaintiff's judgment.
117. Defendants knew or reasonably should have known, that the subject property interests were valuable, and that the legitimate equity in the subject real property or beneficial ownership of the affiliate entities and limited liability ownership interest would be sufficient to satisfy Nype's claim, but for the fraudulent conveyances alleged herein.
118. Defendants transferred, hypothecated and encumbered the various property for improper purposes and inadequate consideration.

1 119. All of the foregoing facts make it just and equitable that this court impose and
2 declare a constructive trust upon the subject property interests, and any proceeds
3 therefrom, in favor of Plaintiffs.

4 120. The court can and should declare a lien against the subject properties, order the
5 sale thereof, and/or order the payment of all rents or monies received from the subject
6 property to Plaintiffs herein.

7 121. It has been necessary for Plaintiff to retain the services of an attorney to prosecute
8 this action and Plaintiff is therefore entitled to an award of reasonable attorneys' fees

9 **SECOND CLAIM FOR RELIEF**

10 **(Fraudulent Conveyance)**

11 122. Plaintiff incorporates by reference paragraphs 1 through 121 as though fully set forth.

12 123. Plaintiff is informed and believes, and on that basis alleges that Defendants have
13 taken numerous actions to avoid satisfying Plaintiff's claims against LAS VEGAS
14 LAND PARTNERS, LLC.

15 124. Plaintiff alleges on information and belief that in order to avoid potential execution
16 against real estate interests, *inter alia*, Defendants, LAS VEGAS LAND PARTNERS,
17 LLC took steps to hypothecate and transfer said property interests and cash to the
18 other Defendants herein.

19 125. Plaintiff is informed and believes, and on that basis alleges that such transfers by
20 Defendants were undertaken in an effort to avoid the adverse financial consequences
21 of Plaintiff's pending claims, as well as those of other creditors.

22 126. Plaintiff is informed and believes, and on that basis alleges that the aforementioned
23 transfers were gratuitous, or for inadequate or disguised consideration, made without
24 obligation, and made with an intent to deprive Plaintiff of its ability to recover such
25 funds directly from LAS VEGAS LAND PARTNERS, LLC in connection with the
26 monies owed to Plaintiff.

27 127. As a result of the aforementioned acts of Defendants, Plaintiff is entitled to a
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- Judgment against them, jointly and severally, in an amount in excess of \$10,000.00.
128. On or about August 14, 2015, during the course of proceedings initiated to enforce and collect upon the judgment in the First Case, Defendant LAS VEGAS LAND PARTNERS, LLC first provided tax returns and detail financial information which revealed to Nype, for the first time, that it had transferred its beneficial interest in numerous real estate parcels, and in the equity of its affiliates, as well as many millions of dollars, to the entity defendants and/or Liberman and Mitchell, during the ongoing pendency of the first case. In making such transfers, Defendants LAS VEGAS LAND PARTNERS, LLC, MITCHELL and LIBERMAN have acted with the actual intent to hinder delay and to defraud their creditors, including Nype, but fraudulently transferring assets to insiders and the entity defendants.
129. Nype lacks an adequate remedy at law because, unless the relief sought in this complaint is granted, LAS VEGAS LAND PARTNERS, LLC with the aid of the other Defendants will have succeeded in fraudulently transferring its assets to insiders and/or related entities, depriving Nype of the opportunity to collect upon the judgment, and we see what is due and owing from LAS VEGAS LAND PARTNERS, LLC.
130. Nype has an high probability of success on the merits in this action.
131. The aforesaid transfer of assets to insiders and/or the entity defendants was made with actual intent to hinder, delay or defraud creditors, most significantly Nype, and these transfers therefore constitute fraudulent transfers in violation of NRS 112.180.
132. LAS VEGAS LAND PARTNERS, LLC did not receive reasonably equivalent value for the transfers herein alleged.
133. Defendant, LAS VEGAS LAND PARTNERS, LLC intended to incur or reasonably should have believed they would incur debts beyond its ability to pay the same as they become due, and thus the transfers at issue are far from transfers in violation of Nevada law.

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134. Because of the special circumstances of this case, in which LAS VEGAS LAND PARTNERS, LLC is liable for a judgment it has consistently ignored and avoided, having committed fraud to avoid the judgment and their debts to Nype, and the hiding assets and also constituting a risk of further affirmative frustration of valid efforts by Nype to collect upon his judgment, Nype is entitled to:

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- (1) The appointment of receiver to take possession of the assets of LVLP, LLC;
 - (2) An injunction against further dissipation, disposition, or assignment of any and all assets and property owned by LAS VEGAS LAND PARTNERS, LLC;
 - (3) Any other relief that the circumstances may require, including a declaration that the transfers in question are void, and that the assets in question are subject to execution by Nype.

135. It has been necessary for Plaintiff to retain the services of an attorney to prosecute this action, and Plaintiff is, therefore, entitled to reasonable attorneys' fees.

THIRD CLAIM FOR RELIEF

(Civil Conspiracy)

136. Plaintiff incorporates by reference paragraphs 1 through 135 as though fully set forth.

137. As alleged hereinabove, and upon information and belief, the transfer of the subject real estate and equity ownership interests and substantial monetary amounts were undertaken by Defendants with full knowledge as to the relevant circumstances and in an effort to participate in transactions in derogation of the rights of Plaintiff.

138. The knowing and willful conduct of the entity Defendants in agreeing to receive the subject real property and act as a nominee for said LAS VEGAS LAND PARTNERS, LLC, LIBERMAN and MITCHELL constitute acts of civil conspiracy.

139. The Defendants, and each of them worked together in concerted actions with the intent to accomplish an unlawful purpose, vis a vis Plaintiff.

- 1 140. The purpose of the unlawful, concerted actions of Defendants was intended to, or
2 would likely result in direct harm to Plaintiff.
3
4 141. As a direct and proximate result of the aforesaid civil conspiracy, undertaken
5 between the Defendants, Plaintiff has been damaged in an amount in excess of
6 \$10,000.00.
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8 142. As alleged hereinabove, upon information and belief, Defendants' conduct was
9 willful, knowing, intentional, and malicious, as a matter of law, entitling Plaintiff to
10 recover exemplary damages in an amount in excess of \$10,000.00.
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12 143. That it has been necessary for Plaintiff to retain the services of an attorney to
13 prosecute this action, and Plaintiff is therefore entitled to reasonable attorneys' fees.

14 **FOURTH CLAIM FOR RELIEF**

15 **(Declaratory Relief)**

- 16 144. Plaintiff incorporates by references Paragraphs 1 through 143 as though fully set
17 forth herein.
18
19 145. A true and ripe controversy exists as to the dispute, and declaratory relief pursuant
20 to NRS 30.040 is necessary to declare the respective rights, responsibilities, and
21 obligations between the parties as a consequence of Plaintiff's judgment against LAS
22 VEGAS LAND PARTNERS, LLC, and as relates to the various transactions
23 undertaken by Defendants, including but not limited to transactions involving various
24 parcels of valuable Las Vegas Real Estate and the transfer of valuable equity
25 ownership interests as regards LVLP's affiliated entities.
26
27 146. For all of the reasons set forth hereinabove, Defendants have acted wrongfully and
28 in violation of Plaintiffs rights as a Creditor, and a direct declaration as to the
invalidity of Defendants' transfers, and the viability of Plaintiff's Judgment Lien
against real estate as a priority lien (subject only to legitimate preexisting senior
encumbrance), and as a valid perfected security interest as regards valuable personal
property interests is appropriate, and should be determined and declared by the court.

147. That it has been necessary for the Plaintiff to retain the services of an attorney to prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

FIFTH CLAIM FOR RELIEF

(Alter Ego)

148. Plaintiff incorporates by references Paragraphs 1 through 147 As though fully set forth herein.

149. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendants, DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIAS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIEBERMAN HOLDINGS, LLC; 305 LAS VEGAS LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LIVE WORK VEGAS, LLC, CASINO COOLIDGE, LLC, and each of them, were and remain the alter-egos of each other; that said Defendants did and still do dominate, influence and control each other; that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which the other Defendants used and still use to conduct their business affairs; that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon Plaintiff will result if the theoretical separateness of the Defendant entities is not disregarded and each such Defendant held liable for all relief being sought herein.

150. Upon information and belief, to the extent that one or more of the Defendant entities is nominally owned or operated by or through LAS VEGAS LAND PARTNERS, LIBERMAN or MITCHELL with respect to one or more of the Defendant entities, which entities as a practical matter exist with functional unity of ownership in said Defendants, LAS VEGAS LAND PARTNERS, LIBERMAN or

MITCHELL, the true and factual individuality and separateness of each such entity was and remains non-existent; each such entity was and remains a mere shell and naked framework, which Defendants LAS VEGAS LAND PARTNERS, LIBERMAN or MITCHELL utilize, through the offices of said Defendants LAS VEGAS LAND PARTNERS, LIBERMAN or MITCHELL and/or through nominees and others to conduct their business affairs. Each such entity is, upon information and belief, merely another nominal manifestation of the business and financial affairs of Defendants LAS VEGAS LAND PARTNERS, LIBERMAN or MITCHELL, and to recognize any such separate entity would work as separate and distinct from Defendants LAS VEGAS LAND PARTNERS, LIBERMAN or MITCHELL, an injustice and fraud upon Plaintiff, to the extent the theoretical or putative separateness of such entity is not disregarded and said nominal Defendants held liable for all the relief being sought herein.

151. As a matter of both statutory common law, and prior declarations of the Eighth Judicial District Court, it is appropriate that the Court further determine and declare that all of the aforesaid entities be held to be the Alter Egos of Defendants LAS VEGAS LAND PARTNERS, LIBERMAN or MITCHELL, and that therefore the various Defendants named herein can and should be jointly and severely liable to the Plaintiff with regard to all claims asserted.

152. That it has been necessary for the Plaintiff to retain the services of an attorney to prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

WHEREFORE, Plaintiff prays for judgment against Defendants and each of them as follows:

1. For a sum in excess of \$10,000.00;
2. For exemplary damages in an amount in excess of \$10,000.00;
3. For the imposition of a constructive trust upon the various parcels of real property and valuable equity ownership interests formerly owned by LAS VEGAS LAND

- 1 PARTNERS, LLC for the benefit of Plaintiff;
- 2
- 3 4. For an order requiring the sale of the parcels of real estate and valuable ownership
- 4 interest and an order directing the payment of all rents with regard to the subject real
- 5 property be made to the order of Plaintiff herein;
- 6
- 7 5. For the Appointment of a Receiver;
- 8
- 9 6. For interest upon all damages which Plaintiff recovers at the Nevada Statutory rate.
- 10
- 11 7. For a declaration as to the invalidity of Defendants' transactions as regards to the
- 12 various valuable real estate interests and equity ownership interests formerly owned
- 13 by LAS VEGAS LAND PARTNERS, LLC, and a further declaration that Plaintiff's
- 14 Judgment Lien is valid and stands as a priority lien, subject only to legitimate senior
- 15 encumbrances.
- 16
- 17 7. For a determination that the Defendants are the alter egos of each other , and should
- 18 all be held liable to Plaintiff, jointly and severally, for the damages sought herein.
- 19
- 20 8. The actions by Defendant, LAS VEGAS LAND PARTNERS, LLC, in conjunction
- 21 with the other Defendants, to convey valuable property and monies to other
- 22 Defendants with the intent to deprive Plaintiff of its ability to recover funds was
- 23 undertaking in a knowing, willful, intentional, and malicious manner, which under
- 24 Nevada law constitute malice and is sufficient grounds to invoke the availability of
- 25 exemplary damages against Defendants, and each of them.
- 26
- 27 9. As a consequence of the willful malicious and intentional misconduct of the
- 28 Defendants and each of them, Nype is entitled to recover exemplary damages from
- each Defendant in accordance with Nevada Law, in an amount in excess of
- \$10,000.00, the precise amount to be proven at time of trial;

10. For reasonable attorneys' fees for the prosecution of this suit; and
11. For such other and further relief as the Court may deem just and proper.

DATED this 21st day of August, 2017.

JOHN W. MUIJE & ASSOCIATES

By: 

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CERTIFICATE OF SERVICE

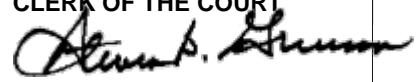
I hereby certify that I am an employee of JOHN W. MUIJE & ASSOCIATES, and that on the 21ST day of August, 2017, I caused to be served a true and correct copy of the foregoing **FIRST AMENDED COMPLAINT FOR: (1) CONSTRUCTIVE TRUST; (2) FRAUDULENT CONVEYANCE; (3) CONSPIRACY TO DEFRAUD; (4) DECLARATORY RELIEF; AND (5) ALTER EGO**, in the following manner:

- ☐ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or
- ☒ by electronically filing with the Clerk of the Court via the Odyssey E-File and Serve System;
- ☐ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid marked certified return receipt requested addressed as follows:
via facsimile at the facsimile number listed below; and/or
- ☐ pursuant to EDCR 7.26, by causing a copy to be sent via facsimile at the number(s) listed below; and/or
- ☐ by hand-delivering a copy to the party or parties as listed below:

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*Attorneys for the Mitchell Defendants***EIGHTH JUDICIAL DISTRICT COURT****CLARK COUNTY, NEVADA**

RUSSELL L. NYPE; REVENUE PLUS, LLC,
DOES I through X; DOE CORPORATIONS I
through X; and DOE PARTNERSHIPS I
through X;

Plaintiffs,

vs.

DAVID J. MITCHELL; BARNET
LIBERMAN; LAS VEGAS LAND
PARTNERS, LLC; MEYER PROPERTY
LTD.; ZOE PROPERTY, LLC; LEAH
PROPERTY, LLC; WINK ONE, LLC;
AQUARIUS OWNER, LLC; LVLV
HOLDINGS, LLC; MITCHELL HOLDINGS,
LLC; LIBERMAN HOLDINGS, LLC; 305
LAS VEGAS, LLC; LIVE WORKS TIC
SUCCESSOR, LLC; CASINO COOLIDGE
LLC; DOES I THROUGH III, inclusive; and
ROE CORPORATIONS I THROUGH III,
inclusive,

Defendants

Case No.: A-16-740689-B

Dept. No.: XI

**MOTION TO ALTER OR AMEND
JUDGMENT PURSUANT TO NRCP 52
AND NRCP 59(e)**

HEARING REQUESTED

COMES NOW David J. Mitchell, Las Vegas Land Partners, LLC Meyer Property, LTD,

1 Zoe Property, LLC; Leah Property, LLC; Wink One, LLC; Aquarius Owner, LLC; LVLP
2 Holdings, LLC, and Live Works Tic Successor, LLC by and through their counsel of record, H.
3 Stan Johnson, Esq. of the law firm Cohen Johnson Parker Edwards and hereby move the Court to
4 alter or amend its judgment against them pursuant to NRCP 59(e) and NRCP 52. This Motion is
5 made and based upon the papers and pleadings on file herein, the memorandum of Points and
6 Authorities submitted in support hereof, and upon any oral argument that this Court may entertain.
7

8 DATED this 14th day of February 2020.

9 **COHEN JOHNSON PARKER EDWARDS**

10 /s/ H. Stan Johnson

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25
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27
28

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

The Court's findings and conclusions in this matter are not supported by Nevada law and the evidence presented at trial and should be amended. The Court made findings that the defendants were alter egos of each other. In addition, the Court found a civil conspiracy and awarded substantial damages on this basis. Both conclusions fail in light of Nevada law. The factors required to prove alter ego are not present here. Moreover, the civil conspiracy found by the Court is undermined by factual, legal, and practical issues. In addition, the Court awarded nearly five million dollars in attorney's fees as special damages. This award was also unsupported and should be amended. This motion is filed to remedy these concerns without the need for a costly appeal.

II.

STATEMENT OF RELEVANT FACTS

The facts underlying this Motion are well known to the Court and will not be repeated here. Trial in this matter began on December 30th, 2019 and continued through January 8th, 2020. After the conclusion of this trial, the Court entered an Amended Findings of Fact, Conclusions of Law, and Judgment on January 17th, 2020. In this judgment awarded cumulative damages of \$19,641,545.90. The Court also made various findings of fact and conclusions of law that will be discussed in this Motion.

III.

LEGAL STANDARD

A. LEGAL STANDARD FOR MOTION TO AMEND PURSUANT TO NRCP

52(b)

Rule 52(b) provides, in pertinent part, "[u]pon a party's motion filed not later than 28 days after service of written notice of entry of judgment, the court may amend its findings or make additional findings and may amend the judgment accordingly." In applying Rule 52(b), the

1 Nevada Supreme Court has stated, “findings of fact and conclusions of law must be upheld if
2 supported by substantial evidence and may not be set aside unless clearly erroneous.” *Trident*
3 *Constr. Corp. v. W. Elec., Inc.*, 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989) (citations
4 omitted). See also, *Pace v. Linton*, 97 Nev. 103, 625 P.2d 84 (1981).

5 **B. LEGAL STANDARD FOR MOTION TO AMEND PURSUANT TO NRCP 59(e)**

6 NRCP 59(e) states that a motion to alter or amend a judgment must be filed within 28
7 days of after service of written notice of entry of judgment. NRCP 59(e) echoes Fed. R. Civ. P.
8 59(e) and so the federal rule may be consulted in interpreting is. *Coury v. Robison*, 115 Nev. 84,
9 91 n.4, 976 P.2d 518, 522 n.4 (1999). Because its terms are so general, Federal Rule 59(e) “has
10 been interpreted as permitting a motion to vacate a judgment rather than merely amend it,” and
11 that “cover[ing] a broad range of motions, the only real limitation on the type of motion
12 permitted [is] that it must request a substantive alteration of the judgment, not merely correction
13 of a clerical error, or relief of a type wholly collateral to the judgment.” *AA Primo Builders, LLC*
14 *v. Washington*, 126 Nev. 578, 245 P.3d 1190, 126 Nev. Adv. Rep. 53 (2010). Quoting 11 C.
15 Wright, A. Miller & M. Kane, Federal Practice and Procedure § 2810.1, at 119 (2d ed. 1995) See
16 also *Osterneck v. Ernst & Whinney*, 489 U.S. 169, 109 S. Ct. 987, 103 L. Ed. 2d 146 (1989);
17 *Buchanan v. Stanships, Inc.*, 485 U.S. 265, 108 S. Ct. 1130, 99 L. Ed. 2d 289 (1988)). Among
18 the “basic grounds” for a Rule 59(e) motion is “correct[ing] manifest errors of law or fact,” and
19 the need “to prevent manifest injustice.” *Id.*

20 **IV.**

21 **LEGAL ARGUMENT**

22 **A. THE COURT ERRED IN AWARDING AS DAMAGES FOR CIVIL CONSPIRACY** 23 **IN THE AMOUNT OF THE LVLP TRANSFERS.**

24 Regarding damages in a civil conspiracy, the “recovery [which] may be had in
25 a civil action is not the conspiracy itself **but the injury to the plaintiff produced by specific**
26 **overt acts.**” *Flowers v. Carville*, 292 F. Supp. 2d 1225, 1229-30 (D. Nev. 2003) citing *Rutkin v.*
27 *Reinfeld*, 229 F.2d 248, 252, 1956. See also *Aldabe v. Adams*, 81 Nev. 280, 287, 402 P.2d 34, 37,
28

1 (1965).

2 Here, Mitchell and Liberman's actions did not damage Nype in the amount of \$15 million.
3 In the underlying case of A551073, Nype ultimately obtained a judgment in the principal amount
4 of \$2,608,797.50. These transfers, which occurred as many as eight years before Nype had a
5 judgment, is not the proper measure of damage in a civil conspiracy action. Even assuming that
6 they did thwart Nype's collection attempts, they only kept him from collecting his \$2.6 million
7 dollar judgment and associated interest. Accordingly, as civil conspiracy damages must be tied to
8 the underlying overt acts, if Nype is to recover anything at all, he should only be allowed to recover
9 an amount equivalent to that which he was prevented from recovering. Therefore, damages in this
10 case should be limited to the amount of the underlying case's judgment plus interest.

11
12 However, this Court has awarded judgment based on the amount of the total distributions
13 to Mitchell and Liberman. (Which distributions are time barred as a cause of action; see argument
14 herein below). This is not supported by the case law cited above and this approach could cause
15 substantial practical concerns. Following this line of reasoning, if \$1 billion dollars had been
16 distributed to Mitchell and Liberman, then Nype would be awarded \$1 billion dollars for his
17 inability to collect \$2.6 million dollars. Conversely, if the distributions had been only \$10,000.00
18 dollars, the conceivably Nype would have been awarded only \$10,000.00. Tying the judgment
19 award to the amount of the distributions, instead of Nype's actual damages, is a manifest error of
20 law and fact.

21
22 Further, any award above this amount is punitive in nature, and as this court has held, Nype
23 did not prove that punitive damages were appropriate in this matter. *See Conclusions at 23.*
24 Accordingly, the Court should amend its judgement, eliminating the judgment against the
25 Defendants for civil conspiracy. In the alternative, the damages from this conspiracy should be
26 limited to the amount of Nype's underlying judgment.
27
28

1 **B. NYPE’S CLAIMS FOR A CIVIL CONSPIRACY IS TIME BARRED.**

2 To establish a claim for civil conspiracy, a Plaintiff must prove “a combination of two or
3 more persons who, by some concerted action, intend to accomplish an unlawful objective for the
4 purpose of harming another, and damage results from the act or acts.” *Hilton Hotels v. Butch Lewis*
5 *Productions*, 109 Nev. 1043, 148, 862 P.2d 1207, 1210 (1993).
6

7 When it made its findings as to the Civil Conspiracy cause of action, this Court found that:

8 “a. Mitchell and Liberman, engaged in conscious, concerted and ongoing efforts to
9 conceal, hide, convey, keep secret and/or distribute millions of dollars in assets
 away from Nype;

10 b. Mitchell and Liberman received distributions from LVLP and the Related
11 entities;

12 c. Mitchell, fabricated and backdated evidence to facilitate the destruction and/or
13 concealment of material financial evidence by his agent that would have greatly
 assisted Nype's case.”

14 *See Conclusions of Law at 19.*

15 This Court has also found that “Plaintiff has not established by a preponderance of the
16 evidence the elements of civil conspiracy separate and apart from the distributions and fabrication
17 of evidence.” *See Conclusions of Law at 21*. The Court also states in footnote 11 that “The
18 limitations for a civil conspiracy claim is not limited by NRS 112.230(1)(a) but is instead governed
19 by NRS 11.220 and the discovery rule.” Finally, the Court found that disclosure of the relevant tax
20 returns put Nype on notice of the transfers made by Defendants. *See Findings at 42*. This is further
21 elaborated by the Nevada Supreme Court that “an action for civil conspiracy accrues when the
22 plaintiff discovers or should have discovered all of the necessary facts constituting a conspiracy
23 claim.” *Siragusa v. Brown*, 114 Nev. 1384, 1393, 971 P.2d 801, 807 (1998). Note that the standard
24 is not all the facts, but just the necessary ones.
25

26 Because this Court has found that Plaintiff did not establish his claim of civil conspiracy
27 apart from the distributions and fabrication of evidence, the Court must find that Plaintiffs’ civil
28

1 conspiracy claim is outside to the statute of limitations as Nype had knowledge of the necessary
2 facts required to bring this civil conspiracy claim.

3 The Court has found that Mitchell and Liberman distributed millions of dollars to
4 themselves. The Court has found that they conspired to do so. *See Conclusions at 19(b)*. These
5 distributions mainly took place and are memorialized in tax returns from 2007-2009, the disclosure
6 of which, the Court found put Nype on notice of the transfers. The first disclosure of these
7 documents was in 2011. Accordingly, the four-year statute of limitations based upon NRS 11.220,
8 began running in 2011, when Nype discovered, or should have discovered these transfers. At this
9 point in time, Nype knew or should have known that the transfers had been made between LVLP,
10 Mitchell, and Liberman, which are necessary facts for the Court's finding of a civil conspiracy.

11 Further, logically, the statute of limitations cannot run for the fraudulent transfer cause of
12 action and not the civil conspiracy. The Court found that "Certain of those distributions were made
13 outside of the statute of limitations period under NRS 112.180(1)(a)." *See Conclusions at 12*. The
14 Court also found that "The earlier transfers are barred by the limitations period for purposes of the
15 fraudulent transfer claim, only." However, the essence of a civil conspiracy is the underlying torts,
16 so if one cannot lie due to the statute of limitations, the other must be barred as well. If there were
17 no actionable fraudulent transfers, there can be no actionable civil conspiracy.

18 Plaintiffs' claim for civil conspiracy should be barred due to the statute of limitations,
19 and the judgment awarded should be stricken. In the alternative, the award should be reduced to
20 the amount of the only allowed fraudulent transfer distribution of \$341,934.47.

21
22
23 **C. MITCHELL'S ACTIONS IN DISCOVERY AND ANY DISTRIBUTIONS TO
24 MITCHELL AND LIBERMAN CANNOT FORM THE BASIS OF A CIVIL
25 CONSPIRACY.**

26 The conduct of Mitchell and his CPA was wrong. However, such acts cannot form the
27 basis for civil liability. By analogy, it is uniformly held that the giving of false testimony is not
28

1 civilly actionable. See, *Eikelberger v. Tolotti*, 96 Nev. 525 (1980); *Radue v. Dill*, 246 N.W. 2D
2 507 (Wis. 1976); *Platts, Inc. v. Platts*, 438 P.2d 867 (Wash. 1968); *Ginsburg v. Halpern*, 118 A.2d
3 201 (Pa. 1955); *Kantor v. Kessler*, 40 A.2d 607 (NJ 1945). “A claim of conspiracy does not avoid
4 the doctrine that there is no civil action for giving false evidence.” . . . “Consequently, perjury is
5 an offense against the public only, and subject only to criminal law.” . . . “Thus we are compelled
6 to conclude that the Eikelbergers may not claim damages for the unethical conduct of Horton in
7 submitting a partially false affidavit.” *Eikelberger*, supra at p. 531.

8
9 Thus, the Court’s conclusion that:

10 Plaintiff has not established by a preponderance of the evidence the elements of
11 civil conspiracy separate and apart from the **distributions** and **fabrication of**
12 **evidence**. See Conclusions of Law at 21. (Emphasis added)

13 Makes it clear that based on the Nevada Supreme Court holding in *Eikelberger*,
14 supra, fabrication of evidence cannot form the necessary underlying tort for civil
15 conspiracy to be found in this case. This only leaves as a basis for civil conspiracy the
16 distributions.

17 Making capital distributions to the members of an LLC cannot by itself be the basis
18 of the underlying tort necessary to support a claim of civil conspiracy. There is no tort for
19 distributions to members unless it results in a fraudulent transfer. Since, the plaintiff only
20 sued for fraudulent conveyance and it is clear from the Amended Complaint that Plaintiff
21 under his Civil Conspiracy claim is only trying to extend the liability for Fraudulent
22 Conveyance to other entities or persons; this cannot be the basis for the underlying tort.

23 The Plaintiff states in paragraph 138:

24
25 The knowing and willful conduct of the entity Defendants in agreeing to receive
26 the **subject real property and act as a nominee** for said LAS VEGAS LAND
27 **PARTNERS, LLC, LIBERMAN and MITCHELL constitutes acts of civil**
conspiracy. (Emphasis added)

28 Since the Court found that all of the alleged fraudulent conveyances, except the Casino

1 Coolidge transaction, were barred by the statute of limitations in NRS 112.230(1) (See, Conclusion
2 of Law 12.); the distributions that occurred in 2007 through 2016 are barred by the statute of
3 limitations. “15. The earlier transfers are barred by the limitations period for the purposes of the
4 fraudulent transfer claim, only.” See Conclusion of Law 15. In 2007 and 2008 LVLP’s tax returns
5 show that \$15,143,639.00 was distributed in those two years. There is really nothing after that
6 point. Since \$15,143,639.00 was distributed in these two years that are barred by the statute of
7 limitations due to Nype’s knowledge and failure to timely bring a cause of action within the statute
8 of limitations; these distributions cannot form the basis of the underlying tort of fraudulent
9 conveyance necessary for the court to find civil conspiracy based on these distributions.
10

11 In addition, the Uniform Fraudulent Transfer Act was meant to codify the existing common
12 law causes of actions. The statutes of limitations for any common law cause of action that deals
13 with any type of fraud and the transfer of assets would be the same for fraud in Nevada three years.
14 So, under the Act or common law the distributions that occurred in 2007 and 2008 are barred by
15 the statute of limitations.
16

17 Further, NRS 86.343(7) acts as a statute of limitations and/or statute of repose regarding
18 any distributions to members:

19 7. A member who receives a distribution from a limited-liability company in
20 violation of this section is not liable to the limited-liability company and, in the
21 event of its dissolution or insolvency, to its creditors, or any of them, for the amount
22 of the distribution after the expiration of 3 years after the date of the distribution
23 unless an action to recover the distribution from the member is commenced before
24 the expiration of the 3-year period following the distribution.

25 NRS 86.343(7) is an additional basis that the distributions received by the members
26 cannot form the basis of an underlying tort to support civil conspiracy.

27 In addition, Mitchell cannot act in a conspiracy with his own agent, who in this case, is his
28 accountant. The Nevada Supreme Court has held that “Agents and employees of a corporation
cannot conspire with their corporate principal or employer where they act in their official capacities

on behalf of the corporation and not as individuals for their individual advantage.” *Collins v. Union Fed. Sav. & Loan Ass’n*, 99 Nev. 284, 303, 662 P.2d 610, 622 (1983). This case sets forth the well-established principle that one cannot act in concert or form a conspiracy with, their own agent. The accountant was acting in his capacity as the accountant for Las Vegas Land Partners, LLC. He is not a party to this case. His only involvement is as an agent or extension of Las Vegas Land Partners and the other defendants. Civil conspiracy requires two or more persons acting in a concerted manner, Mitchell cannot act in a civil conspiracy with himself, as the Court has found here. Therefore, this fabrication of evidence cannot be the concerted action upon which a civil conspiracy claim is based.

Regarding any other discovery conduct that the Court considers part of this civil conspiracy, that matter was already settled. Mitchell and the other defendants were sanctioned for their conduct. Finally, as discussed in trial, Nype received all the documents from the account that he and his expert maintained were missing prior to trial. Nype elected to proceed to trial instead of reviewing these documents. Accordingly, any discovery deficiencies which weighed on the trial were not a result of the Defendant’s actions, but were based entirely on Nype’s strategic decisions.

Based on the foregoing, the court should amend its judgment, removing its judgment based upon civil conspiracy. If the Court is not inclined to do so, it should at the very least, reduce its judgment to the amount of the actional fraudulent convenience that it found, \$341,934.47.

D. THE COURT’S FINDING OF ALTER EGO WAS INAPPROPRIATE.

To establish that one party is the alter ego of another, a party must show that:

- (a) [t]he corporation is influenced and governed by the stockholder, director or officer;
- (b) [t]here is such unity of interest and ownership that the corporation and the stockholder, director or officer are inseparable from each other; and
- (c) [a]dherence to the corporate fiction of a separate entity would sanction fraud or promote a manifest injustice. NRS 78.747(2) See also *LFC Mktg. Grp. v. Loomis*, 116 Nev. 896, 904, 8 P.3d 841, 846-47 (2000).

1 **1. The Court Erred in finding that the second factor was met.**

2 The second prong of this test necessitates a consideration of the following factors, (1)
3 commingling of funds, (2) undercapitalization, (3) unauthorized diversion of funds, (4) treatment
4 of corporate assets as the individual's own, and (5) failure to observe corporate formalities. *Lorenz*
5 *v. Beltio, Ltd.*, 114 Nev. 795, 808, 963 P.2d 488, 497 (1998). However, no single factor alone can
6 be determinative when applying the doctrine of alter ego. *Id.* While there is no litmus test for alter
7 ego, the courts have provided guidance in evaluating these factors.

8
9 When looking for commingling of funds, the courts have found that a parent company or
10 individual controlling the finances of a subsidiary does not equate the comingling of funds. *JSA,*
11 *LLC v. Golden Gaming, Inc.*, 2013 Nev. Unpub. LEXIS 1449, *13-19, 2013 WL 5437333. Nevada
12 Courts have specifically found that a subsidiary who lacks an “independent checking account,”
13 has no “independent review or control over its income and expenses,” whose parent makes “all
14 financial decisions,” pays the bills, and handles the money generally does not equate commingling
15 funds. *Id.* This is because Courts nationwide have generally declined to find alter ego liability
16 based on a parent corporation's use of a specific cash management or financial system. *Fletcher v.*
17 *Atex, Inc.*, 68 F.3d 1451, 1459 (2d Cir. 1995) (citing *In re Acushnet River & New Bedford Harbor*
18 *Proceedings*, 675 F. Supp. 22, 34 (D. Mass. 1987); *United States v. Bliss*, 108 F.R.D. 127, 132
19 (E.D. Mo. 1985); *Japan Petroleum Co. (Nigeria) v. Ashland Oil, Inc.*, 456 F. Supp. 831, 846 (D.
20 Del. 1978)).

21
22 Here, the Court made findings that:

23
24 48. Except with respect to Livework Manager and Casino Coolidge, none of these
25 entities had its own bank account. Mitchell caused each of the Related Entities to use the
26 same bank accounts to deposit and disburse funds, including distributions to Mitchell and
27 Lieberman.

28 49. At all relevant times, Mitchell and Liberman caused each of the Related Entities to
 use the same financial and accounting records, which are not distinguishable by entity.
 Each of the Related Entities’ financial and accounting records are not distinguishable by

1 entity.

2 51. Mitchell and Liberman caused each of the Related Entities to use the same general
3 ledger to post all entries under the name of “Las Vegas Land Partners.”

4 52. Mitchell, Liberman and the Related Entities commingled funds, including personal
5 loans from various banks which are included in the LVLP accounting records and general
6 records.

7 53. Mitchell and Liberman also used journal entries to post commingled transactions
8 for themselves and the Related Entities.

9 These findings are inappropriate given the case law cited above. LVLP is the parent company of
10 the related entities. These entities largely lacked their own bank accounts and used common
11 accounting records. Likewise, the subsidiary company in JSA lacked independent checking
12 accounts, records, and did not make their own financial decisions. In both cases, this structure is
13 insufficient grounds to find that commingling of funds occurred for the purpose of unity of interest
14 and ownership factor of alter ego. The testimony at trial from the Plaintiff’s own expert Mr. Rich
15 was that this type of structure among real estate developers was not unusual and that separate bank
16 accounts are not required. In fact, he testified that he had advised clients to use the same structure
17 and had not always required clients to have separate bank accounts for all subsidiaries.

18 This conclusion is also supported by common practices in the financial arena. Nype failed
19 to present any evidence during trial that any acts or practices undertaken by the defendants was
20 abnormal and were not done with the intent to defraud Nype. Accordingly, to find commingling
21 in this situation would open thousands of businesses to this same claim without cause and in
22 violation of Nevada case law.

23
24 Moreover, the Court erred in finding that Mitchell and Liberman commingled personal
25 funds with company funds. The “personal loans” where not personal at all. Witness testimony
26 testified that the loans in question were made for business purposes. While they were made to
27 Mitchell and Liberman personally, this was done at the insistence of the lender and these loans
28

1 were not personal. No evidence was presented at trial to establish that Mitchell or Liberman paid
2 personal funds out of corporate accounts. Without such a finding, there can be no commingling
3 and this element should weigh against a finding of alter ego.

4 Regarding the second possible factor, undercapitalization, courts have consistently
5 distinguished between undercapitalization and insolvency. “[t]he adequacy of capital is to be
6 measured as of the time of formation of a corporation. A corporation that was adequately
7 capitalized when formed but subsequently suffers financial reverses is not undercapitalized.” 1
8 Fletcher Cyc. Corp. §41.33; see also *Trustees of the Nat'l Elevator Indus. Pension, Health Benefit*
9 *and Educ. Funds v. Lutuk*, 332 F.3d 188, 196 (3d. Cir. 2003) (“mere insolvency is distinct from
10 undercapitalization”). Accordingly, insolvency is insufficient grounds to pierce the corporate veil.
11 *Paul Steelman, Ltd. v. Omni Realty Partners*, 110 Nev. 1223, 1225, 885 P.2d 549 (1994); *In re*
12 *Branding Iron Steak House*, 536 F.2d 299, 302 (9th Cir. 1976). Even undercapitalization alone is
13 insufficient grounds to disregard an entity. *North Arlington Medic. Bldg, Inc. v. Sanchez Constr.*,
14 86 Nev. 515, 471 P.2d 240, 244 (Nev. 1970).

15 Here, the Court made the following finding regarding undercapitalization:

16 46. One or more of the Related Entities was formed with an initial capitalization of just
17 \$10.

18 First and foremost, this finding is not accurate. While some entities were opened with an initial
19 capitalization of \$10, there was ample testimony that these entities were single purpose entities,
20 created for various real estate projects, often at the specific request of the lender involved in the
21 project. This is a common practice that was even acknowledged by Nype’s expert witness.
22 Accordingly, while an entity may have been formed on paper with an \$10 initial capitalization,
23 they consistently and almost immediately held development properties and projects worth millions
24 of dollars. Accordingly, the entities in question were not undercapitalized at all given their
25 purpose.
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Further, while some entities eventually became insolvent due to larger market forces, this does not equate to undercapitalization for the purposes of the alter ego analysis. Not only is this conclusion supported by the Nevada Case law cited above, but it is supported by practical considerations as well. The entities in this case were formed to facilitate land development. That they later became insolvent has no bearing on Mitchell and Liberman's intentions when they formed them and does not speak to a "unity of interest or ownership." This is why it is the entities purpose and capitalization at the time each was formed that matter when analyzing undercapitalization and not eight years later when Nype got his judgment. As these entities were not undercapitalized for their specific purposes, this factor should weigh against finding a unity of interest or ownership.

The next factors, "unauthorized diversion of funds" and "treatment of corporate assets as the individual's own" are similar, as the when evaluating unauthorized diversions, courts have consistently looked for diversions for "other than corporate purposes[es]..." *SEC v. Elmas Trading Corp.*, 620 F. Supp. 231, 234 (D. Nev. 1985) See also *SEC v. Torchia*, 2016 U.S. Dist. LEXIS 147123, *10 (N. D. Georgia 2016). Proving these factors falls entirely on the Plaintiff. *North Arlington Medic. Bldg.*, 471 P.2d at 244 (noting that burden was on the Plaintiff to demonstrate that the alleged alter-ego's use of corporate funds was not legitimate); *Nevada Contractors Ins. Co. v. Kukurin*, 2011 Nev. Unpub. LEXIS 486, 2011 WL 3298513, at *2 (Nev. July 29, 2011) (finding no unity of interest in an alter-ego analysis and stating, "[Plaintiffs] failed to demonstrate that [the Defendant] treated the money as his own, and there is nothing in the record that suggests [Defendant] treated [the] money as his own . . .")

Regarding this element, the court found that:

50. The LVLP accounting records include a few Mitchell and Liberman personal transactions and postings commingled from multiple entities.

During trial, the Plaintiff's failed completely to identify which transactions were allegedly

1 personal. They also failed to identify any “unauthorized diversion of funds.” This is explicitly their
2 burden under Nevada law. As Nype has failed to identify and present evidence regarding these
3 alleged personal transactions, this element must weigh against a finding of alter ego.

4 Finally, observing corporate formalities does not entail a kind of specific governance. To
5 observe proper formalities “separation of funds, independent accounts, [specific] agreements...,
6 or an operating agreement...” are not necessary. *JSA*, 2013 Nev. Unpub. Lexis *18. See also
7 *Weddell v. H2O, Inc.*, 128 Nev. 94, 271 P.3d 743, 749 (2012)(“An LLC may, but is not required
8 to, adopt an operating agreement, NRS 86.286.”) The corporate formalities required are merely
9 those required by law. *Fusion Capital Fund II, LLC v. Ham*, 614 F.3d 698, 701 (7th Cir. 2010)
10 (applying Nevada law and finding unity of interest where corporation did not maintain corporate
11 documentation required by law and was headquartered in members' residence); *JSA*, 2013 Nev.
12 Unpub. *6 (Nev. Sept. 25, 2013)(finding observance of corporate formalities where corporation
13 undertook all steps required of a limited liability company under state law). *Caple v. Raynel*
14 *Campers, Inc.*, 90 Nev. 341, 343-44, 526 P.2d 334 (1974)(“corporation had no apparent
15 independent business operation and existed solely for the purpose of conducting [individual's]
16 personal business”).

17 The “related entities” identified by the Court all comported with all formalities required by
18 law. All were formed properly under Delaware law. Many, if not all of these entities had operated
19 agreements, even though this is not explicitly required. These operating agreements were admitted
20 into evidence in this matter. Moreover, there are hundreds of other corporate documents which
21 manifest the lengths the defendants went to in order to honor corporate or LLC formalities.¹ These
22 documents clearly manifest that these entities undertook extensive efforts to observe and keep the
23

24 ¹ These exhibits constitute the bulk of Nype’s exhibits 1-55, these documents were also reproduced and
25 included elsewhere in the record.
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1 legal requirements of limited liability companies. Accordingly, this factor weighs against a finding
2 of any unity of interest or ownership.

3 **2. The Court Erred in Finding that the Third Factor Was Met.**

4 The third factor required to prove alter ego, that of fraud or injustice, has also been fleshed
5 out by the Courts. This final element does not require proof of “actual fraud”; rather, “[i]t is enough
6 if the recognition of the two entities as separate would result in an injustice.” *Polaris Indus. Corp.*
7 *v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987). However, a creditor “not being paid...
8 is not, in and of itself, sufficient injustice” to support the finding of alter ego. *Lipshie v. Tracy Inv.*
9 *Co.*, 93 Nev. 370, 378, 566 P.2d 819, 824 (1977). See also *AE Rest. Assocs., LLC v. Giampietro*
10 *(In re Giampietro)*, 317 B.R. 841, 853, (2004). *Golden Gaming, Inc.*, 2013 Nev. Unpub. LEXIS
11 1449, 2013 WL 5437333, at *6 (finding it “unfortunate” but not unjust that the Plaintiffs would
12 not receive payment and further noting that “appellants and their agents, and not [the company at
13 issue] are responsible for not protecting against the eventuality that occurred. . .”) *North Arlington*
14 *Medic. Bldg.*, 471 P.2d at 245 (finding that an unprofitable venture did not “sanction a fraud or
15 promote injustice”).

16 This factor weighs firmly against a finding of alter ego. Various courts have made it clear
17 that Nype’s situation, that of a creditor not being paid, is not “sufficient injustice” to warrant a
18 finding of alter ego. Nype has not suffered any injustice at the hands of Mitchell, Liberman, or the
19 related entities. Nype received a judgment against Las Vegas Land Partners, which he was unable,
20 after limited attempts, to collect. Nype decided to only sue Las Vegas Land Partners. It was his
21 decision. Moreover, as Nype’s judgment was based on unjust enrichment, he decided to supply
22 those services to LVLP. He assumed the risk of non-payment when he supplied the services with
23 no written contract and to that particular entity. This is not the type of case as in a tort case when
24 someone is injured, and they have no choice who they sue; Nype chose to provide services to
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1 LVLP. This does not rise to the level required to support a finding fraud or injustice. Accordingly,
2 this factor has not been met and there can be no finding of alter ego. Based on these findings and
3 this case law, the Court erred in finding alter ego between the defendants. Nype failed completely
4 to produce sufficient evidence at trial to support the required findings explained above.
5 Accordingly, the Court's order should be altered or amended, and the finding of alter ego reversed.

6
7 **E. PLAINTIFF CANNOT BE GRANTED HIS ATTORNEY'S FEES AS SPECIAL DAMAGES.²**

8 Nevada strictly adheres to the American Rule, meaning that attorney fees may only be
9 awarded when authorized by statute, rule, or agreement. *Pardee Homes v. Wolfram*, 444 P.3d 423,
10 425-27, (2019). There are few exceptions to this rule however, one such exception is the award of
11 attorney fees as special damages. *Id.* To receive fees as special damages, a party must conform
12 with NRCP 9(g), which reads that "If an item of special damage is claimed, it must be specifically
13 stated" in the complaint. *Id.* See Also *Watson Rounds, P.C. v. Eighth Judicial Dist. Court*, 358
14 P.3d 228, 233, 131 Nev. Adv. Rep. 79 (2015)(Rejecting the award of attorney fees as special
15 damages when the request was not pleaded in accordance with NRCP 9(g).) The mere mention of
16 attorney fees in a complaint is insufficient to meet this requirement. *Sandy Valley Associates v.*
17 *Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956-57, 35 P.3d 964, 969 (2001).
18

19
20 In addition, to receive attorney fees as special damages, they must have been directly
21 "foreseeable" and necessitated by a Defendant's action. *Id.* Conduct that will likely cause a party
22 to hire an attorney to file a case is not "foreseeable" under this test. *Id.* Rather, the Courts look for
23 situations that cannot be resolved without the incurring legal fees such as slander of title.
24 Accordingly, the Nevada Supreme Court has specifically disavowed the award of attorney fees
25

26 ² It is important to note that the Court awarded Nype's fees as specially damages twice, once as special
27 damages related to the fraudulent conveyance and once as special damages relating to the civil conspiracy.
28 The shortcomings of these awards are the same and so they will be addressed together for the sake of
judicial economy.

1 “broadly.... [even when] the fees [and litigation is] a reasonably foreseeable consequence of
2 injurious conduct...” *Pardee*, 444 P.3d at 427. Finally, these fees must be “proven by competent
3 evidence” at trial. *Id.*

4 The *Pardee* case is instructive. *Pardee* involved a potential development project to be
5 known as “Coyote Springs.” *Id.* at 424. To further this project, real estate brokers James Wolfram
6 and Walter Wilkes introduced Pardee Homes of Nevada to Coyote Springs Investment, LLC. *Id.*
7 Pardee entered into an agreement to buy land from Coyote Springs for the development and the
8 option to purchase other properties in the future. *Id.* Eventually, a dispute arose between the
9 brokers and Pardee Homes and they filed an action seeking, among other things, their
10 commissions. *Id.* at 425. As part of their judgment, the brokers were awarded their attorney fees
11 as special damages, on the assumption that “Wolfram and Wilkes were forced to file suit against
12 Pardee in order to get the information [and commissions] to which they were entitled pursuant to
13 the Commission Agreement.” *Id.* In overturning this award of special damages, the Court found
14 that Nevada law does not “support an award of attorney fees as special damages where a plaintiff
15 merely seeks to recover fees incurred for prosecuting a breach-of-contract action against a
16 breaching defendant.” *Id.* at 426. The Court further reasoned that allowing this award to stand
17 would create the precedent that any “aggrieved party [who retains] the services of an attorney to
18 remedy a breach...” would be entitled to attorney fees as special damages. *Id.* This broad
19 application awarding of special damages “conflicts with [Nevada’s] caselaw.” *Id.*

20 The facts in this case and in *Pardee* are substantially similar. Both cases deal with real
21 estate issues and “aggrieved part[ies]” seeking redress of their wrongs in Court. Here, as in *Pardee*,
22 Nype has not brought any claims which warrant the award of fees as the “reasonably foreseeable
23 consequence” of Defendants’ actions. In the underlying case, Nype prevailed on a claim of unjust
24 enrichment. In this matter, Nype has prevailed under theories of alter ego, fraudulent transfer, and
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1 civil conspiracy. None of these claims are materially different then the breach of contract claim in
2 *Pardee*. None of them, by themselves, absolutely necessitated the expenditure of legal fees to
3 resolve Nype's issues. Awarding attorney fees as special damages for these claims would radically
4 expand the scope of these special damages just as in *Pardee*. Accordingly, the award of attorney's
5 fees as special damages in this matter should be set aside.
6

7 There are other concerns with this award. Nype failed completely to plead his request for
8 attorney fees as special damages. While there are references to attorney fees incurred under each
9 claim, this wrote repetition does not meet the requirements of NRCP 9(g). Moreover, Nype's
10 Amended Complaint does not contain a prayer for relief requesting these fees as special damages.
11 While the rules allow for amendment of pleadings to conform to the evidence, it cannot overcome
12 a complete failure to plead a prayer for relief at all. Doing so would render NRCP 9(g) and Nevada
13 caselaw meaningless.
14

15 Moreover, even if some form of the Court's award survives, the amount of the award
16 should be amended. The Court's awarded of \$4,835,111.37 as special damages for attorney fees
17 appears to correspond to the amount incurred by Nype for case 07A551073 and this matter, A-16-
18 740689-B. Awarding the fees relating to case 07A551073 is not permissible pursuant to the *Pardee*
19 case discussed above. Both cases were contractual issues and special damages are inappropriate.
20 Moreover, the act of going backwards to award fees from a previous matter where they had not
21 been requested is entirely inappropriate. Not only is the required analysis under NRCP 9(g)
22 impossible, but there is no legal mechanism or case law that supports the award of fees from a
23 prior case nearly five years after that case has been closed. In short, if any fees are awarded as
24 special damages, and they should not be, then they must be limited to this matter only.
25

26 Finally, although the Court did add a footnote addressing the *Brunzell* factors, it did not
27 evaluate the totality of the fees it awarded. The Court merely stated that "The Court has previously
28

1 evaluated the *Brunzell* factors in connection with the sanctions order which has now been satisfied.
2 See 12/26/19 filing. That evaluation is incorporated by reference.” The Court did not evaluate
3 these factors for all of the fees it awarded as Nype did not request \$4,835,111.37 at that hearing.
4 Accordingly, the Court has failed to evaluate the *Brunzell* factors and so its award of fees should
5 be amended.

6 ///

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14 **IV.**
15 **CONCLUSION**

16 Based upon the foregoing, the Court should amend its findings, conclusions, and judgement
17 and strike the damages awarded against the Defendants.

18 DATED this 14th day of February 2020.

19 **COHEN JOHNSON PARKER EDWARDS**

20
21 /s/ H. Stan Johnson
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CERTIFICATE OF SERVICE

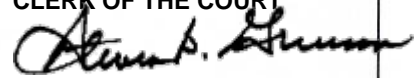
Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 14th day of February 2020 I caused a true and correct copy of **MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP 59(e) ON ORDER SHORTENING TIME** to be served via the Court's Wiznet E-Filing system on all registered and active parties.

/s/ Sarah Gondek

An employee of Cohen|Johnson|Parker|Edwards

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CLERK OF THE COURT



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DISTRICT COURT
CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC, DOES I
through X; DOES I through X; DOE
CORPORATIONS I through X; and DOES
PARTNERSHIPS I through X,

Plaintiffs,

vs.

DAVID J. MITCHELL; BARNET LIBERMAN; LAS
VEGAS LAND PARTNERS, LLC; MEYER
PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,
LLC; LIVE WORK MANAGER, LLC; AQUARIUS
OWNER, LLC; LVLV HOLDINGS, LLC;
MITCHELL HOLDINGS, LLC; LIBERMAN
HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE
WORKS TIC SUCCESSOR, LLC; CASINO
COOLIDGE LLC; DOES I through III, and ROE
CORPORATIONS I through III, inclusive,

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: February 24, 2020

Time of Hearing: 9:00 a.m.

ORDER DENYING THE MITCHELL DEFENDANTS'
MOTION TO ALTER OR AMEND JUDGMENT

This matter coming on for hearing on February 24, 2020 at the hour of 9:00 a.m.,
Plaintiffs, RUSSELL L. NYPE AND REVENUE PLUS, LLC, being represented by JOHN W.
MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE & ASSOCIATES, David J. Mitchell and the
Mitchell Defendants, being represented by H. Stan Johnson, Esq. and James L. Edwards, Esq., of

02-28-20A05:39 RCVD

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1 the Law Firm of COHEN JOHNSON PARKER & EDWARDS, the Court having reviewed and
2 considered the points and authorities, the exhibits in support thereof, and the various pleadings
3 and documents on file herein and having considered oral argument and good cause appearing.

4
5 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Mitchell
6 Defendants Motion to Alter or Amend Judgment be and the same hereby is **DENIED**.

7 DATED this _____ day of February, 2020.

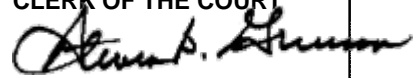
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10 _____
11 DISTRICT COURT JUDGE

12 Submitted by:

13 JOHN W. MUIJE & ASSOCIATES

14
15 By: /s/ JOHN W. MUIJE, ESQ.

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DISTRICT COURT
CLARK COUNTY, NEVADA

9 **RUSSELL L. NYPE AND REVENUE PLUS,**
10 **LLC**

CASE NO: A-16-740689-B

11 Plaintiffs,

DEPT NO: XI

12 vs.

13 **DAVID J. MITCHELL; BARNET LIBERMAN; LAS**
14 **VEGAS LAND PARTNERS, LLC; MEYER**
15 **PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH**
16 **PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,**
17 **LLC; LIVE WORK MANAGER, LLC; AQUARIUS**
18 **OWNER, LLC; LVLP HOLDINGS, LLC;**
19 **MITCHELL HOLDINGS, LLC; LIBERMAN**
20 **HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE**
21 **WORKS TIC SUCCESSOR, LLC; CASINO**
22 **COOLIDGE LLC; DOES I through III, and ROE**
23 **CORPORATIONS I through III, inclusive,**

24 Mitchell Defendants.

25 **NOTICE OF ENTRY OF ORDER DENYING THE MITCHELL DEFENDANTS'**
26 **MOTION TO ALTER OR AMEND JUDGMENT**

27 TO: **ELLIOT S. BLUT, ESQ., of BLUT LAW GROUP, P.C., Attorneys for Defendants**
28 **Barnet Liberman and Casino Coolidge, LLC**

TO: **H. STAN JOHNSON, ESQ., and JAMES L. EDWARDS, ESQ., of the Law Offices of**
COHEN, JOHNSON, PARKER & EDWARDS, Attorneys for Mitchell Defendants

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PLEASE TAKE NOTICE that the ORDER DENYING THE MITCHELL
DEFENDANTS' MOTION TO ALTER OR AMEND JUDGMENT, was entered with the
Court on the 30th day of March, 2020, a copy of which is attached hereto as Exhibit "1".

DATED this 30th day of March, 2020.

JOHN W. MUIJE & ASSOCIATES

By: /s/ JOHN W. MUIJE, ESQ.
JOHN W. MUIJE, ESQ.
Nevada Bar No: 2419
1840 E. Sahara Ave #106
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JOHN W. MUIJE & ASSOCIATES
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CERTIFICATE OF MAILING

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 30TH day of March, 2020, I caused the foregoing document, **NOTICE OF ENTRY OF ORDER DENYING THE MITCHELL DEFENDANTS' MOTION TO ALTER OR AMEND JUDGMENT**, to be served as follows:

- ☐ By placing a copy of the same for mailing in the United States mail, with first-class postage prepaid addressed as follows; and/or
- ☒ By electronically filing with the Clerk of the Court via the Odyssey E-File and Serve System;
- ☐ By placing a copy of the same for mailing in the United States mail, with first-class postage prepaid marked certified return receipt requested addressed as follows:

Elliot S. Blut, Esq.
BLUT LAW GROUP, P.C.
300 South Fourth Street, Suite 701
Las Vegas, Nevada 89101
Attorneys for Defendants
Barnet Liberman and Casino Coolidge,
LLC

H. Stan Johnson, Esq.
James L. Edwards, Esq.
COHEN JOHNSON PARKER & EDWARDS
375 E. Warm Springs Road, #104
Las Vegas, Nevada 89119
Attorneys for Mitchell Defendants

Fern M. Vitman
An Employee of JOHN W. MUIJE & ASSOCIATES

EXHIBIT “1”

ORIGINAL

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Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 **ORDER**

2 JOHN W. MUIJE & ASSOCIATES

3 JOHN W. MUIJE, ESQ.

4 Nevada Bar No: 2419

5 1840 E. Sahara Ave #106

6 Las Vegas, NV 89104

7 Phone No: (702) 386-7002

8 Fax No: (702) 386-9135

9 Email: jmuije@muijelawoffice.com

10 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 RUSSELL L. NYPE; REVENUE PLUS, LLC, DOES I
12 through X; DOES I through X; DOE
13 CORPORATIONS I through X; and DOES
14 PARTNERSHIPS I through X,

Plaintiffs,

vs.

15 DAVID J. MITCHELL; BARNET LIBERMAN; LAS
16 VEGAS LAND PARTNERS, LLC; MEYER
17 PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
18 PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,
19 LLC; LIVE WORK MANAGER, LLC; AQUARIUS
20 OWNER, LLC; LVLP HOLDINGS, LLC;
21 MITCHELL HOLDINGS, LLC; LIBERMAN
22 HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE
23 WORKS TIC SUCCESSOR, LLC; CASINO
24 COOLIDGE LLC; DOES I through III, and ROE
25 CORPORATIONS I through III, inclusive,

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: February 24, 2020

Time of Hearing: 9:00 a.m.

ORDER DENYING THE MITCHELL DEFENDANTS'
MOTION TO ALTER OR AMEND JUDGMENT

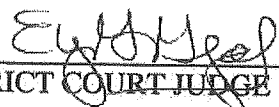
26 This matter coming on for hearing on February 24, 2020 at the hour of 9:00 a.m.,
27 Plaintiffs, RUSSELL L. NYPE AND REVENUE PLUS, LLC, being represented by JOHN W.
28 MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE & ASSOCIATES, David J. Mitchell and the
Mitchell Defendants, being represented by H. Stan Johnson, Esq. and James L. Edwards, Esq., of

02-23-20A05:39 RCVD

1 the Law Firm of COHEN JOHNSON PARKER & EDWARDS, the Court having reviewed and
2 considered the points and authorities, the exhibits in support thereof, and the various pleadings
3 and documents on file herein and having considered oral argument and good cause appearing.
4

5 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Mitchell
6 Defendants Motion to Alter or Amend Judgment be and the same hereby is **DENIED**.

7 DATED this 30th day of ~~February~~ ^{March}, 2020.
8
9

10 
11 DISTRICT COURT JUDGE

12 Submitted by:

13 JOHN W. MUIJE & ASSOCIATES
14

15 By: /s/ JOHN W. MUIJE, ESQ.

16 JOHN W. MUIJE, ESQ.

17 Nevada Bar No: 2419

18 1840 East Sahara Avenue, Suite 106

19 Las Vegas, Nevada 89104

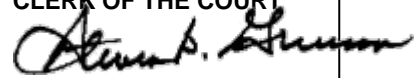
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*Attorneys for Defendants,
BARNET LIBERMAN and CASINO COOLIDGE LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

RUSSELL L. NYPE; REVENUE PLUS, LLC,
DOES I through X; DOES I through X; DOE
CORPORATIONS I through X; and DOES
PARTNERSHIPS I through X,

Plaintiffs,

vs.

DAVID J. MITCHELL; BARNET LIBERMAN;
LAS VEGAS LAND PARTNERS, LLC; MEYER
PROPERTY, LTD.; ZOE PROPERTY, LLC;
LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE
WORK, LLC; LIVE WORK MANAGER, LLC;
AQUARIUS OWNER, LLC; LVLP HOLDINGS,
LLC; MITCHELL HOLDINGS, LLC; LIBERMAN
HOLDINGS, LLC; 305 LAS VEGAS LLC; LIVE
WORKS TIC SUCCESSOR, LLC; CASINO
COOLIDGE LLC; DOES I through III, and ROE
CORPORATIONS I through III, inclusive,

Defendants.

Case No. A-16-740689-B

Dept. No. 11

**DEFENDANTS CASINO COOLIDGE,
LLC AND BARNET LIBERMAN'S
MOTION TO ALTER OR AMEND
AMENDED JUDGMENT AND
FINDINGS OF FACT AND
CONCLUSIONS OF LAW PURSUANT
TO NRCP 52 AND NRCP 59**

HEARING REQUESTED

COME NOW, Defendants BARNET LIBERMAN and CASINO COOLIDGE LLC, by
and through their attorney of record, ELLIOT S. BLUT, ESQ. of BLUT LAW GROUP, PC, and
hereby move this Court for relief and to alter or amend the Amended Judgment, Findings of Fact
and Conclusions of Law filed on January 17, 2020. This Motion is based on Rules 52 and 59 of the

1 Nevada Rules of Civil Procedure, the attached Memorandum of Points and Authorities, all papers
2 and pleadings on file herein, all testimony and exhibits admitted at trial, and on any oral or
3 documentary evidence that may be submitted at the hearing on this matter.

4
5 DATED this 14th day of February, 2020

6 BLUT LAW GROUP, PC

7 By: /s/ Elliot S. Blut
8 Elliot S. Blut, Esq.
9 Nevada Bar No. 6570
300 South Fourth Street, Suite 701
10 Las Vegas, NV 89101
11 *Attorney for Defendants BARNET LIBERMAN*
and CASINO COOLIDGE LLC

12
13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

15 This Court, following a bench trial that concluded on January 7, 2020 entered a judgment
16 in favor of the Plaintiffs and against Defendant Casino Coolidge LLC (“Casino Coolidge”).

17 On January 17, 2020, the Court filed its “Amended Findings of Fact and Conclusions of
18 Law.”¹ Movants assert the Amended Findings are erroneous in two respects: (1) the Court
19 entered an award for monetary damages in excess of the amount to which the Plaintiff was
20 entitled; (2) the Court entered an award for attorney’s fees in contravention of prevailing law.

21
22 **II. FINDINGS AT ISSUE**

23 “Prior to September 2015, Nype had reason to know that the limited transfers were transfers
24 made by debtors under the UFTA, that the transfers rendered debtors insolvent (or contributed
25 thereto) or the facts and circumstances upon which this Court utilized in determining that the
26 transfers were made with the actual intent to hinder, delay or defraud creditors (including Nype).”
27 (AFoF&CoL, P.10, CoL #10).

28 ¹ A copy of the Amended Findings of Fact and Conclusions of Law (“AFoF&CoL”) is attached as Exhibit 1.

1 “Nype has proven by a preponderance of the evidence that he suffered special damages in
2 attorney’s fees, costs and expert expenses related to the transfers in the total amount of
3 \$4,493,176.90.” (AFoF&CoL, P.11, CoL #16)

4 “Plaintiff has not established by a preponderance of the evidence the elements of a civil
5 conspiracy separate and apart from the distributions and fabrication of evidence.” (AFoF&CoL,
6 P.12, CoL #21)

7 “Plaintiff has established damages on the civil conspiracy claim in the amount of
8 \$15,148.339.” (AFoF&CoL, P.12, CoL #22)

9 “Nype is entitled to recover his attorney’s fees as special damages as he was successful on
10 his claim for civil conspiracy in the total amount of \$4,493,176.90.” (AFoF&CoL, P.13, CoL
11 #24)

12 “Mitchell, Liberman, and the Related Entities’ actions and inactions have cause Nype
13 damages in the total amount of \$19,641,515.90.” (AFoF&CoL, P. 13, CoL #26)

14 “IT IS HEREBY ORDERED ADJUDGED AND DECREED that JUDGMENT is hereby
15 entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, ... and Casino
16 Coolidge on the fraudulent conveyance claim in the amount of \$4,835,111.37.” (*Id.* P 13, lines
17 16-22)

18
19 **III. LEGAL STANDARDS FOR GRANTING DEFENDANTS BARNET LIBERMAN
AND CASINO COOLIDGE, LLC RELIEF FROM THE JUDGMENT**

20 **A. LEGAL STANDARD FOR MOTION TO AMEND PURSUANT TO NRCP 52(b)**

21 Rule 52(b) provides, in pertinent part, “[u]pon a party’s motion filed not later than 10 days
22 after service of written notice of entry of judgment, the court may amend its findings or make
23 additional findings and may amend the judgment accordingly.” In applying Rule 52(b), the Nevada
24 Supreme Court has stated, “findings of fact and conclusions of law must be upheld if supported by
25 substantial evidence, and may not be set aside unless clearly erroneous.” *Trident Constr. Corp. v.*
26 *W. Elec., Inc.*, 105 Nev. 423, 426, 776 P.2d 1239, 1241 (1989) (citations omitted). *See also, Pace v.*
27 *Linton*, 97 Nev. 103, 625 P.2d 84 (1981).
28

B. LEGAL STANDARD FOR MOTION TO ALTER OR AMEND PURSUANT TO NRCP 59(e)

Rule 59(e) requires a party to file a motion to alter or amend a judgment “no later than 10 days after service of written notice of entry of the judgment.” “Among the basic grounds for a Rule 59(e) motion are correcting manifest errors of law or fact, newly discovered or previously unavailable evidence, the need to prevent manifest injustice, or a change in controlling law.” *AA Primo Builders, LLC v. Washington*, 126 Nev. Adv. Op. 53, 245 P.3d 1190, 1193 (2010) (citations and internal alterations omitted). The Nevada Supreme Court has noted NRCP 59(e) echoes FRCP 59(e), which ““has been interpreted...as covering a broad range of motions, with the only real limitation on the type of motion permitted being that it must request a substantive alteration of the judgment, not merely correction of a clerical error, or relief of a type wholly collateral to the judgment.” *Id.* (citations and internal alterations omitted).

IV. ARGUMENT

A. THE COURT ERRED BY AWARDING THE PLAINTIFF DAMAGES AGAINST CASINO COOLIDGE, LLC AND BARNET LIBERMAN.

1. Plaintiffs are not Entitled to a Damages Award, But Only Restitution or an Order Voiding the Transfer.

There are no findings that Casino Coolidge, LLC or Barnet Liberman committed a tort against the Plaintiffs. No tort claim was tried in this action. The claims for relief presented at trial were: 1. Fraudulent Transfer; 2. Civil Conspiracy; 3. Alter Ego [ES1].

“Mitchell, Liberman and the Related Entities have made distributions to avoid satisfying Nype’s claims and Judgment.” (AFoF&CoL, P.8, #59) Plaintiff failed to make any showing that Casino Coolidge, LLC made improper any distributions to the individual defendants to avoid satisfying the judgment.

Preliminarily, there is no claim pled in this action and no remedy cited that supports the award of damages under Nevada law:

“Creditors do not possess *legal* claims for damages when they are the victims of fraudulent transfers. Instead, creditors have recourse in *equitable* proceedings in order

1 to recover the property, or payment for its value, by which they are returned to their pre-
2 transfer position. *See* NRS 112.210; NRS 112.220(2). Nevada law does not create a legal
3 cause of action for damages in excess of the value of the property to be recovered. . . . As
4 an exception to the general rule, NRS 112.220(2) permits actions resulting in judgments
5 against certain transferees. But such judgments are only in the amount of either
6 the creditor's claim or the value of the transferred property, whichever is less. *Id.* The
7 statutory scheme does not allow a creditor to recover an amount in excess of
8 the transferred property's value, or to recover against a nontransferee. And no similar
9 exceptional authorization creates claims against nontransferees.”

10 *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049, 1053 (Nev. 2015), emphasis in the original
11 (italics); emphasis added (underline). Nevada law permits the creditor in a fraudulent conveyance
12 action to recover the property, or receive payment for its value. There is no right to recover
13 damages in excess of the value of the property to be recovered.

14 The Ninth Circuit's analysis of a fraudulent conveyance claim in *United States v.*
15 *Neidorf*, 522 F.2d 916, 918-20 (9th Cir. 1975) is useful. There, the Ninth Circuit noted that a
16 fraudulent conveyance claim, even when a debtor's intent is relevant, is **not** founded upon a tort:
17 "The fraud, such as it is, is only incidental to the right of the creditor to follow the assets of the
18 debtor and obtain satisfaction of the debt. The gravamen of the cause of action ... is the ordinary
19 right of a creditor to receive payment" *Neidorf*, 522 F.2d at 918 (citations omitted). In finding
20 the claim to sound in quasi-contract rather than tort, the Ninth Circuit reasoned that the remedy
21 for a fraudulent conveyance claim is restitution of benefits received, whereas in tort, the remedy
22 is compensatory damages. *Id.* (Emphasis added)

23 “True, NRS 112.210(1) permits creditors to obtain “any other relief the
24 circumstances may require.” But we agree with other jurisdictions that this language,
25 taken from the Uniform Fraudulent Transfer Act, ‘was intended to codify an existing but
26 imprecise system,’ not to create a new cause of action. (Citation from the original
27 omitted) ... Thus, NRS 112.210(1) gives the creditor an equitable right to the property,
28 not a claim for damages. The Legislature did not create a claim against nontransferees.
And although NRS 12.240 incorporates the traditional rules of law and equity into the
statutory fraudulent transfer law, we agree with other states that such savings clauses do
not create entirely new causes of action, such as civil conspiracy.” (Citations from the
original omitted).

Cadle Co. v. Woods & Erickson, LLP, 345 P.3d 1049, 1053-54 (Nev. 2015)

Applying the restitution analysis instead of a damages analysis yields a very different
result [ES2]. Here, the equitable right to the property Leah transferred to Casino Coolidge is the

1 value available to distribute to the judgment creditor. “In December 2014, Leah sold certain real
2 property to Casino Coolidge for \$1,000,000. Mitchell and Liberman caused Leah to distribute
3 sales proceeds in the amount of \$341,934.47 directly to themselves, rather than Leah’s parent
4 company, LVLP.” (AFoF&CoL, P.5, FoF #33) The seller failed to remit the funds to LVLP.
5 Casino Coolidge, LLC paid value and even if not an innocent third party, it does not follow that it
6 has any liability for paying Leah the purchase price in this arm’s length transaction. Moreover,
7 liability should be capped at \$341,884.33 – the amount of net sale proceeds after payment of
8 costs and expenses of sale plus \$5,949.86– as this would be all that would have been available to
9 pay the Plaintiff from the sale plus the two nominal distributions to Liberman and Mitchell after
10 2011. (See Exhibit 2 to this Motion, Trial Exhibit 50028-124).

11 The damages award also fails to recognize the statute of limitations issue [ES3]. As was
12 determined by this Court, the August 2011 disclosures by Mr. Rich (Trial Exhibit 90079), raised
13 at least inquiry notice to Plaintiff Nype of the earlier transfers to Liberman and Mitchell, and as
14 such these earlier transfers cannot support an award because these are time barred. Since the
15 earlier transfers are time barred, only \$341,884.33 remains to be awarded to Plaintiff under the
16 cause of action for Fraudulent Transfer as to Liberman.

17 Casino Coolidge, LLC has no liability under the law as a “transferor”, or as a co-judgment
18 debtor, but in fact the court awarded all of the amounts that make up the prior judgment, together
19 with special damages against Casino Coolidge, LLC as a “related entity” whose liability is joint
20 and several. That finding is at odds with the current law of Nevada, and should be revised
21 accordingly.

22 As noted above, NRS Chapter 112 provides creditors with claims for equitable remedies, not
23 a claim for legal damages. In fact, the Nevada Supreme Court has stated, “although NRS 112.240
24 incorporates the traditional rules of law and equity into the statutory fraudulent
25 transfer law, we agree with other states that *such savings clauses to not create entirely new*
26 *causes of action, such as civil conspiracy.*” *Cadle, supra*, 131 Nev. Adv. Op 15, 345 P.3d at 1054
27 (emphasis added); *see also, Van v. Asset Ventures, LLC*, 2:15-cv-01401-JAD-PAL, at *5 (D. Nev.
28 Sep. 8, 2015) (“As the Nevada Supreme Court recently explained in *Cadle Co. v. Woods &*

1 *Erickson, LLP*, ‘[c]reditors do not possess *legal* claims for damages when they are victims of
2 fraudulent transfers. Instead, creditors have recourse in *equitable* proceedings in order to recover
3 the property, or payment for its value, by which they are returned to their pre-transfer position.’)
4 (Emphasis original).

5 The trial court nonetheless found, “Nype has proven by a preponderance of the evidence
6 that he suffered special damages in attorney’s fees, costs and expert expenses related to the
7 transfers in the total amount of \$4,493,176.90.” (AFoF&CoL, P.13, CoL #24). As NRS 112.210
8 provides only for equitable relief, and not damage awards, and because there is no claim for
9 damages that arises from a “civil conspiracy” absent an underlying tort, an award of self-
10 described special damages for \$4,493,176.90 against these Moving Parties is facially suspect.

11 “In *Bobby Berosini, Ltd.*, we explained that a party must “demonstrate how such [claimed
12 costs] were necessary to and incurred in the present action.” 114 Nev. at 1352–53, 971 P.2d at
13 386.” *Cadle Co. v. Woods & Erickson, LLP*, 345 P.3d 1049, 1054 (Nev. 2015). Plaintiffs did not
14 demonstrate that they incurred those fees to set aside the transfer of this property by Leah to
15 Casino Coolidge, LLC. The single transfer at issue for Casino Coolidge, LLC was a matter of
16 public record. The investigation of the net proceeds required a subpoena and a few interrogatories
17 or deposition questions. The attorney’s fees, costs and expert expenses were not demonstrated to
18 be reasonable or necessary for this transaction. Fees incurred regarding the fraudulent conveyance
19 claims yielded under \$6,000 of transfers after 2011 and as such more than \$4,000,000 in
20 attorney’s and expert fees to demonstrate \$6,000 in transfers is not warranted under any facts.

21 But the most egregious conclusion is this: “Mitchell, Liberman, and the Related Entities’
22 actions and inactions have cause Nype damages in the total amount of \$19,641,515.90.”
23 (AFoF&CoL, P. 13, CoL #26) Again, there is no right to recover damages for a fraudulent
24 conveyance action. No right to an award damages that make up the underlying judgment. Nor is
25 there any theory, other than alter ego, under which the court could reasonably conclude that Barnett
26 Liberman and Casino Coolidge are jointly and severally liable for the entire amount of the
27 underlying judgment. (*Id.*, at lines 16-22)

1 “The purpose of the fraudulent conveyance statutes is to ‘put the creditors back in the
2 same position they would have enjoyed immediately prior to the voidable
3 conveyance.’ *Mattingly v. Gentry*, 419 S.W.2d 745, 747 (Ky.1967). To fulfill this
4 purpose, ‘[t]he proper remedy in a fraudulent conveyance claim is the nullification of the
5 transfer by returning the property at issue back to the transferor.’” *Paradigm BioDevices,*
Inc. v. Viscogliosi Bros., 842 F.Supp.2d 661, 667 (S.D.N.Y.2012) (citing *Grace v. Bank*
Leumi Trust Co. of N.Y., 443 F.3d 180, 189 (2d Cir.2006) (interpreting New York law)).

6 *GATX Corp. v. Addington*, 879 F. Supp. 2d 633, 641 (E.D. Ky. 2012) (cited in *Cadle Co. v. Woods*
7 *& Erickson, LLP*, 345 P.3d 1049, 1053-54 (Nev. 2015).

8 **2. There is No Right to Damages Where There is No Proof or Finding of an**
9 **Underlying Tort Claim for Civil Conspiracy.**

10 “Plaintiff has established damages on the civil conspiracy claim in the amount of
11 \$15,148.39.” (AFoF&CoL, P. 12, CoL #22). “To establish a claim for civil conspiracy, a
12 plaintiff must establish: (1) the commission of an underlying tort; and (2) an agreement between
13 the defendants to commit that tort. *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (2001).
14 Further, the plaintiff must establish with particular specificity “the manner in which a defendant
15 joined in the conspiracy and how he participated in it.” *Arroyo v. Wheat*, 591 F.Supp. 141,
16 4144 (D.Nev.1984).” *Peterson v. Miranda*, 991 F. Supp. 2d 1109, 1120 (D. Nev. 2014) There is
17 no finding that Movants committed a tort, nor any description of when and how these Movants
18 joined the conspiracy.

19 To prevail on their civil conspiracy claim, Plaintiffs had to prove that Defendants entered
20 into a conspiracy agreement "to accomplish an unlawful objective for the purpose of harming
21 them by defrauding them, and that they suffered damages as a result of the agreement. *See Jordan*
22 *v. State*, 110 P.3d 30, 51 (Nev. 2005), *abrogated on other grounds by Buzz Stew, LLC v. City of*
23 *N. Las Vegas*, 181 P.3d 670 (Nev. 2008).” *Ivey v. Spilotro*, 2:11-cv-02044-RCJ-RJJ, at *16 (D.
24 Nev. July 9, 2012). The Defendants could not and did not harm the judgment, its enforcement,
25 or the right to collect on it, so there is no basis for awarding the judgment as damages, or special
26 damages in excess of the judgment. Again, there was no finding of intent to harm Plaintiff.
27 Moreover, a conspiracy to commit fraud claim is time-barred, and was not even tried.

28 ///

1 **3. Most of the Claims of Fraudulent Transfer were Time-Barred.**

2 The Court concluded the facts justified an astronomical sum as damages: “Mitchell,
3 Liberman, and the Related Entities’ actions and inactions have cause Nype damages in the total
4 amount of \$19,641,515.90.” (AFoF&CoL, P. 13, CoL #26). The Court also awarded damages
5 “...in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, ... and Casino
6 Coolidge on the fraudulent conveyance claim in the amount of \$4,835,111.37.” (AFoF&CoL,
7 P.13, lines 16-22).

8 Even assuming Plaintiff established a Conspiracy to Commit Fraudulent Conveyance, all
9 but \$347,884.33 of transfers are time barred.

10 Conclusion of Law #10 identifies the date of discovery of the basis of discovery of
11 “limited” transfers. This is a misstatement of the evidence admitted at trial and other findings in
12 the Amended Findings of Fact and Conclusions of Law. The true facts are that the evidence
13 showed that Plaintiff Nype was on notice from August 20, 2011, not September 2015.² This
14 means that some of the distributions cannot be set aside because claims based upon those
15 distributions are time-barred. In addition the transfers were not “limited” but rather exceeded
16 \$15,000,000. These transfers are all beyond the statute of limitations and cannot form the basis
17 for this Court’s award.

18 This case was filed in 2016. Allowing for the more generous limitations period of four
19 years associated with NRS 112.230, the transfers prior to July 26, 2012 are time barred. Movants
20 refer the Court to Exhibit 50028-0124, which shows the distributions for each calendar year made
21 to Defendants Mitchell and Liberman. A copy is attached as Exhibit 2. The evidence at trial
22 showed that Plaintiff Nype was on notice of the claim from August 20, 2011, and not September
23 2015 as the court found. (AFoF&CoL, P.10, CoL #10). The award fails to recognize the fact the
24 claims accruing prior to July 26, 2012 were and are time barred and should be amended
25 accordingly and reduced to transfers after 2012 which is at most \$341,884.33.

26
27
28 ² Exhibit 90079 was an expert disclosure in the underlying action confirms knowledge in August, 2011 of the conveyances.

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V. CONCLUSION

For the reasons set forth, Defendants Casino Coolidge, LLC and Barnet Liberman respectfully request the court grant this Motion, and amend the amended findings in accordance with the Movants' contentions herein and reduce the judgment on the Fraudulent Transfer to \$341,884.33, deny recovery under the civil conspiracy cause of action, or at most reduce the judgment on that cause of action to \$341,884.33 and deny the recovery for attorney's fees.

DATED this 14th day of February, 2020

BLUT LAW GROUP, PC

By: /s/ Elliot S. Blut
Elliot S. Blut, Esq.
Nevada Bar No. 6570
300 South Fourth Street, Suite 701
Las Vegas, NV 89101
*Attorney for Defendants BARNET LIBERMAN
and CASINO COOLIDGE LLC*

EXHIBIT “1”

1 **FFCL**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5 RUSSELL L. NYPE; REVENUE PLUS, LLC,
6 DOES I through X; DOES I through X; DOE
7 CORPORATIONS CASE NO: A-16-740689-
C I through X; and DOES PARTNERSHIPS I
through X,

8 Plaintiffs,

9 v.

10 DAVID J. MITCHELL; BARNET
11 LIBERMAN; LAS VEGAS LAND
12 PARTNERS, LLC; MEYER PROPERTY,
13 LTD.; ZOE PROPERTY, LLC; LEAH
14 PROPERTY, LLC; WINK ONE, LLC; LNE
15 WORK, LLC; LNE WORK MANAGER,
16 LLC; AQUARIUS OWNER, LLC; L VLP
HOLDINGS, LLC; MITCHELL HOLDINGS,
LLC; LIBERMAN HOLDINGS, LLC; 305
LAS VEGAS, LLC; LIVE WORKS TIC
SUCCESSOR, LLC; CASINO COOLIDGE
LLC; DOES I through ill, and ROE
CORPORATIONS I through ill, inclusive,

17 Defendants.

Case No.: A-16-740689-C

Dept.: XI

18 ***AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW***

19 This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez
20 beginning on December 30, 2019, and continuing day to day, until its completion on January 7,
21 2020; John W. Muije of John W. Muije & Associates appeared on behalf of Russell L. Nype and
22 Revenue Plus, LLC ("Plaintiffs") and Shelley D. Krohn, U.S. Bankruptcy Trustee ("Plaintiff
23 Trustee"); H. Stan Johnson, James L. Edwards and Kevin M. Johnson of the law firm of Cohen,
24 Johnson, Parker & Edwards appeared on behalf of David J. Mitchell, Las Vegas Land Partners,
25 LLC, Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork
26 LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, Mitchell Holdings
27
28

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CLERK OF THE COURT

1 LLC, Live Works TIC Successor LLC, FC/Live Work Vegas LLC, ("Mitchell Defendants");¹
2 Brian W. Boschee of the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson
3 appeared on behalf of Defendant 305 Las Vegas, LLC²; and, Elliott S. Blut appeared on behalf of
4 Defendants Barnett Liberman and Casino Coolidge; the Court having read and considered the
5 pleadings filed by the parties; having reviewed the evidence admitted during the trial; having
6 heard and carefully considered the testimony of the witnesses called to testify and weighing their
7 credibility; having considered the oral and written arguments of counsel, and with the intent of
8 rendering a decision on all claims before the Court,³ pursuant to NRCP 52(a) and 58; the Court
9 makes the following findings of fact and conclusions of law:
10

11 FINDINGS OF FACT

12
13 1. This action arises from a judgment that Plaintiffs obtained on or about April 10,
14 2015, against Las Vegas Land Partners, LLC ("LVLP") in Case No. A551073. Plaintiff filed this
15 suit on July 26, 2016. The complaint was amended by the filing of an amended complaint on
16 August 21, 2017.

17 2. Plaintiff Trustee was duly appointed to act as the Trustee in the Bankruptcy Case
18 of *Las Vegas Land Partners, LLC*, Case No. BK-19-15333-mkn and moved to intervene in the
19 instant action, which motion was granted on November 18, 2019. Plaintiff Trustee filed the
20 complaint in intervention on November 18, 2019.

21 3. Plaintiff Russell L. Nype ("Nype") is an adult resident of New York.
22

23
24 ¹ Given the filing of *Las Vegas Land Partners, LLC*, Case No. BK-19-15333-mkn in
August 2019, the Court takes no action against Las Vegas Land Partners, LLC.

25 ² The Court granted the Rule 50(a) motion by 305 Las Vegas, LLC at the close of the
26 Plaintiffs' case as no damages against that entity were established given the nature of its conduct.

27 ³ Plaintiff asserted five claims for relief against the Defendants: 1) Constructive Trust;
28 2) Fraudulent Transfer; 3) Civil Conspiracy; 4) Declaratory Relief; and 5) Alter Ego.

- 1 4. Plaintiff Revenue Plus, LLC (collectively with Nype, "Plaintiffs") is a Florida
2 limited liability company.
- 3 5. Defendant, David J. Mitchell ("Mitchell"), is an adult resident of New York.
- 4 6. Defendant, Barnett Liberman ("Liberman"), is an adult resident of New York.
- 5 7. Defendant Mitchell Holdings, LLC ("Mitchell Holdings") is a Delaware limited
6 liability company.
- 7 8. Defendant LVLP Holdings, LLC ("LVLP Holdings") is a Delaware limited
8 liability company that was formed on or about November 4, 2004 by Mitchell and Liberman.
- 9 9. Defendant Las Vegas Land Partners ("LVLP") is a Delaware limited liability
10 company.
- 11 10. Mitchell and Liberman are managers of LVLP.
- 12 11. At all relevant times, Mitchell and Liberman were the sole owners (50/50) and
13 managers of LVLP Holdings.
- 14 12. At all relevant times, LVLP was owned (50/50) and managed by Mitchell and
15 Liberman.
- 16 13. Defendant Casino Coolidge LLC is a Nevada limited liability company. ("Casino
17 Coolidge").
- 18 14. Liberman is the managing member of Casino Coolidge.
- 19 15. Defendant Aquarius Owner, LLC ("Aquarius") is a Delaware limited liability
20 company.
- 21 16. Defendant Leah Property, LLC ("Leah") is a Delaware limited liability company.
- 22 17. Defendant Livework, LLC ("Livework") is a Delaware limited liability company.
- 23 18. Defendant Livework Manager, LLC ("Livework Manager"), is a Delaware limited
24 liability company.
- 25 19. Defendant Zoe Property, LLC ("Zoe") is a Delaware limited liability company.
- 26 20. Defendant Wink One, LLC ("Wink") is a Delaware limited liability company.
- 27
- 28

1 21. Defendant Meyer Property, LLC ("Meyer") is a Delaware limited liability
2 company.

3 22. Non-party Charleston Casino Partners, LLC ("Casino Partners") is a Delaware
4 limited liability company.

5 23. Defendant FC/LW Vegas, LLC ("FC/LW") is a Delaware limited liability
6 company.

7 24. Defendant LiveWorks TIC Successor, LLC ("TIC Successor") is a Delaware
8 limited liability company.

9 25. These entities are collectively referred to as the Related Entities.⁴

10 26. 305 Las Vegas, LLC ("305 Las Vegas") was created in April of 2007 for the
11 purpose through a 1031 exchange of purchasing real property located around 300 East
12 Charleston.

13 27. In 2005, Mitchell and Liberman requested Nype's assistance with finding a
14 development partner to assist them in developing certain real property in Downtown Las Vegas.

15 28. Prior to closing the transaction with Forest City, a dispute arose between LVLP
16 and Nype in late 2006/early 2007 over the amount Nype was entitled to be paid related to the
17 transaction with Forest City.

18 29. Mitchell and Liberman were fully aware that Nype was expecting to receive at
19 least two million dollars for his efforts.

20 30. Despite understanding Nype's expectations, Mitchell and Liberman only set aside
21 \$430,000.

22 31. Shortly after setting aside that amount, Mitchell and Liberman took personal
23 distributions from LVLP in excess of thirteen million dollars.
24

25
26 ⁴ For purposes of the term "Related Entity" the following are included: Las Vegas Land
27 Partners, LLC, Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC,
28 LiveWork LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC,
LiveWorks TIC Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC.

1 32. On November 2, 2007, LVLP and two other entities⁵ sued Nype seeking primarily
2 a declaratory judgment that they did not owe Nype any fee, Nype counterclaimed seeking
3 compensation for services rendered.

4 33. In December 2014, Leah sold certain real property to Casino Coolidge for
5 \$1,000,000. Mitchell and Liberman caused Leah to distribute sales proceeds in the amount of
6 \$341,934.47 directly to themselves, rather than Leah's parent company, LVLP. Plaintiff has not
7 established that given the market conditions at the time that Mitchell and Liberman sold the Leah
8 Property without obtaining reasonably equivalent value in exchange.

9 34. After obtaining judgment on the counterclaim in 2015, Nype engaged in
10 significant attempts to collect on the Judgment from LVLP.

11 35. Those efforts resulted in recovery of approximately \$10,000.

12 36. Between 2007 and 2016, Mitchell and Liberman distributed to themselves a total
13 of \$15,148,339 from the Related Entities.

14 37. These distributions were at times that Mitchell and Liberman were fully aware of
15 Nype's claims.

16 38. The distributions caused and/or contributed to the Related Entities' insolvency
17 and/or inability to pay their debts as they became due.

18 39. The evidence also demonstrates that Mitchell, Liberman and the Related Entities
19 engaged in conscious, concerted and ongoing efforts to conceal, hide, convey, keep secret and/or
20 divert millions of dollars in assets away from Nype and/or other creditors.

21 40. The evidence also demonstrates that Mitchell, Liberman and the Related Entities
22 engaged in conscious, concerted and ongoing efforts to ensure that funds and/or assets that would
23 otherwise be available to Nype to satisfy his claims (and Judgment) were kept away from Nype.

24
25
26
27 ⁵ The other plaintiffs in that case were LiveWork LLC and Zoe Properties, LLC, neither of
28 which were named as counterdefendants.

1 41. The evidence demonstrates that Mitchell, Liberman and the Related Entities
2 distributed in excess of \$15,000,000 in funds that should have been available to satisfy Nype's
3 claims/Judgment.

4 42. Nype's disclosure of the tax returns and its own consultant's report⁶ on or about
5 April 25, 2014, in A551073, are the latest date of discovery for purposes of NRS 112.230(1)(a).⁷
6

7 43. David Mitchell was not credible.⁸ The failure of Mitchell to meaningfully
8 participate in discovery until the eve of trial and the failure to produce documents which should
9 have been in his possession leads the Court to conclude that if those documents had been
10 produced they would have been adverse to Mitchell.

11 44. At all relevant times, each of the Related Entities was wholly owned and managed
12 by LVLP or LVLP Holdings.

13 45. At all relevant times, each of the Related Entities was beneficially owned,
14 controlled, and managed by Mitchell and Liberman.
15

16 46. One or more of the Related Entities was formed with an initial capitalization of
17 just \$10.
18
19

20 ⁶ The report is a part of Exhibit 90079.

21 ⁷ That statute provides in pertinent part:

22 1. A claim for relief with respect to a fraudulent transfer or obligation under this chapter is
23 extinguished unless action is brought:

24 (a) Under paragraph (a) of subsection 1 of NRS 112.180, within 4 years after the transfer was
25 made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was
or could reasonably have been discovered by the claimant;

26 ⁸ The explanation by Mitchell surrounding the creation of retention agreements with the
27 CPA Sam Spitz signed in different styles and ink is additional information which leads the Court
28 to believe Mitchell is not credible. (Exhibits 60032-60036).

1 47. At all relevant times, each of the Related Entities was treated by Mitchell and
2 Lieberman as a disregarded entity of LVLP Holdings for tax purposes and all of the Related
3 Entities filed one combined tax return.

4 48. Except with respect to Livework Manager and Casino Coolidge, none of these
5 entities had its own bank account. Mitchell caused each of the Related Entities to use the same
6 bank accounts to deposit and disburse funds, including distributions to Mitchell and Liberman.

7 49. At all relevant times, Mitchell and Liberman caused each of the Related Entities to
8 use the same financial and accounting records, which are not distinguishable by entity. Each of
9 the Related Entities' financial and accounting records are not distinguishable by entity.

10 50. The LVLP accounting records include a few Mitchell and Liberman personal
11 transactions and postings commingled from multiple entities.

12 51. Mitchell and Liberman caused each of the Related Entities to use the same general
13 ledger to post all entries under the name of "Las Vegas Land Partners".

14 52. Mitchell, Liberman and the Related Entities commingled funds, including personal
15 loans from various banks which are included in the LVLP accounting records and general ledger.

16 53. Mitchell and Liberman also used journal entries to post commingled transactions
17 for themselves and the Related Entities.

18 54. In 2016, the Related Entities stopped using bank accounts and instead began using
19 journal entries to post entries apparently transacted personally by Mitchell.

20 55. As a result of Mitchell and Liberman's domination, influence and control over the
21 Related Entities, the individuality and separateness of the Related Entities—vis-à-vis themselves
22 and Mitchell and Liberman—was and remains nonexistent as evidenced by the commingling of
23 funds, transactions, revenues, expenses, assets, liabilities and contributed capital.

24 56. The manner in which Mitchell and Liberman operated the Related Entities makes
25 it virtually impossible to identify transactions by purpose and/or entity.

26 57. The evidence demonstrates that: (a) Mitchell, Liberman and the Related Entities
27 commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;

1 (c) Mitchell, Liberman and the Related Entities distributed funds to Mitchell and Liberman as
2 individuals without regard to parent entities; (d) Mitchell, Liberman and the Related Entities
3 treated assets of the other entities as their own; and (e) the Related Entities failed to observe
4 corporate or LLC formalities.

5 58. The evidence demonstrates that the Related Entities: (a) are and were influenced
6 and governed by Mitchell and Liberman; (b) there is such unity of interest and/or ownership that
7 Mitchell, Liberman and the Related Entities are inseparable from the other; and (c) the facts are
8 such that adherence to the fiction of separate entities would, under the circumstances, sanction a
9 fraud or promote injustice.

10 59. Mitchell, Liberman and the Related Entities have made distributions to avoid
11 satisfying Nype's claims and Judgment.

12 a. When Leah Property sold certain real property to Casino Coolidge on or
13 about December 17, 2014, and did not transfer the funds to LVLP;

14 b. When Mitchell and Liberman took personal distributions from the Related
15 Entities, between 2007 and 2016, totaling \$15,148.339.
16

17 60. In determining that these distributions were made with the actual intent to hinder,
18 delay or defraud creditors and Nype, the Court notes, among other things, the following:

19 a. They were made to "insiders" or other entities of which Mitchell and
20 Liberman own or control (in whole or in part);

21 b. They were made at times when Mitchell and Liberman were fully aware of
22 Nype's claims, Judgment and/or Nype's intent to sue for the amounts owed to him.

23 c. The distributions rendered or contributed to LVLP's and/or the Related
24 Entities' insolvency, and left LVLP and/or the Related Entities unable to pay their debts as they
25 became due;
26
27
28

d. Mitchell, Liberman and the Related Entities attempted to conceal the distributions and their assets, through their discovery misconduct in this matter, which required enormous and expensive effort on Nype's part to attempt to obtain full and proper disclosure; and

e. Mitchell, Liberman and the Related Entities removed or concealed assets.

61. If any findings of fact are properly conclusions of law, they shall be treated as if appropriately identified and designated.

CONCLUSIONS OF LAW

1. In Nevada, there are three general requirements for application of the alter ego doctrine: (1) the corporation must be influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction fraud or promote injustice.” *Polaris Indus. Corp. v. Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987).

2. Nevada recognizes application of the alter ego doctrine in reverse, in which a creditor is permitted to reach "the assets of a corporation to satisfy the debt of a corporate insider based on a showing that the corporate entity is really the alter ego of the individual." Loomis, 116 Nev. at 903, 8 P.3d at 846.

3. Application of the alter ego doctrine in reverse "is appropriate where the particular facts and equities show the existence of an alter ego relationship and require that the corporate fiction be ignored so that justice may be promoted." *Id.*, at 904, 8 P.3d at 846.

4. The Court, concludes that: (a) Mitchell, Liberman and the Related Entities commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized; (c) Mitchell, Liberman and the Related Entities committed unauthorized diversion of funds; (d)

1 Mitchell, Liberman and the Related Entities treated assets of the other entities as their own; and
2 (e) the Related Entities failed to observe corporate and LLC formalities.

3 5. The Court further concludes the evidence demonstrates that the Related Entities:
4 (a) are and were influenced and governed by Mitchell and Liberman; (b) there is such unity of
5 interest and/or ownership that Mitchell, Liberman and the Related Entities are inseparable from
6 the other; and (c) the facts are such that adherence to the fiction of separate entities would, under
7 the circumstances, sanction a fraud or promote injustice.
8

9 6. Justice and equity require that the Court impose alter ego liability on Mitchell,
10 Liberman and the Related Entities.

11 7. Nype has proven, by a preponderance of the evidence his claim for alter ego,
12 establishing that Mitchell, Liberman, and each of the Related Entities, is the alter ego of LVLP
13 and each other.
14

15 8. Nype has not proven, by a preponderance of the evidence, his claim for alter ego
16 that Mitchell Holdings is the alter ego of Mitchell.

17 9. Mitchell, Liberman and each of the Related Entities are jointly and severally liable
18 on Nype's Judgment and the damages, attorney's fees and costs awarded in this action.

19 10. Prior to September of 2015, Nype had reason to know that the limited transfers
20 were transfers made by debtors under the UFTA, that the transfers rendered debtors insolvent (or
21 contributed thereto) or the facts and circumstances upon which this Court utilized in determining
22 that the transfers were made with the actual intent to hinder, delay or defraud creditors (including
23 Nype).
24
25
26
27
28

1 11. Nype has proven, by a preponderance of the evidence his claims for fraudulent
2 transfer, including that certain of the distributions constitute fraudulent transfers within the
3 meaning of NRS 112.180(1)(a).⁹

4 12. Certain of those distributions were made outside the limitations period under NRS
5 112.230(1).
6

7 13. Nevada's Uniform Fraudulent Transfer Act provides an equitable remedy for
8 creditors affected by a fraudulent transfer, but nothing more. *Cadle Co. v. Woods & Erickson,*
9 *LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015).

10 14. Nype has proven by a preponderance of the evidence that he suffered damages in
11 the amount of \$341,934.47 as a result of the fraudulent transfer of the proceeds of the Leah
12 transaction with Casino Coolidge directly to Liberman and Mitchell, rather than to Leah's parent
13 LVLP.
14

15 15. The earlier transfers are barred by the limitations period for purposes of the
16 fraudulent transfer claim, only.

17 16. Nype has proven by a preponderance of the evidence that he suffered special
18 damages in the form of attorney's fees, costs and expert expenses related to the transfers in the
19 total amount of \$4,493,176.90.¹⁰
20

21 17. Plaintiff cannot recover on a civil conspiracy claim (or accessory liability) for
22 allegations arising out of NRS Chapter 112 against a nontransferor. *Cadle Co. v. Woods &*
23 *Erickson, LLP*, 131 Nev. 114 at 120, 345 P.3d 1049 (2015).
24

25 ⁹ The Court is cognizant of the possibility of duplicative awards given the various claims
for relief.

26 ¹⁰ The Court has previously evaluated the *Brunzell* factors in connection with the sanctions
27 order which has now been satisfied. See 12/26/19 filing. That evaluation is incorporated by
28 reference.

18. Independent of NRS Chapter 112, to prove a civil conspiracy, Plaintiff must prove “a combination of two or more persons who, by some concerted action, intend to accomplish a lawful objective for the purpose of harming another, and damage results from the act or acts.” *Hilton Hotels vs. Butch Lewis Productions*, 109 Nev. 1043, 148, 862 P.2d 1207, 1210 (1993).

19. The Court concludes that the evidence demonstrates that:

a. Mitchell and Liberman, engaged in conscious, concerted and ongoing efforts to conceal, hide, convey, keep secret and/or distribute millions of dollars in assets away from Nype;

b. Mitchell and Liberman received distributions from LVLV and the Related entities;

c. Mitchell, fabricated and backdated evidence to facilitate the destruction and/or concealment of material financial evidence by his agent that would have greatly assisted Nype's case.

d. But for Nype's pretrial discovery,¹¹ the fabrication of evidence would not have been uncovered.

20. Nype has proven his claim of civil conspiracy, by a preponderance of the evidence against Mitchell and Liberman.

21. Plaintiff has not established by a preponderance of the evidence the elements of civil conspiracy separate and apart from the distributions and fabrication of evidence.

22. Plaintiff has established damages on the civil conspiracy claim in the amount of \$15,148.339.

23. Nype has not demonstrated that punitive damages are appropriate in this matter.

¹¹ The limitations for a civil conspiracy claim is not limited by NRS 112.230(1)(a) but is instead governed by NRS 11.220 and the discovery rule. *Siragusa v. Brown*, 114 Nev. 1384 at 1391-3 (1998).

1 24. Nype is entitled to recover his attorney's fees as special damages as he was
2 successful on his claim for civil conspiracy in the total amount of \$4,493,176.90.

3 25. Nype has not established a claim for constructive trust given the current state of
4 title of the remaining parcels in which the Related Entities hold their interest.

5 26. Mitchell, Liberman, and the Related Entities' actions and inactions have caused
6 Nype damages in the total amount of \$19,641,515.90.¹²

7 27. Nype may also file a post-trial motion if appropriate, for fees and costs not proven
8 during the trial as special damages.

9 28. Given the findings and conclusion no further relief on the Declaratory Relief claim
10 is appropriate.

11 29. If any conclusions of law are properly findings of fact, they shall be treated as if
12 appropriately identified and designated.

13 Based upon the foregoing Findings of Fact and Conclusions of Law:

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
15 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer
16 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,
17 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC
18 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the fraudulent
19 conveyance claim in the amount of \$4,835,111.37.¹³

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
21 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell and Liberman on
22

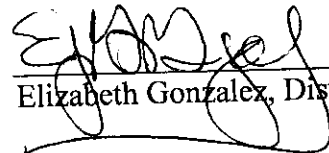
23
24
25
26 ¹² This is the total amount of damages which is not duplicated among the various claims for
27 which the Court has made an award.

28 ¹³ These damages are duplicated in the civil conspiracy judgment.

1 the civil conspiracy claim in the amount of \$19,641,515.90.

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
3 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer
4 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,
5 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC
6 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the alter ego claim in
7 the amount of the underlying judgment in A551073.
8

9 DATED this 17th day of January, 2020.

10
11 
12 Elizabeth Gonzalez, District Court Judge
13

14 **Certificate of Service**

15 I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of
16 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth
17 Judicial District Court Electronic Filing Program.

18 *If indicated below, a copy of the foregoing Scheduling Order was also:*

19 ☐ Placed in the Attorney(s) Folder on the 1st Floor of the RJC for;

20 ☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at
21 their last known address(es):
22

23 
24 Dan Kutinac
25
26
27
28

EXHIBIT “2”

David Mitchell					
LVLP					
		Capital Distributions	Capital Contributions	Net	
	2005	409,348.22	2,490,925.17	2,081,576.95	
	2006	2,140,000.00	2,027,569.98	(112,430.02)	
	2007	4,293,730.90	100,000.00	(4,193,730.90)	
	2008	129,500.00	74,750.00	(54,750.00)	
	2009	18,500.00	34,167.00	15,667.00	
	2010	-	360,000.00	360,000.00	
	2011	-	415,528.75	415,528.75	
	2012	1,249.86	324,769.31	323,519.45	
	2013	-	681,129.79	681,129.79	
	2014	250,000.00	962,861.97	712,861.97	
		7,242,328.98	7,471,701.97	229,372.99	
Barnet Liberman					
LVLP					
		Capital Distributions	Capital Contributions	Net	
	2005	2,004,200.00	6,029,490.44	4,025,290.44	
	2006	1,380,000.00	5,982,955.11	4,602,955.11	
	2007	10,477,408.10	745,000.00	(9,732,408.10)	
	2008	198,000.00	2,833,500.00	2,635,500.00	
	2009	807,000.00	419,320.57	(387,679.43)	
	2010	250,000.00	331,206.18	81,206.18	
	2011	-	355,456.25	355,456.25	
	2012	4,700.00	-	(4,700.00)	
	2013	-	23,444.00	23,444.00	
	2014	91,934.47	171,021.25	79,086.78	
		15,213,242.57	16,891,393.80	1,678,151.23	

CONFIDENTIAL INFORMATION

1

SPZ000437

RICH00124

MSJOPP000136

50028-0124
Case No.: A-16-740689-B

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BLUT LAW GROUP, PC, and that on **February 14, 2020**, I caused a correct copy of the foregoing document entitled **DEFENDANTS CASINO COOLIDGE, LLC AND BARNET LIBERMAN'S MOTION TO ALTER OR AMEND AMENDED JUDGMENT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO NRCP 52 AND NRCP 59** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which First Class postage was prepaid: and/or
- ☐ pursuant to NRCP (5)(b)(2)(D) to be served via facsimile; and/or
- ☐ pursuant to EDCR 7.26, to be sent via email; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth 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,

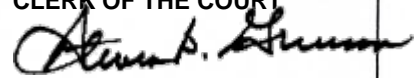
to the attorneys / interested parties listed below at the address and/or facsimile number indicated below:

John W. Muije, Esq. JOHN W. MUIJE & ASSOCIATES 1840 E. Sahara Ave #106 Las Vegas, NV 89104 <i>Attorneys for Plaintiffs</i>	Brian B. Boschee, Esq. HOLLY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON 400 S. Fourth St., 3 rd Flr. Las Vegas, NV 89101 <i>Attorneys for Defendant 305 Las Vegas, LLC</i>
James L. Edwards, Esq. COHEN JOHNSON PARKER & EDWARDS 375 E. Warm Springs Rd., Suite 104 Las Vegas, NV 89119 <i>Attorneys for Mitchell Defendants</i>	

/s/ Hillary Kapaona
An Employee of Blut Law Group, PC

ORIGINAL

Electronically Filed
3/30/2020 7:35 AM
Steven D. Grierson
CLERK OF THE COURT



1 **ORDR**

2 JOHN W. MUIJE & ASSOCIATES

3 JOHN W. MUIJE, ESQ.

4 Nevada Bar No: 2419

5 1840 E. Sahara Ave #106

6 Las Vegas, NV 89104

7 Phone No: (702) 386-7002

8 Fax No: (702) 386-9135

9 Email: jmuije@muijelawoffice.com

10 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 RUSSELL L. NYPE; REVENUE PLUS, LLC, DOES I
12 through X; DOES I through X; DOE
13 CORPORATIONS I through X; and DOES
14 PARTNERSHIPS I through X,

Plaintiffs,

vs.

CASE NO: A-16-740689-B

DEPT NO: XI

15 DAVID J. MITCHELL; BARNET LIBERMAN; LAS
16 VEGAS LAND PARTNERS, LLC; MEYER
17 PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
18 PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,
19 LLC; LIVE WORK MANAGER, LLC; AQUARIUS
20 OWNER, LLC; LVLP HOLDINGS, LLC;
21 MITCHELL HOLDINGS, LLC; LIBERMAN
22 HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE
WORKS TIC SUCCESSOR, LLC; CASINO
COOLIDGE LLC; DOES I through III, and ROE
CORPORATIONS I through III, inclusive,

Mitchell Defendants.

Date of Hearing: February 24, 2020

Time of Hearing: 9:00 a.m.

23 **ORDER DENYING DEFENDANTS CASINO COOLIDGE, LLC'S**
24 **AND BARNET LIBERMAN'S MOTION TO ALTER OR AMEND JUDGMENT**
25 **AS FILED ON FEBRUARY 14, 2020**

26 This matter coming on for hearing on February 24, 2020 at the hour of 9:00 a.m.,
27 Plaintiffs, RUSSELL L. NYPE AND REVENUE PLUS, LLC, being represented by JOHN W.
28 MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE & ASSOCIATES, ELLIOT S. BLUT,
ESQ., of the Law Firm of BLUT LAW GROUP, P.C., Attorneys for Defendants BARNET

02-28-20A05:40 RCVD

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1 LIBERMAN and CASINO COOLIDGE, LLC, and David J. Mitchell and the Mitchell
2 Defendants, being represented by H. Stan Johnson, Esq. and James L. Edwards, Esq., of the Law
3 Firm of COHEN JOHNSON PARKER & EDWARDS, the Court having reviewed and
4 considered the points and authorities, the exhibits in support thereof, and the various pleadings
5 and documents on file herein and having considered oral argument and good cause appearing.
6

7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendants Casino
8 Coolidge, LLC's and Barnet Liberman's Motion to Alter or Amend Judgment as filed on
9 February 14, 2020, be and the same hereby is **DENIED**.
10

11 DATED this ____ day of February, 2020.

12
13
14 _____
15 DISTRICT COURT JUDGE

16 Submitted by:

17 JOHN W. MUIJE & ASSOCIATES
18

19
20 By: /s/ JOHN W. MUIJE, ESQ.

21 JOHN W. MUIJE, ESQ.

22 Nevada Bar No: 2419

23 1840 East Sahara Avenue, Suite 106

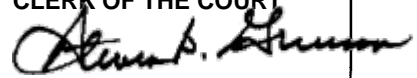
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28 *Attorneys for Plaintiffs*



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10 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 **RUSSELL L. NYPE AND REVENUE PLUS,**
12 **LLC**

CASE NO: A-16-740689-B

13 **Plaintiffs,**

DEPT NO: XI

14 **vs.**

15 **DAVID J. MITCHELL; BARNET LIBERMAN; LAS**
16 **VEGAS LAND PARTNERS, LLC; MEYER**
17 **PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH**
18 **PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,**
19 **LLC; LIVE WORK MANAGER, LLC; AQUARIUS**
20 **OWNER, LLC; LVLP HOLDINGS, LLC;**
21 **MITCHELL HOLDINGS, LLC; LIBERMAN**
22 **HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE**
23 **WORKS TIC SUCCESSOR, LLC; CASINO**
24 **COOLIDGE LLC; DOES I through III, and ROE**
25 **CORPORATIONS I through III, inclusive,**

26 **Mitchell Defendants.**

27 **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' CASINO**
28 **COOLIDGE, LLC'S AND BARNET LIBERMAN'S MOTION TO ALTER**
29 **OR AMEND JUDGMENT AS FILED ON FEBRUARY 14, 2020**

30 **TO: ELLIOT S. BLUT, ESQ., of BLUT LAW GROUP, P.C., Attorneys for Defendants**
31 **Barnet Liberman and Casino Coolidge, LLC**

32 **TO: H. STAN JOHNSON, ESQ., and JAMES L. EDWARDS, ESQ., of the Law Offices of**
33 **COHEN, JOHNSON, PARKER & EDWARDS, Attorneys for Mitchell Defendants**

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1 PLEASE TAKE NOTICE that the ORDER DENYING DEFENDANTS' CASINO
2 COOLIDGE, LLC'S AND BARNET LIBERMAN'S MOTION TO ALTER OR AMEND
3 JUDGMENT AS FILED ON FEBRUARY 14, 2020, was entered with the Court on the 30th
4 day of March, 2020, a copy of which is attached hereto as Exhibit "1".
5

6 DATED this 30TH day of March, 2020.

7 JOHN W. MUIJE & ASSOCIATES
8

9
10 By: /s/ JOHN W. MUIJE, ESQ.
11 JOHN W. MUIJE, ESQ.
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18 *Attorneys for Plaintiffs*
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28

CERTIFICATE OF MAILING

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 30TH day of March, 2020, I caused the foregoing document, **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' CASINO COOLIDGE, LLC'S AND BARNET LIBERMAN'S MOTION TO ALTER OR AMEND JUDGMENT AS FILED ON FEBRUARY 14, 2020**, to be served as follows:

- ☐ By placing a copy of the same for mailing in the United States mail, with first-class postage prepaid addressed as follows; and/or
- ☒ By electronically filing with the Clerk of the Court via the Odyssey E-File and Serve System;
- ☐ By placing a copy of the same for mailing in the United States mail, with first-class postage prepaid marked certified return receipt requested addressed as follows:

Elliot S. Blut, Esq.
BLUT LAW GROUP, P.C.
300 South Fourth Street, Suite 701
Las Vegas, Nevada 89101
*Attorneys for Defendants
Barnet Liberman and Casino Coolidge,
LLC*

H. Stan Johnson, Esq.
James L. Edwards, Esq.
**COHEN JOHNSON PARKER &
EDWARDS**
375 E. Warm Springs Road, #104
Las Vegas, Nevada 89119
Attorneys for Mitchell Defendants

Jean M. Vitman
An Employee of JOHN W. MUIJE & ASSOCIATES

EXHIBIT “1”

ORIGINAL

Electronically Filed
3/30/2020 9:05 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 **ORDR**
2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
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10 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

11 RUSSELL L. NYPE; REVENUE PLUS, LLC, DOES I
12 through X; DOES I through X; DOE
13 CORPORATIONS I through X; and DOES
14 PARTNERSHIPS I through X,

Plaintiffs,

vs.

15 DAVID J. MITCHELL; BARNET LIBERMAN; LAS
16 VEGAS LAND PARTNERS, LLC; MEYER
17 PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH
18 PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,
19 LLC; LIVE WORK MANAGER, LLC; AQUARIUS
20 OWNER, LLC; LVL HOLDINGS, LLC;
21 MITCHELL HOLDINGS, LLC; LIBERMAN
22 HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE
23 WORKS TIC SUCCESSOR, LLC; CASINO
24 COOLIDGE LLC; DOES I through III, and ROE
25 CORPORATIONS I through III, inclusive,

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: February 24, 2020

Time of Hearing: 9:00 a.m.

23 **ORDER DENYING DEFENDANTS CASINO COOLIDGE, LLC'S**
24 **AND BARNET LIBERMAN'S MOTION TO ALTER OR AMEND JUDGMENT**
25 **AS FILED ON FEBRUARY 14, 2020**

26 This matter coming on for hearing on February 24, 2020 at the hour of 9:00 a.m.,
27 Plaintiffs, RUSSELL L. NYPE AND REVENUE PLUS, LLC, being represented by JOHN W.
28 MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE & ASSOCIATES, ELLIOT S. BLUT,
ESQ., of the Law Firm of BLUT LAW GROUP, P.C., Attorneys for Defendants BARNET

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Case Number: A-16-740689-B

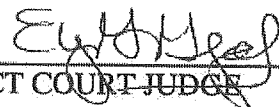
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1 LIBERMAN and CASINO COOLIDGE, LLC, and David J. Mitchell and the Mitchell
2 Defendants, being represented by H. Stan Johnson, Esq. and James L. Edwards, Esq., of the Law
3 Firm of COHEN JOHNSON PARKER & EDWARDS, the Court having reviewed and
4 considered the points and authorities, the exhibits in support thereof, and the various pleadings
5 and documents on file herein and having considered oral argument and good cause appearing.

7 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendants Casino
8 Coolidge, LLC's and Barnet Liberman's Motion to Alter or Amend Judgment as filed on
9 February 14, 2020, be and the same hereby is **DENIED**.

10 March
11 DATED this 30th day of ~~February~~, 2020.

12
13 
14 DISTRICT COURT JUDGE

15
16 Submitted by:

17 JOHN W. MUIJE & ASSOCIATES
18

19
20 By: /s/ JOHN W. MUIJE, ESQ.

21 JOHN W. MUIJE, ESQ.

22 Nevada Bar No: 2419

23 1840 East Sahara Avenue, Suite 106

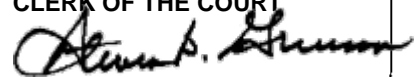
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27 Email: jmuije@muijelawoffice.com

28 *Attorneys for Plaintiffs*



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC,
DOES I through X; DOES I through X; DOE
CORPORATIONS CASE NO: A-16-740689-
C I through X; and DOES PARTNERSHIPS I
through X,

Plaintiffs,

v.

DAVID J. MITCHELL; BARNET
LIBERMAN; LAS VEGAS LAND
PARTNERS, LLC; MEYER PROPERTY,
LTD.; ZOE PROPERTY, LLC; LEAH
PROPERTY, LLC; WINK ONE, LLC; LNE
WORK, LLC; LNE WORK MANAGER,
LLC; AQUARIUS OWNER, LLC; L VLP
HOLDINGS, LLC; MITCHELL HOLDINGS,
LLC; LIBERMAN HOLDINGS, LLC; 305
LAS VEGAS, LLC; LIVE WORKS TIC
SUCCESSOR, LLC; CASINO COOLIDGE
LLC; DOES I through ill, and ROE
CORPORATIONS I through ill, inclusive,

Defendants.

Case No.: A-16-740689-C

Dept.: XI

AMENDED FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter having come on for non-jury trial before the Honorable Elizabeth Gonzalez beginning on December 30, 2019, and continuing day to day, until its completion on January 7, 2020; John W. Muije of John W. Muije & Associates appeared on behalf of Russell L. Nype and Revenue Plus, LLC ("Plaintiffs") and Shelley D. Krohn, U.S. Bankruptcy Trustee ("Plaintiff Trustee"); H. Stan Johnson, James L. Edwards and Kevin M. Johnson of the law firm of Cohen, Johnson, Parker & Edwards appeared on behalf of David J. Mitchell, Las Vegas Land Partners, LLC, Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, Mitchell Holdings

RECEIVED

JAN 17 2020

CLERK OF THE COURT

14

1 LLC, Live Works TIC Successor LLC, FC/Live Work Vegas LLC, ("Mitchell Defendants");¹
2 Brian W. Boschee of the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson
3 appeared on behalf of Defendant 305 Las Vegas, LLC²; and, Elliott S. Blut appeared on behalf of
4 Defendants Barnett Liberman and Casino Coolidge; the Court having read and considered the
5 pleadings filed by the parties; having reviewed the evidence admitted during the trial; having
6 heard and carefully considered the testimony of the witnesses called to testify and weighing their
7 credibility; having considered the oral and written arguments of counsel, and with the intent of
8 rendering a decision on all claims before the Court,³ pursuant to NRCP 52(a) and 58; the Court
9 makes the following findings of fact and conclusions of law:
10

11 FINDINGS OF FACT

12
13 1. This action arises from a judgment that Plaintiffs obtained on or about April 10,
14 2015, against Las Vegas Land Partners, LLC ("LVLP") in Case No. A551073. Plaintiff filed this
15 suit on July 26, 2016. The complaint was amended by the filing of an amended complaint on
16 August 21, 2017.

17 2. Plaintiff Trustee was duly appointed to act as the Trustee in the Bankruptcy Case
18 of *Las Vegas Land Partners, LLC*, Case No. BK-19-15333-mkn and moved to intervene in the
19 instant action, which motion was granted on November 18, 2019. Plaintiff Trustee filed the
20 complaint in intervention on November 18, 2019.

21 3. Plaintiff Russell L. Nype ("Nype") is an adult resident of New York.
22

23
24 ¹ Given the filing of *Las Vegas Land Partners, LLC*, Case No. BK-19-15333-mkn in
August 2019, the Court takes no action against Las Vegas Land Partners, LLC.

25 ² The Court granted the Rule 50(a) motion by 305 Las Vegas, LLC at the close of the
26 Plaintiffs' case as no damages against that entity were established given the nature of its conduct.

27 ³ Plaintiff asserted five claims for relief against the Defendants: 1) Constructive Trust;
28 2) Fraudulent Transfer; 3) Civil Conspiracy; 4) Declaratory Relief; and 5) Alter Ego.

- 1 4. Plaintiff Revenue Plus, LLC (collectively with Nype, "Plaintiffs") is a Florida
2 limited liability company.
- 3 5. Defendant, David J. Mitchell ("Mitchell"), is an adult resident of New York.
- 4 6. Defendant, Barnett Liberman ("Liberman"), is an adult resident of New York.
- 5 7. Defendant Mitchell Holdings, LLC ("Mitchell Holdings") is a Delaware limited
6 liability company.
- 7 8. Defendant LVLP Holdings, LLC ("LVLP Holdings") is a Delaware limited
8 liability company that was formed on or about November 4, 2004 by Mitchell and Liberman.
- 9 9. Defendant Las Vegas Land Partners ("LVLP") is a Delaware limited liability
10 company.
- 11 10. Mitchell and Liberman are managers of LVLP.
- 12 11. At all relevant times, Mitchell and Liberman were the sole owners (50/50) and
13 managers of LVLP Holdings.
- 14 12. At all relevant times, LVLP was owned (50/50) and managed by Mitchell and
15 Liberman.
- 16 13. Defendant Casino Coolidge LLC is a Nevada limited liability company. ("Casino
17 Coolidge").
- 18 14. Liberman is the managing member of Casino Coolidge.
- 19 15. Defendant Aquarius Owner, LLC ("Aquarius") is a Delaware limited liability
20 company.
- 21 16. Defendant Leah Property, LLC ("Leah") is a Delaware limited liability company.
- 22 17. Defendant Livework, LLC ("Livework") is a Delaware limited liability company.
- 23 18. Defendant Livework Manager, LLC ("Livework Manager"), is a Delaware limited
24 liability company.
- 25 19. Defendant Zoe Property, LLC ("Zoe") is a Delaware limited liability company.
- 26 20. Defendant Wink One, LLC ("Wink") is a Delaware limited liability company.
- 27
- 28

1 21. Defendant Meyer Property, LLC ("Meyer") is a Delaware limited liability
2 company.

3 22. Non-party Charleston Casino Partners, LLC ("Casino Partners") is a Delaware
4 limited liability company.

5 23. Defendant FC/LW Vegas, LLC ("FC/LW") is a Delaware limited liability
6 company.

7 24. Defendant LiveWorks TIC Successor, LLC ("TIC Successor") is a Delaware
8 limited liability company.

9 25. These entities are collectively referred to as the Related Entities.⁴

10 26. 305 Las Vegas, LLC ("305 Las Vegas") was created in April of 2007 for the
11 purpose through a 1031 exchange of purchasing real property located around 300 East
12 Charleston.

13 27. In 2005, Mitchell and Liberman requested Nype's assistance with finding a
14 development partner to assist them in developing certain real property in Downtown Las Vegas.

15 28. Prior to closing the transaction with Forest City, a dispute arose between LVLP
16 and Nype in late 2006/early 2007 over the amount Nype was entitled to be paid related to the
17 transaction with Forest City.

18 29. Mitchell and Liberman were fully aware that Nype was expecting to receive at
19 least two million dollars for his efforts.

20 30. Despite understanding Nype's expectations, Mitchell and Liberman only set aside
21 \$430,000.

22 31. Shortly after setting aside that amount, Mitchell and Liberman took personal
23 distributions from LVLP in excess of thirteen million dollars.
24

25
26 ⁴ For purposes of the term "Related Entity" the following are included: Las Vegas Land
27 Partners, LLC, Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC,
28 LiveWork LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC,
LiveWorks TIC Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC.

1 32. On November 2, 2007, LVLP and two other entities⁵ sued Nype seeking primarily
2 a declaratory judgment that they did not owe Nype any fee, Nype counterclaimed seeking
3 compensation for services rendered.

4 33. In December 2014, Leah sold certain real property to Casino Coolidge for
5 \$1,000,000. Mitchell and Liberman caused Leah to distribute sales proceeds in the amount of
6 \$341,934.47 directly to themselves, rather than Leah's parent company, LVLP. Plaintiff has not
7 established that given the market conditions at the time that Mitchell and Liberman sold the Leah
8 Property without obtaining reasonably equivalent value in exchange.

9 34. After obtaining judgment on the counterclaim in 2015, Nype engaged in
10 significant attempts to collect on the Judgment from LVLP.

11 35. Those efforts resulted in recovery of approximately \$10,000.

12 36. Between 2007 and 2016, Mitchell and Liberman distributed to themselves a total
13 of \$15,148,339 from the Related Entities.

14 37. These distributions were at times that Mitchell and Liberman were fully aware of
15 Nype's claims.

16 38. The distributions caused and/or contributed to the Related Entities' insolvency
17 and/or inability to pay their debts as they became due.

18 39. The evidence also demonstrates that Mitchell, Liberman and the Related Entities
19 engaged in conscious, concerted and ongoing efforts to conceal, hide, convey, keep secret and/or
20 divert millions of dollars in assets away from Nype and/or other creditors.

21 40. The evidence also demonstrates that Mitchell, Liberman and the Related Entities
22 engaged in conscious, concerted and ongoing efforts to ensure that funds and/or assets that would
23 otherwise be available to Nype to satisfy his claims (and Judgment) were kept away from Nype.

24
25
26
27 ⁵ The other plaintiffs in that case were LiveWork LLC and Zoe Properties, LLC, neither of
28 which were named as counterdefendants.

1 41. The evidence demonstrates that Mitchell, Liberman and the Related Entities
2 distributed in excess of \$15,000,000 in funds that should have been available to satisfy Nype's
3 claims/Judgment.

4 42. Nype's disclosure of the tax returns and its own consultant's report⁶ on or about
5 April 25, 2014, in A551073, are the latest date of discovery for purposes of NRS 112.230(1)(a).⁷
6

7 43. David Mitchell was not credible.⁸ The failure of Mitchell to meaningfully
8 participate in discovery until the eve of trial and the failure to produce documents which should
9 have been in his possession leads the Court to conclude that if those documents had been
10 produced they would have been adverse to Mitchell.

11 44. At all relevant times, each of the Related Entities was wholly owned and managed
12 by LVLP or LVLP Holdings.

13 45. At all relevant times, each of the Related Entities was beneficially owned,
14 controlled, and managed by Mitchell and Liberman.
15

16 46. One or more of the Related Entities was formed with an initial capitalization of
17 just \$10.
18
19

20 ⁶ The report is a part of Exhibit 90079.

21 ⁷ That statute provides in pertinent part:

22 1. A claim for relief with respect to a fraudulent transfer or obligation under this chapter is
23 extinguished unless action is brought:

24 (a) Under paragraph (a) of subsection 1 of NRS 112.180, within 4 years after the transfer was
25 made or the obligation was incurred or, if later, within 1 year after the transfer or obligation was
or could reasonably have been discovered by the claimant;

26 ⁸ The explanation by Mitchell surrounding the creation of retention agreements with the
27 CPA Sam Spitz signed in different styles and ink is additional information which leads the Court
to believe Mitchell is not credible. (Exhibits 60032-60036).
28

1 47. At all relevant times, each of the Related Entities was treated by Mitchell and
2 Lieberman as a disregarded entity of LVLP Holdings for tax purposes and all of the Related
3 Entities filed one combined tax return.

4 48. Except with respect to Livework Manager and Casino Coolidge, none of these
5 entities had its own bank account. Mitchell caused each of the Related Entities to use the same
6 bank accounts to deposit and disburse funds, including distributions to Mitchell and Liberman.

7 49. At all relevant times, Mitchell and Liberman caused each of the Related Entities to
8 use the same financial and accounting records, which are not distinguishable by entity. Each of
9 the Related Entities' financial and accounting records are not distinguishable by entity.

10 50. The LVLP accounting records include a few Mitchell and Liberman personal
11 transactions and postings commingled from multiple entities.

12 51. Mitchell and Liberman caused each of the Related Entities to use the same general
13 ledger to post all entries under the name of "Las Vegas Land Partners".

14 52. Mitchell, Liberman and the Related Entities commingled funds, including personal
15 loans from various banks which are included in the LVLP accounting records and general ledger.

16 53. Mitchell and Liberman also used journal entries to post commingled transactions
17 for themselves and the Related Entities.

18 54. In 2016, the Related Entities stopped using bank accounts and instead began using
19 journal entries to post entries apparently transacted personally by Mitchell.

20 55. As a result of Mitchell and Liberman's domination, influence and control over the
21 Related Entities, the individuality and separateness of the Related Entities—vis-à-vis themselves
22 and Mitchell and Liberman—was and remains nonexistent as evidenced by the commingling of
23 funds, transactions, revenues, expenses, assets, liabilities and contributed capital.

24 56. The manner in which Mitchell and Liberman operated the Related Entities makes
25 it virtually impossible to identify transactions by purpose and/or entity.

26 57. The evidence demonstrates that: (a) Mitchell, Liberman and the Related Entities
27 commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;

28

1 (c) Mitchell, Liberman and the Related Entities distributed funds to Mitchell and Liberman as
2 individuals without regard to parent entities; (d) Mitchell, Liberman and the Related Entities
3 treated assets of the other entities as their own; and (e) the Related Entities failed to observe
4 corporate or LLC formalities.

5 58. The evidence demonstrates that the Related Entities: (a) are and were influenced
6 and governed by Mitchell and Liberman; (b) there is such unity of interest and/or ownership that
7 Mitchell, Liberman and the Related Entities are inseparable from the other; and (c) the facts are
8 such that adherence to the fiction of separate entities would, under the circumstances, sanction a
9 fraud or promote injustice.

10 59. Mitchell, Liberman and the Related Entities have made distributions to avoid
11 satisfying Nype's claims and Judgment.

12 a. When Leah Property sold certain real property to Casino Coolidge on or
13 about December 17, 2014, and did not transfer the funds to LVLP;

14 b. When Mitchell and Liberman took personal distributions from the Related
15 Entities, between 2007 and 2016, totaling \$15,148.339.
16

17 60. In determining that these distributions were made with the actual intent to hinder,
18 delay or defraud creditors and Nype, the Court notes, among other things, the following:

19 a. They were made to "insiders" or other entities of which Mitchell and
20 Liberman own or control (in whole or in part);

21 b. They were made at times when Mitchell and Liberman were fully aware of
22 Nype's claims, Judgment and/or Nype's intent to sue for the amounts owed to him.

23 c. The distributions rendered or contributed to LVLP's and/or the Related
24 Entities' insolvency, and left LVLP and/or the Related Entities unable to pay their debts as they
25 became due;
26
27
28

1 d. Mitchell, Liberman and the Related Entities attempted to conceal the
2 distributions and their assets, through their discovery misconduct in this matter, which required
3 enormous and expensive effort on Nype's part to attempt to obtain full and proper disclosure; and

4 e. Mitchell, Liberman and the Related Entities removed or concealed assets.

5 61. If any findings of fact are properly conclusions of law, they shall be treated as if
6 appropriately identified and designated.
7

8 CONCLUSIONS OF LAW

9 1. In Nevada, there are three general requirements for application of the alter ego
10 doctrine: (1) the corporation must be influenced and governed by the person asserted to be the
11 alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the
12 other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity
13 would, under the circumstances, sanction fraud or promote injustice." *Polaris Indus. Corp. v.*
14 *Kaplan*, 103 Nev. 598, 601, 747 P.2d 884, 886 (1987).
15

16 2. Nevada recognizes application of the alter ego doctrine in reverse, in which a
17 creditor is permitted to reach "the assets of a corporation to satisfy the debt of a corporate insider
18 based on a showing that the corporate entity is really the alter ego of the individual." *Loomis*,
19 116 Nev. at 903, 8 P.3d at 846.
20

21 3. Application of the alter ego doctrine in reverse "is appropriate where the particular
22 facts and equities show the existence of an alter ego relationship and require that the corporate
23 fiction be ignored so that justice may be promoted." *Id.*, at 904, 8 P.3d at 846.

24 4. The Court, concludes that: (a) Mitchell, Liberman and the Related Entities
25 commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;
26 (c) Mitchell, Liberman and the Related Entities committed unauthorized diversion of funds; (d)
27
28

1 Mitchell, Liberman and the Related Entities treated assets of the other entities as their own; and
2 (e) the Related Entities failed to observe corporate and LLC formalities.

3 5. The Court further concludes the evidence demonstrates that the Related Entities:
4 (a) are and were influenced and governed by Mitchell and Liberman; (b) there is such unity of
5 interest and/or ownership that Mitchell, Liberman and the Related Entities are inseparable from
6 the other; and (c) the facts are such that adherence to the fiction of separate entities would, under
7 the circumstances, sanction a fraud or promote injustice.
8

9 6. Justice and equity require that the Court impose alter ego liability on Mitchell,
10 Liberman and the Related Entities.

11 7. Nype has proven, by a preponderance of the evidence his claim for alter ego,
12 establishing that Mitchell, Liberman, and each of the Related Entities, is the alter ego of LVLP
13 and each other.
14

15 8. Nype has not proven, by a preponderance of the evidence, his claim for alter ego
16 that Mitchell Holdings is the alter ego of Mitchell.

17 9. Mitchell, Liberman and each of the Related Entities are jointly and severally liable
18 on Nype's Judgment and the damages, attorney's fees and costs awarded in this action.

19 10. Prior to September of 2015, Nype had reason to know that the limited transfers
20 were transfers made by debtors under the UFTA, that the transfers rendered debtors insolvent (or
21 contributed thereto) or the facts and circumstances upon which this Court utilized in determining
22 that the transfers were made with the actual intent to hinder, delay or defraud creditors (including
23 Nype).
24
25
26
27
28

1 11. Nype has proven, by a preponderance of the evidence his claims for fraudulent
2 transfer, including that certain of the distributions constitute fraudulent transfers within the
3 meaning of NRS 112.180(1)(a).⁹

4 12. Certain of those distributions were made outside the limitations period under NRS
5 112.230(1).
6

7 13. Nevada's Uniform Fraudulent Transfer Act provides an equitable remedy for
8 creditors affected by a fraudulent transfer, but nothing more. *Cadle Co. v. Woods & Erickson,*
9 *LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015).

10 14. Nype has proven by a preponderance of the evidence that he suffered damages in
11 the amount of \$341,934.47 as a result of the fraudulent transfer of the proceeds of the Leah
12 transaction with Casino Coolidge directly to Liberman and Mitchell, rather than to Leah's parent
13 LVLP.
14

15 15. The earlier transfers are barred by the limitations period for purposes of the
16 fraudulent transfer claim, only.

17 16. Nype has proven by a preponderance of the evidence that he suffered special
18 damages in the form of attorney's fees, costs and expert expenses related to the transfers in the
19 total amount of \$4,493,176.90.¹⁰
20

21 17. Plaintiff cannot recover on a civil conspiracy claim (or accessory liability) for
22 allegations arising out of NRS Chapter 112 against a nontransferor. *Cadle Co. v. Woods &*
23 *Erickson, LLP*, 131 Nev. 114 at 120, 345 P.3d 1049 (2015).
24

25 ⁹ The Court is cognizant of the possibility of duplicative awards given the various claims
for relief.

26 ¹⁰ The Court has previously evaluated the *Brunzell* factors in connection with the sanctions
27 order which has now been satisfied. See 12/26/19 filing. That evaluation is incorporated by
28 reference.

18. Independent of NRS Chapter 112, to prove a civil conspiracy, Plaintiff must prove “a combination of two or more persons who, by some concerted action, intend to accomplish a lawful objective for the purpose of harming another, and damage results from the act or acts.” *Hilton Hotels vs. Butch Lewis Productions*, 109 Nev. 1043, 148, 862 P.2d 1207, 1210 (1993).

19. The Court concludes that the evidence demonstrates that:

a. Mitchell and Liberman, engaged in conscious, concerted and ongoing efforts to conceal, hide, convey, keep secret and/or distribute millions of dollars in assets away from Nype;

b. Mitchell and Liberman received distributions from LVLV and the Related entities;

c. Mitchell, fabricated and backdated evidence to facilitate the destruction and/or concealment of material financial evidence by his agent that would have greatly assisted Nype's case.

d. But for Nype's pretrial discovery,¹¹ the fabrication of evidence would not have been uncovered.

20. Nype has proven his claim of civil conspiracy, by a preponderance of the evidence against Mitchell and Liberman.

21. Plaintiff has not established by a preponderance of the evidence the elements of civil conspiracy separate and apart from the distributions and fabrication of evidence.

22. Plaintiff has established damages on the civil conspiracy claim in the amount of \$15,148.339.

23. Nype has not demonstrated that punitive damages are appropriate in this matter.

¹¹ The limitations for a civil conspiracy claim is not limited by NRS 112.230(1)(a) but is instead governed by NRS 11.220 and the discovery rule. *Siragusa v. Brown*, 114 Nev. 1384 at 1391-3 (1998).

1 24. Nype is entitled to recover his attorney's fees as special damages as he was
2 successful on his claim for civil conspiracy in the total amount of \$4,493,176.90.

3 25. Nype has not established a claim for constructive trust given the current state of
4 title of the remaining parcels in which the Related Entities hold their interest.

5 26. Mitchell, Liberman, and the Related Entities' actions and inactions have caused
6 Nype damages in the total amount of \$19,641,515.90.¹²

7 27. Nype may also file a post-trial motion if appropriate, for fees and costs not proven
8 during the trial as special damages.

9 28. Given the findings and conclusion no further relief on the Declaratory Relief claim
10 is appropriate.

11 29. If any conclusions of law are properly findings of fact, they shall be treated as if
12 appropriately identified and designated.

13 Based upon the foregoing Findings of Fact and Conclusions of Law:

14 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
15 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer
16 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,
17 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC
18 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the fraudulent
19 conveyance claim in the amount of \$4,835,111.37.¹³

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
21 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell and Liberman on
22

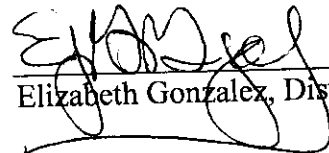
23
24
25
26 ¹² This is the total amount of damages which is not duplicated among the various claims for
27 which the Court has made an award.

28 ¹³ These damages are duplicated in the civil conspiracy judgment.

1 the civil conspiracy claim in the amount of \$19,641,515.90.

2 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is
3 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer
4 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,
5 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC
6 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the alter ego claim in
7 the amount of the underlying judgment in A551073.
8

9 DATED this 17th day of January, 2020.

10
11 
12 Elizabeth Gonzalez, District Court Judge
13

14 **Certificate of Service**

15 I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of
16 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth
17 Judicial District Court Electronic Filing Program.

18 *If indicated below, a copy of the foregoing Scheduling Order was also:*

19 ☐ Placed in the Attorney(s) Folder on the 1st Floor of the RJC for;

20 ☐ Mailed by United States Postal Service, Postage prepaid, to the proper parties listed below at
21 their last known address(es):
22

23 
24 Dan Kutinac
25
26
27
28