

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID J. MITCHELL; ET AL.;

Appellants,

vs.

RUSSELL L. NYPE; REVENUE
PLUS, LLC; AND SHELLEY D.
KROHN,

Respondents.

Supreme Court Case No. 80693

District Court No. A-16-740689-B

Electronically Filed
Mar 18 2021 10:07 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPELLANTS' APPENDIX – VOLUME V OF XXIX

COHEN JOHNSON

H. STAN JOHNSON, ESQ.

Nevada Bar No. 00265

sjohnson@cohenjohnson.com

KEVIN M. JOHNSON, ESQ.

Nevada Bar No. 14551

kjohnson@cohenjohnson.com

375 E. Warm Springs Road, Suite 104

Las Vegas, Nevada 89119

Telephone: (702) 823-3500

Facsimile: (702) 823-3400

*Attorney for Appellants David J. Mitchell,
Meyer Property, Ltd., Zoe Property, LLC,
Leah Property, LLC, Wink One, LLC,
Aquarius Owner, LLC, LVLP Holdings,
LLC, and Live Works Tic Successor, LLC*

CHRONOLOGICAL TABLE OF CONTENTS TO
APPELLANTS' APPENDIX

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
7/26/16	Complaint (Original)	I	AA 1-19
2/27/17	Proofs of Service	I	AA 20-48
3/23/17	Defendants' Motion to Strike Plaintiffs' Jury Demand	I	AA 49-59
4/6/17	Defendants' Motion to Dismiss Plaintiffs' Complaint	I	AA 60-88
4/17/17	Plaintiffs' Opposition to Defendants' Motion to Strike Jury Demand; Counter-Motion for Advisory Jury	I	AA 89-151
4/25/17	Defendants' Reply to Motion to Strike; Opposition to Counter-Motion for Advisory Jury	I	AA 152-162
5/24/17	NEO re: Defendants' Motion to Strike and Counter-Motion for Advisory Jury	I	AA 163-169
6/14/17	Plaintiffs' Opposition to Defendants' Motion to Dismiss	II	AA 170-268
7/6/17	Defendants' Reply to Motion to Dismiss	II	AA 269-292
7/18/17	Business Court Order	II	AA 293-297
8/9/17	NEO re: Defendants' Motion to Dismiss	II	AA 298-306
8/21/17	Amended Complaint	II	AA 307-340
9/5/17	Answer to Amended Complaint	II	AA 341-351

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
9/8/17	Answer to Amended Complaint [Lieberman and 305 Las Vegas]	II	AA 352-361
10/24/17	Joint Case Conference Report [Partial Document Only]	III	AA 362-470
2/15/18	NEO re: Continue Discovery [First]	III	AA 471-478
2/20/18	Business Court Order [Amended]	III	AA 479-481
2/21/18	NEO re: Stipulated Protective Order	III	AA 482-489
4/19/18	Mitchell Defendants' Motion to Compel Discovery	IV	AA 490-725
4/26/18	Joinder to Mitchell Defendants' Motion to Compel Discovery [Lieberman and 305 Las Vegas]	IV	AA 726-728
5/11/18	Plaintiffs' Opposition to Mitchell Defendants' Motion to Compel Discovery; Counter-Motion for Disclosure of Un-Redacted Emails [Partial Document Only]	V	AA 729-795
5/30/18	Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 796-828
5/30/18	Joinder to Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 829-831
6/5/18	Plaintiffs' Supplement to Opposition to Mitchell Defendants' Motion to Compel Discovery and Counter-Motion for Disclosure of Un-Redacted Emails	V	AA 832-861

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
6/19/18	NEO re: Mitchell Defendants' Motion to Compel Discovery and Plaintiffs' Counter-Motion	V	AA 862-868
7/3/18	NEO re: Plaintiffs' Ex Parte Application for OSC	V	AA 869-878
7/17/18	Amended Business Court Order	V	AA 879-882
7/30/18	Second Amended Business Court Order	V	AA 883-885
11/7/18	Court Minutes - November 7, 2018	V	AA 886-887
11/20/18	NEO re: Continue Discovery (Second)	V	AA 888-894
11/30/18	NEO re: Dismissal of Defendant, Liberman Holdings	V	AA 895-902
5/30/19	NEO re: Plaintiffs' Motion to Compel Discovery	V	AA 903-914
8/23/19	Defendant's, 305 Las Vegas, Motion for Summary Judgment	V	AA 915-936
8/28/19	Notice of Filing Bankruptcy	V	AA 937-939
9/23/19	NEO re: Discovery Sanctions	V	AA 940-952
10/7/19	Plaintiffs' Opposition to Defendant's, 305 Las Vegas, Motion for Summary Judgment	VI	AA 953-980
10/17/19	Defendant's, 305 Las Vegas, Reply to Motion for Summary Judgment	VI	AA 981-991
11/12/19	Receipt of Copy	VI	AA 992-993

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
11/12/19	Motion to Intervene	VI	AA 994-1036
11/16/19	Mitchell Defendants' Opposition to Motion to Intervene	VI	AA 1037-1045
11/18/19	NEO re: Motion to Intervene	VI	AA 1046-1051
11/18/19	Complaint in Intervention	VI	AA 1052-1082
11/19/19	Errata to Complaint in Intervention	VI	AA 1083-1088
11/21/19	NEO re: Redactions and Sealing	VI	AA 1089-1094
11/21/19	Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1095-1123
12/9/19	Answer to Complaint in Intervention [305 Las Vegas]	VI	AA 1124-1133
12/12/19	Plaintiffs' Opposition to Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1134-1155
12/19/19	Answer to Complaint in Intervention [Mitchell Defendants]	VI	AA 1156-1160
12/19/19	Mitchell Defendants' Reply to Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1161-1170
12/23/19	Answer to Complaint in Intervention [Lieberman and Casino Coolidge]	VI	AA 1171-1179
12/26/19	Satisfaction of Judgment	VI	AA 1180-1182

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
12/27/19	Joint Pre-Trial Memorandum [Partial Document Only]	VI	AA 1183-1202
1/16/20	NOE Findings of Fact, Conclusions of Law and Judgment [Original]	VII	AA 1203-1220
1/17/19	NOE Findings of Fact, Conclusions of Law and Judgment [Amended]	VII	AA 1221-1238
2/6/20	Plaintiffs' Motion for Attorney's Fees	VII	AA 1239-1289
2/13/20	Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VII	AA 1290-1324
2/14/20	Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1325-1352
2/14/20	Plaintiffs' Opposition to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1353-1370
2/14/20	Mitchell Defendants' Motion to Alter/Amend Judgment	VII	AA 1371-1391
2/20/20	Joinder to Mitchell Defendants' Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1392-1394
2/20/20	Reply to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1395-1401
2/20/20	Mitchell Defendants' Opposition to Plaintiffs' Motion for Attorney's Fees	VII	AA 1402-1408

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
2/20/20	Plaintiffs' Opposition to Motions to Alter/Amend Judgment [All Parties]	VII	AA 1409-1434
2/24/20	NEO re: Directed Verdict and Judgment for Defendant, 305 Las Vegas	VII	AA 1435-1439
2/25/20	Notice of Appeal [Lieberman and Casino Coolidge]	VII	AA 1440-1442
2/26/20	Notice of Appeal [Mitchell Defendants]	VIII	AA 1443-1460
2/27/20	Mitchell Defendants' Opposition to Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1461-1467
3/6/20	Plaintiffs' Reply to Motion for Attorney's Fees	VIII	AA 1468-1475
3/13/20	Plaintiffs' Reply to Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1476-1482
3/30/20	NEO re: Motion to Alter/Amend Judgment [Casino Coolidge]	VIII	AA 1483-1488
3/30/20	NEO re: Motion to Alter/Amend Judgment [Mitchell Defendants]	VIII	AA 1489-1494
3/30/20	NEO re: Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VIII	AA 1492-1500

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
5/13/20	NEO re: Plaintiffs' Motion for Attorney's Fees	VIII	AA 1501-1510
5/13/20	NEO re: Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1511-1517
5/14/20	NEO re: Motion to Retax and Settle Costs	VIII	AA 1518-1524
<u>TRANSCRIPTS</u>			
11/18/19	Court Transcript - November 18, 2019 [Motion to Intervene]	VIII	AA 1525-1532
12/30/19	Trial Transcript - Day 1 [December 30, 2019]	IX	AA 1533-1697
12/31/19	Trial Transcript - Day 2 [December 31, 2019]	X	AA 1698-1785
1/2/20	Trial Transcript - Day 3 [January 2, 2020]	XI	AA 1786-1987
1/3/20	Trial Transcript - Day 4 [January 3, 2020]	XII	AA 1988-2163
1/6/20	Trial Transcript - Day 5 [January 6, 2020]	XIII	AA 2164-2303
1/7/20	Trial Transcript - Day 6 [January 7, 2020]	XIV	AA 2304-2421
2/4/20	Court Transcript - February 4, 2020 [Motions to Alter/Amend]	XV	AA 2422-2456

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
<u>TRIAL EXHIBITS</u>			
Undated	Plaintiffs' Trial Exhibit 1 [Ownerships Interests]	XV	AA 2457
Undated	Plaintiffs' Trial Exhibit 3 [LVLP Organization Documents]	XV	AA 2458-2502
Undated	Plaintiffs' Trial Exhibit 9 [Live Work, LLC - Nevada SOS]	XV	AA 2503-2505
Undated	Plaintiffs' Trial Exhibit 10 [Live Work Organization Documents]	XV	AA 2506-2558
Undated	Plaintiffs' Trial Exhibit 12 [Term Restructure - Forest City]	XV	AA 2559-2563
Undated	Plaintiffs' Trial Exhibit 17 [305 Las Vegas Entity Details]	XV	AA 2564-2566
Undated	Plaintiffs' Trial Exhibit 18 [305 Las Vegas Organization Documents]	XV	AA 2567-2570
Undated	Plaintiffs' Trial Exhibit 19 [305 Second Avenue Associates - Entity Details]	XV	AA 2571-2572
Undated	Plaintiffs' Trial Exhibit 20 [305 Las Vegas - Certificate of Formation]	XV	AA 2573-2574
Undated	Plaintiff's Trial Exhibit 21 [305 Las Vegas - Operating Agreement]	XV	AA 2575-2597

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 23 [List Managers - 305 Las Vegas]	XV	AA 2598
Undated	Plaintiffs' Trial Exhibit 30 [Casino Coolidge - Articles of Organization]	XV	AA 2599-2603
Undated	Plaintiffs' Trial Exhibit 34 [Live Work - Organization Documents]	XV	AA 2604-2657
Undated	Plaintiffs' Trial Exhibit 38 [Wink One - Organization Documents]	XV	AA 2658-2660
Undated	Plaintiffs' Trial Exhibit 43 [L/W TIC Successor - Operating Agreement]	XVI	AA 2661-2672
Undated	Plaintiffs' Trial Exhibit 44 [Meyer Property - Operating Agreement]	XVI	AA 2673-2677
Undated	Plaintiffs' Trial Exhibit 45 [Leah Property - Consents]	XVI	AA 2678-2693
Undated	Plaintiffs' Trial Exhibit 40001 [Settlement Statement - Casino Coolidge]	XVI	AA 2694
Undated	Plaintiffs' Trial Exhibit 40002 [Aquarius Settlement Statement]	XVI	AA 2695-2702
Undated	Plaintiffs' Trial Exhibit 40006 [Live Work Settlement Statement]	XVI	AA 2703-2704
Undated	Plaintiffs' Trial Exhibit 40007 [Final Settlement Statement - Forest City]	XVI	AA 2705-2707

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 40040 [Deed - Casino Coolidge]	XVI	AA 2708-2709
Undated	Plaintiffs' Trial Exhibit 40041 [Deeds - Casino Coolidge]	XVI	AA 2710-2714
Undated	Plaintiffs' Trial Exhibit 40042 [Deeds - Casino Coolidge]	XVI	AA 2715-2730
Undated	Plaintiffs' Trial Exhibit 40046 [Personal Guaranty - Lease]	XVI	AA 2731-2739
Undated	Plaintiffs' Trial Exhibit 40047 [Personal Guaranty - Lease]	XVI	AA 2740-2747
Undated	Plaintiffs' Trial Exhibit 50001 [Underlying Complaint: A-07-551073]	XVI	AA 2748-2752
Undated	Plaintiffs' Trial Exhibit 50002 [Underlying First Amended Complaint and Counter-Claim: A-07-551073]	XVI	AA 2753-2766
Undated	Plaintiffs' Trial Exhibit 50006 [Underlying Action: FFCL]	XVI	AA 2767-2791
Undated	Plaintiffs' Trial Exhibit 50007 [Underlying Judgment: A-07-551073]	XVI	AA 2792-2794
Undated	Plaintiffs' Trial Exhibit 50008 [Underlying Amended Judgment]	XVI	AA 2795-2797
Undated	Plaintiffs' Trial Exhibit 50037 [Rich Supplemental Expert Report]	XVI	AA 2798-2825
Undated	Plaintiffs' Trial Exhibit 50040 [Settlement Agreement - Heartland]	XVI	AA 2826-2878

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 50042 [Mitchell Response - Bar Fee Dispute]	XVI	AA 2879-2900
Undated	Plaintiffs' Trial Exhibit 60002 [Emails]	XVI	AA 2901
Undated	Plaintiffs' Trial Exhibit 60005 [Emails]	XVI	AA 2902-2904
Undated	Plaintiffs' Trial Exhibit 70003 [Disregarded Entities]	XVI	AA 2905-2906
Undated	Plaintiffs' Trial Exhibit 70023 [LVLP Holdings Entities]	XVI	AA 2907
Undated	Plaintiffs' Trial Exhibit 70030 [Underlying Action - Discovery Request]	XVII	AA 2908-2917
Undated	Plaintiffs' Trial Exhibit 70036 [Reisman Attorney's Fees]	XVII	AA 2918-2943
Undated	Plaintiffs' Trial Exhibit 70037 [Reisman Attorney's Fees]	XVII	AA 2944-2950
Undated	Plaintiffs' Trial Exhibit 70038 [Reisman Attorney's Fees]	XVII	AA 2951-2954
Undated	Plaintiffs' Trial Exhibit 70042 [New Jersey Fees/Costs]	XVII	AA 2955-2968
Undated	Plaintiffs' Trial Exhibit 70045 [Rich's Fees]	XVII	AA 2969-3033
Undated	Plaintiffs' Trial Exhibit 70052 [Document List - LVLP]	XVII	AA 3034-3037

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 70053 [Rich's Fees]	XVII	AA 3038-3044
Undated	Plaintiffs' Trial Exhibit 70054 [Rich's Fees]	XVII	AA 3045
Undated	Plaintiffs' Trial Exhibit 70055 [Muije Attorney's Fees]	XVIII	AA 3046-3220
Undated	Plaintiffs' Trial Exhibit 70056 [Muije Attorney's Fees]	XVIII	AA 3221-3228
Undated	Plaintiffs' Trial Exhibit 70060 [Underlying Judgment & Interest]	XVIII	AA 3229-3230
Undated	Plaintiffs' Trial Exhibit 70062 [Attorney's Fees/Costs]	XVIII	AA 3231
Undated	Plaintiffs' Trial Exhibit 70063 [Rich's Fees]	XVIII	AA 3232-3237
Undated	Plaintiffs' Trial Exhibit 70064 [Reisman Attorney's Fees]	XVIII	AA 3238-3240
Undated	Plaintiffs' Trial Exhibit 70065 [Reisman Attorney's Fees]	XVIII	AA 3241-3243
Undated	Plaintiffs' Trial Exhibit 70067 [Muije Attorney's Fees]	XVIII	AA 3244-3263
Undated	Plaintiffs' Trial Exhibit 70075 [Attorney's Fees/Costs]	XIX	AA 3264-3359
Undated	Plaintiffs' Trial Exhibit 70076 [Reisman Attorney's Fees]	XIX	AA 3360-3375
Undated	Plaintiffs' Trial Exhibit 70077 [Reisman Attorney's Fees]	XIX	AA 3376

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 70078 [Rich's Fees]	XIX	AA 3377-3463
Undated	Plaintiffs' Trial Exhibit 70079 [Muije Attorney's Fees]	XIX	AA 3464-3511
Undated	Mitchell's Trial Exhibit 90054 [Surrender/Termination Agreement]	XX	AA 3512-3516
Undated	Mitchell's Trial Exhibit 90069 [Release of Lease Guaranty]	XX	AA 3517-3521
Undated	Mitchell's Trial Exhibit 90075 [FC/LW - Entity Details]	XX	AA 3522-3524
Undated	Mitchell's Trial Exhibit 90079 [10th NRCP 16.1 Disclosures: Underlying Action]	XX	AA 3525-3543

CHRONOLOGICAL TABLE OF CONTENTS OF SEALED VOLUMES

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
1/19/18	Plaintiffs' First Supplemental NRCP 16.1 Disclosure [Sealed]	XXI	SAA 1-72
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [Sealed]	XXII	SAA 73-323
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [Continued][Sealed]	XXIII	SAA 324-513
Undated	Plaintiffs' Trial Exhibit 2 [Aquarius Owner/LVLP] [Sealed]	XXIII	SAA 514-547
Undated	Plaintiffs' Trial Exhibit 27 [Meadows Bank Statement] [Partial Document Only] [Sealed]	XXIII	SAA 548
Undated	Plaintiffs' Trial Exhibit 32 [Casino Coolidge Operating Agreement] [Sealed]	XXIV	SAA 549-578
Undated	Plaintiffs' Trial Exhibit 35 [Live Work Manager Company Documents] [Sealed]	XXIV	SAA 579-582
Undated	Plaintiffs' Trial Exhibit 40 [Wink One Company Documents] [Sealed]	XXIV	SAA 583-588
Undated	Plaintiffs' Trial Exhibit 52 [FC Live Work Company Documents] [Sealed]	XXIV	SAA 589-659
Undated	Plaintiffs' Trial Exhibit 10002 [LVLP Holdings 2007 Tax Return] [Sealed]	XXIV	SAA 660-677

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs Trial Exhibit 10003 [LVLP Holdings 2008 Tax Return] [Sealed]	XXIV	SAA 678-692
Undated	Plaintiffs' Trial Exhibit 10004 [LVLP Holdings 2009 Tax Return] [Sealed]	XXIV	SAA 693-709
Undated	Plaintiffs' Trial Exhibit 20024 [Signature Bank 2015-2016] [Sealed]	XXIV	SAA 710-742
Undated	Plaintiffs' Trial Exhibit 20026 [Signature Bank April 2015] [Sealed]	XXIV	SAA 743
Undated	Plaintiffs' Trial Exhibit 30002 [LVLP G/L 2007] [Sealed]	XXIV	SAA 744
Undated	Plaintiffs' Trial Exhibit 30031 [LVLP G/L 2008] [Sealed]	XXIV	SAA 745-764
Undated	Plaintiffs' Trial Exhibit 30062 [Mitchell Contributions] [Sealed]	XXIV	SAA 765-770
Undated	Plaintiffs' Trial Exhibit 30063 [Capital Contributions] [Sealed]	XXIV	SAA 771-774
Undated	Plaintiffs' Trial Exhibit 30066 [Unallocated Contributions] [Sealed]	XXIV	SAA 775
Undated	Plaintiffs' Trial Exhibit 30067 [Mitchell Amounts Paid] [Sealed]	XXIV	SAA 776-780
Undated	Plaintiffs' Trial Exhibit 30086 [Mitchell Loan Balances] [Sealed]	XXIV	SAA 781-783
Undated	Plaintiffs' Trial Exhibit 30087 [Lieberman Loan Balances] [Sealed]	XXIV	SAA 784-786

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 40043 [Release of Lease Guaranty] [Sealed]	XXIV	SAA 787-789
Undated	Plaintiffs' Trial Exhibit 50038 [Wall Street Settlement Agreement] [Sealed]	XXV	SAA 790-820
Undated	Plaintiffs' Trial Exhibit 60001 [Wall Street Engagement Letter] [Sealed]	XXV	SAA 821-825
Undated	Plaintiffs' Trial Exhibit 60053 [Rich Working Papers] [Partial Document Only] [Sealed]	XXV	SAA 826-1039
Undated	Plaintiffs' Trial Exhibit 60053 [Rich Working Papers] [Partial Document Only] [Continued] [Sealed]	XXVI	SAA 1040-1289
Undated	Plaintiffs' Trial Exhibit 60053 [Rich Working Papers] [Partial Document Only] [Continued] [Sealed]	XXVII	SAA 1290-1414
Undated	Plaintiffs' Trial Exhibit 70009 [Lieberman Contributions] [Sealed]	XXVII	SAA 1415-1418
Undated	Plaintiffs' Trial Exhibit 70015 [Mitchell Contributions] [Sealed]	XXVII	SAA 1419-1422
Undated	Plaintiffs' Trial Exhibit 70021 [LVLP Balance Sheet - 2015] [Sealed]	XXVII	SAA 1423
Undated	Plaintiffs' Trial Exhibit 70043 [Rich Initial Expert Report] [Sealed]	XXVIII	SAA 1424-1673
Undated	Plaintiffs' Trial Exhibit 70043 [Rich Initial Expert Report] [Continued] [Sealed]	XXIX	SAA 1674-1704

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 70072 [LVLP G/L 2011] [Sealed]	XXIX	SAA 1705-1712
Undated	Plaintiffs' Trial Exhibit 70074 [LVLP Adjusted Entries 2012] [Sealed]	XXIX	SAA 1713-1714
Undated	Mitchell's Trial Exhibit 90001 [Forest City Agreement] [Sealed]	XXIX	SAA 1715-1807
Undated	Mitchell's Trial Exhibit 90052 [Casino Coolidge Title Documents] [Sealed]	XXIX	SAA 1808-1820

ALPHABETICAL TABLE OF CONTENTS TO APPELLANTS' APPENDIX

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
7/17/18	Amended Business Court Order	V	AA 879-882
8/21/17	Amended Complaint	II	AA 307-340
9/5/17	Answer to Amended Complaint	II	AA 341-351
9/8/17	Answer to Amended Complaint [Lieberman and 305 Las Vegas]	II	AA 352-361
12/9/19	Answer to Complaint in Intervention [305 Las Vegas]	VI	AA 1124-1133
12/19/19	Answer to Complaint in Intervention [Mitchell Defendants]	VI	AA 1156-1160
12/23/19	Answer to Complaint in Intervention [Lieberman and Casino Coolidge]	VI	AA 1171-1179
7/18/17	Business Court Order	II	AA 293-297
2/20/18	Business Court Order [Amended]	III	AA 479-481
7/26/16	Complaint (Original)	I	AA 1-19
11/18/19	Complaint in Intervention	VI	AA 1052-1082
11/7/18	Court Minutes - November 7, 2018	V	AA 886-887
2/4/20	Court Transcript - February 4, 2020 [Motions to Alter/Amend]	XV	AA 2422-2456
11/18/19	Court Transcript - November 18, 2019 [Motion to Intervene]	VIII	AA 1525-1532

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
8/23/19	Defendant's, 305 Las Vegas, Motion for Summary Judgment	V	AA 915-936
10/17/19	Defendant's, 305 Las Vegas, Reply to Motion for Summary Judgment	VI	AA 981-991
4/6/17	Defendants' Motion to Dismiss Plaintiffs' Complaint	I	AA 60-88
3/23/17	Defendants' Motion to Strike Plaintiffs' Jury Demand	I	AA 49-59
7/6/17	Defendants' Reply to Motion to Dismiss	II	AA 269-292
4/25/17	Defendants' Reply to Motion to Strike; Opposition to Counter-Motion for Advisory Jury	I	AA 152-162
11/19/19	Errata to Complaint in Intervention	VI	AA 1083-1088
2/20/20	Joinder to Mitchell Defendants' Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1392-1394
4/26/18	Joinder to Mitchell Defendants' Motion to Compel Discovery [Lieberman and 305 Las Vegas]	IV	AA 726-728
5/30/18	Joinder to Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 829-831
10/24/17	Joint Case Conference Report [Partial Document Only]	III	AA 362-470
12/27/19	Joint Pre-Trial Memorandum [Partial Document Only]	VI	AA 1183-1202

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
2/14/20	Mitchell Defendants' Motion to Alter/Amend Judgment	VII	AA 1371-1391
4/19/18	Mitchell Defendants' Motion to Compel Discovery	IV	AA 490-725
11/21/19	Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1095-1123
11/16/19	Mitchell Defendants' Opposition to Motion to Intervene	VI	AA 1037-1045
2/20/20	Mitchell Defendants' Opposition to Plaintiffs' Motion for Attorney's Fees	VII	AA 1402-1408
2/27/20	Mitchell Defendants' Opposition to Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1461-1467
5/30/18	Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 796-828
12/19/19	Mitchell Defendants' Reply to Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1161-1170
Undated	Mitchell's Trial Exhibit 90001 [Forest City Agreement] [Sealed]	XXIX	SAA 1715-1807
Undated	Mitchell's Trial Exhibit 90052 [Casino Coolidge Title Documents] [Sealed]	XXIX	SAA 1808-1820
Undated	Mitchell's Trial Exhibit 90054 [Surrender/Termination Agreement]	XX	AA 3512-3516

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Mitchell's Trial Exhibit 90069 [Release of Lease Guaranty]	XX	AA 3517-3521
Undated	Mitchell's Trial Exhibit 90075 [FC/LW - Entity Details]	XX	AA 3522-3524
Undated	Mitchell's Trial Exhibit 90079 [10th NRCP 16.1 Disclosures: Underlying Action]	XX	AA 3525-3543
2/14/20	Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1325-1352
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [Sealed]	XXII	SAA 73-323
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [Continued][Sealed]	XXIII	SAA 324-513
11/12/19	Motion to Intervene	VI	AA 994-1036
11/20/18	NEO re: Continue Discovery (Second)	V	AA 888-894
2/15/18	NEO re: Continue Discovery [First]	III	AA 471-478
8/9/17	NEO re: Defendants' Motion to Dismiss	II	AA 298-306
5/24/17	NEO re: Defendants' Motion to Strike and Counter-Motion for Advisory Jury	I	AA 163-169
2/24/20	NEO re: Directed Verdict and Judgment for Defendant, 305 Las Vegas	VII	AA 1435-1439
9/23/19	NEO re: Discovery Sanctions	V	AA 940-952

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
11/30/18	NEO re: Dismissal of Defendant, Liberman Holdings	V	AA 895-902
6/19/18	NEO re: Mitchell Defendants' Motion to Compel Discovery and Plaintiffs' Counter-Motion	V	AA 862-868
3/30/20	NEO re: Motion to Alter/Amend Judgment [Casino Coolidge]	VIII	AA 1483-1488
3/30/20	NEO re: Motion to Alter/Amend Judgment [Mitchell Defendants]	VIII	AA 1489-1494
3/30/20	NEO re: Motion to Alter/Amend Judgment [Liberman and Casino Coolidge]	VIII	AA 1492-1500
11/18/19	NEO re: Motion to Intervene	VI	AA 1046-1051
5/14/20	NEO re: Motion to Retax and Settle Costs	VIII	AA 1518-1524
7/3/18	NEO re: Plaintiffs' Ex Parte Application for OSC	V	AA 869-878
5/13/20	NEO re: Plaintiffs' Motion for Attorney's Fees	VIII	AA 1501-1510
5/30/19	NEO re: Plaintiffs' Motion to Compel Discovery	V	AA 903-914
5/13/20	NEO re: Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1511-1517

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
11/21/19	NEO re: Redactions and Sealing	VI	AA 1089-1094
2/21/18	NEO re: Stipulated Protective Order	III	AA 482-489
1/16/20	NOE Findings of Fact, Conclusions of Law and Judgment [Original]	VII	AA 1203-1220
1/17/19	NOE Findings of Fact, Conclusions of Law and Judgment [Amended]	VII	AA 1221-1238
2/25/20	Notice of Appeal [Lieberman and Casino Coolidge]	VII	AA 1440-1442
2/26/20	Notice of Appeal [Mitchell Defendants]	VIII	AA 1443-1460
8/28/19	Notice of Filing Bankruptcy	V	AA 937-939
1/19/18	Plaintiffs' First Supplemental NRCP 16.1 Disclosure [Sealed]	XXI	SAA 1-72
2/6/20	Plaintiffs' Motion for Attorney's Fees	VII	AA 1239-1289
2/13/20	Plaintiffs' Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VII	AA 1290-1324
10/7/19	Plaintiffs' Opposition to Defendant's, 305 Las Vegas, Motion for Summary Judgment	VI	AA 953-980
6/14/17	Plaintiffs' Opposition to Defendants' Motion to Dismiss	II	AA 170-268

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
4/17/17	Plaintiffs' Opposition to Defendants' Motion to Strike Jury Demand; Counter-Motion for Advisory Jury	I	AA 89-151
5/11/18	Plaintiffs' Opposition to Mitchell Defendants' Motion to Compel Discovery; Counter-Motion for Disclosure of Un-Redacted Emails [Partial Document Only]	V	AA 729-795
12/12/19	Plaintiffs' Opposition to Mitchell Defendants' Motion to Dismiss or, in the alternative, Motion for Summary Judgment	VI	AA 1134-1155
2/14/20	Plaintiffs' Opposition to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1353-1370
2/20/20	Plaintiffs' Opposition to Motions to Alter/Amend Judgment [All Parties]	VII	AA 1409-1434
3/6/20	Plaintiffs' Reply to Motion for Attorney's Fees	VIII	AA 1468-1475
3/13/20	Plaintiffs' Reply to Motion to Correct Minor Errors and Incorporate Pre-Judgment Interest	VIII	AA 1476-1482
6/5/18	Plaintiffs' Supplement to Opposition to Mitchell Defendants' Motion to Compel Discovery and Counter-Motion for Disclosure of Un-Redacted Emails	V	AA 832-861
Undated	Plaintiffs' Trial Exhibit 1 [Ownerships Interests]	XV	AA 2457

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 2 [Aquarius Owner/LVLP] [Sealed]	XXIII	SAA 514-547
Undated	Plaintiffs' Trial Exhibit 3 [LVLP Organization Documents]	XV	AA 2458-2502
Undated	Plaintiffs' Trial Exhibit 9 [Live Work, LLC - Nevada SOS]	XV	AA 2503-2505
Undated	Plaintiffs' Trial Exhibit 10 [Live Work Organization Documents]	XV	AA 2506-2558
Undated	Plaintiffs' Trial Exhibit 12 [Term Restructure - Forest City]	XV	AA 2559-2563
Undated	Plaintiffs' Trial Exhibit 17 [305 Las Vegas Entity Details]	XV	AA 2564-2566
Undated	Plaintiffs' Trial Exhibit 18 [305 Las Vegas Organization Documents]	XV	AA 2567-2570
Undated	Plaintiffs' Trial Exhibit 19 [305 Second Avenue Associates - Entity Details]	XV	AA 2571-2572
Undated	Plaintiffs' Trial Exhibit 20 [305 Las Vegas - Certificate of Formation]	XV	AA 2573-2574
Undated	Plaintiffs' Trial Exhibit 21 [305 Las Vegas - Operating Agreement]	XV	AA 2575-2597
Undated	Plaintiffs' Trial Exhibit 23 [List Managers - 305 Las Vegas]	XV	AA 2598

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 27 [Meadows Bank Statement] [Partial Document Only] [Sealed]	XXIII	SAA 548
Undated	Plaintiffs' Trial Exhibit 30 [Casino Coolidge - Articles of Organization]	XV	AA 2599-2603
Undated	Plaintiffs' Trial Exhibit 32 [Casino Coolidge Operating Agreement] [Sealed]	XXIV	SAA 549-578
Undated	Plaintiffs' Trial Exhibit 34 [Live Work - Organization Documents]	XV	AA 2604-2657
Undated	Plaintiffs' Trial Exhibit 35 [Live Work Manager Company Documents] [Sealed]	XXIV	SAA 579-582
Undated	Plaintiffs' Trial Exhibit 38 [Wink One - Organization Documents]	XV	AA 2658-2660
Undated	Plaintiffs' Trial Exhibit 40 [Wink One Company Documents] [Sealed]	XXIV	SAA 583-588
Undated	Plaintiffs' Trial Exhibit 43 [L/W TIC Successor - Operating Agreement]	XVI	AA 2661-2672
Undated	Plaintiffs' Trial Exhibit 44 [Meyer Property - Operating Agreement]	XVI	AA 2673-2677
Undated	Plaintiffs' Trial Exhibit 45 [Leah Property - Consents]	XVI	AA 2678-2693

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 52 [FC Live Work Company Documents] [Sealed]	XXIV	SAA 589-659
Undated	Plaintiffs' Trial Exhibit 10002 [LVLP Holdings 2007 Tax Return] [Sealed]	XXIV	SAA 660-677
Undated	Plaintiffs' Trial Exhibit 10003 [LVLP Holdings 2008 Tax Return] [Sealed]	XXIV	SAA 678-692
Undated	Plaintiffs' Trial Exhibit 10004 [LVLP Holdings 2009 Tax Return] [Sealed]	XXIV	SAA 693-709
Undated	Plaintiffs' Trial Exhibit 20024 [Signature Bank 2015-2016] [Sealed]	XXIV	SAA 710-742
Undated	Plaintiffs' Trial Exhibit 20026 [Signature Bank April 2015] [Sealed]	XXIV	SAA 743
Undated	Plaintiffs' Trial Exhibit 30002 [LVLP G/L 2007] [Sealed]	XXIV	SAA 744
Undated	Plaintiffs' Trial Exhibit 30031 [LVLP G/L 2008] [Sealed]	XXIV	SAA 745-764
Undated	Plaintiffs' Trial Exhibit 30062 [Mitchell Contributions] [Sealed]	XXIV	SAA 765-770
Undated	Plaintiffs' Trial Exhibit 30063 [Capital Contributions] [Sealed]	XXIV	SAA 771-774
Undated	Plaintiffs' Trial Exhibit 30066 [Unallocated Contributions] [Sealed]	XXIV	SAA 775

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 30067 [Mitchell Amounts Paid] [Sealed]	XXIV	SAA 776-780
Undated	Plaintiffs' Trial Exhibit 30086 [Mitchell Loan Balances] [Sealed]	XXIV	SAA 781-783
Undated	Plaintiffs' Trial Exhibit 30087 [Lieberman Loan Balances] [Sealed]	XXIV	SAA 784-786
Undated	Plaintiffs' Trial Exhibit 40001 [Settlement Statement - Casino Coolidge]	XVI	AA 2694
Undated	Plaintiffs' Trial Exhibit 40002 [Aquarius Settlement Statement]	XVI	AA 2695-2702
Undated	Plaintiffs' Trial Exhibit 40006 [Live Work Settlement Statement]	XVI	AA 2703-2704
Undated	Plaintiffs' Trial Exhibit 40007 [Final Settlement Statement - Forest City]	XVI	AA 2705-2707
Undated	Plaintiffs' Trial Exhibit 40040 [Deed - Casino Coolidge]	XVI	AA 2708-2709
Undated	Plaintiffs' Trial Exhibit 40041 [Deeds - Casino Coolidge]	XVI	AA 2710-2714
Undated	Plaintiffs' Trial Exhibit 40042 [Deeds - Casino Coolidge]	XVI	AA 2715-2730
Undated	Plaintiffs' Trial Exhibit 40043 [Release of Lease Guaranty] [Sealed]	XXIV	SAA 787-789
Undated	Plaintiffs' Trial Exhibit 40046 [Personal Guaranty - Lease]	XVI	AA 2731-2739

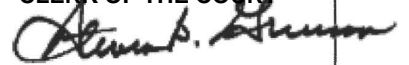
<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 40047 [Personal Guaranty - Lease]	XVI	AA 2740-2747
Undated	Plaintiffs' Trial Exhibit 50001 [Underlying Complaint: A-07-551073]	XVI	AA 2748-2752
Undated	Plaintiffs' Trial Exhibit 50002 [Underlying First Amended Complaint and Counter-Claim: A-07-551073]	XVI	AA 2753-2766
Undated	Plaintiffs' Trial Exhibit 50006 [Underlying Action: FFCL]	XVI	AA 2767-2791
Undated	Plaintiffs' Trial Exhibit 50007 [Underlying Judgment: A-07-551073]	XVI	AA 2792-2794
Undated	Plaintiffs' Trial Exhibit 50008 [Underlying Amended Judgment]	XVI	AA 2795-2797
Undated	Plaintiffs' Trial Exhibit 50037 [Rich Supplemental Expert Report]	XVI	AA 2798-2825
Undated	Plaintiffs' Trial Exhibit 50038 [Wall Street Settlement Agreement] [Sealed]	XXV	SAA 790-820
Undated	Plaintiffs' Trial Exhibit 50040 [Settlement Agreement - Heartland]	XVI	AA 2826-2878
Undated	Plaintiffs' Trial Exhibit 50042 [Mitchell Response - Bar Fee Dispute]	XVI	AA 2879-2900
Undated	Plaintiffs' Trial Exhibit 60001 [Wall Street Engagement Letter] [Sealed]	XXV	SAA 821-825

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 60002 [Emails]	XVI	AA 2901
Undated	Plaintiffs' Trial Exhibit 60005 [Emails]	XVI	AA 2902-2904
Undated	Plaintiffs' Trial Exhibit 60053 [Rich Working Papers] [Partial Document Only] [Sealed]	XXV	SAA 826-1039
Undated	Plaintiffs' Trial Exhibit 60053 [Rich Working Papers] [Partial Document Only] [Continued][Sealed]	XXVI	SAA 1040-1289
Undated	Plaintiffs' Trial Exhibit 60053 [Rich Working Papers] [Partial Document Only] [Continued][Sealed]	XXVII	SAA 1290-1414
Undated	Plaintiffs' Trial Exhibit 70003 [Disregarded Entities]	XVI	AA 2905-2906
Undated	Plaintiffs' Trial Exhibit 70009 [Lieberman Contributions] [Sealed]	XXVII	SAA 1415-1418
Undated	Plaintiffs' Trial Exhibit 70015 [Mitchell Contributions] [Sealed]	XXVII	SAA 1419-1422
Undated	Plaintiffs' Trial Exhibit 70021 [LVLP Balance Sheet - 2015] [Sealed]	XXVII	SAA 1423
Undated	Plaintiffs' Trial Exhibit 70023 [LVLP Holdings Entities]	XVI	AA 2907
Undated	Plaintiffs' Trial Exhibit 70030 [Underlying Action - Discovery Request]	XVII	AA 2908-2917

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 70036 [Reisman Attorney's Fees]	XVII	AA 2918-2943
Undated	Plaintiffs' Trial Exhibit 70037 [Reisman Attorney's Fees]	XVII	AA 2944-2950
Undated	Plaintiffs' Trial Exhibit 70038 [Reisman Attorney's Fees]	XVII	AA 2951-2954
Undated	Plaintiffs' Trial Exhibit 70042 [New Jersey Fees/Costs]	XVII	AA 2955-2968
Undated	Plaintiffs' Trial Exhibit 70043 [Rich Initial Expert Report] [Sealed]	XXVIII	SAA 1424-1673
Undated	Plaintiffs' Trial Exhibit 70043 [Rich Initial Expert Report] [Continued] [Sealed]	XXIX	SAA 1674-1704
Undated	Plaintiffs' Trial Exhibit 70045 [Rich's Fees]	XVII	AA 2969-3033
Undated	Plaintiffs' Trial Exhibit 70052 [Document List - LVLP]	XVII	AA 3034-3037
Undated	Plaintiffs' Trial Exhibit 70053 [Rich's Fees]	XVII	AA 3038-3044
Undated	Plaintiffs' Trial Exhibit 70054 [Rich's Fees]	XVII	AA 3045
Undated	Plaintiffs' Trial Exhibit 70055 [Muije Attorney's Fees]	XVIII	AA 3046-3220
Undated	Plaintiffs' Trial Exhibit 70056 [Muije Attorney's Fees]	XVIII	AA 3221-3228

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 70060 [Underlying Judgment & Interest]	XVIII	AA 3229-3230
Undated	Plaintiffs' Trial Exhibit 70062 [Attorney's Fees/Costs]	XVIII	AA 3231
Undated	Plaintiffs' Trial Exhibit 70063 [Rich's Fees]	XVIII	AA 3232-3237
Undated	Plaintiffs' Trial Exhibit 70064 [Reisman Attorney's Fees]	XVIII	AA 3238-3240
Undated	Plaintiffs' Trial Exhibit 70065 [Reisman Attorney's Fees]	XVIII	AA 3241-3243
Undated	Plaintiffs' Trial Exhibit 70067 [Muije Attorney's Fees]	XVIII	AA 3244-3263
Undated	Plaintiffs' Trial Exhibit 70072 [LVLP G/L 2011] [Sealed]	XXIX	SAA 1705-1712
Undated	Plaintiffs' Trial Exhibit 70074 [LVLP Adjusted Entries 2012] [Sealed]	XXIX	SAA 1713-1714
Undated	Plaintiffs' Trial Exhibit 70075 [Attorney's Fees/Costs]	XIX	AA 3264-3359
Undated	Plaintiffs' Trial Exhibit 70076 [Reisman Attorney's Fees]	XIX	AA 3360-3375
Undated	Plaintiffs' Trial Exhibit 70077 [Reisman Attorney's Fees]	XIX	AA 3376
Undated	Plaintiffs' Trial Exhibit 70078 [Rich's Fees]	XIX	AA 3377-3463

<u>Date</u>	<u>Description</u>	<u>Vol.</u>	<u>Bates No.</u>
Undated	Plaintiffs' Trial Exhibit 70079 [Muije Attorney's Fees]	XIX	AA 3464-3511
2/27/17	Proofs of Service	I	AA 20-48
11/12/19	Receipt of Copy	VI	AA 992-993
2/20/20	Reply to Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1395-1401
12/26/19	Satisfaction of Judgment	VI	AA 1180-1182
7/30/18	Second Amended Business Court Order	V	AA 883-885
12/30/19	Trial Transcript - Day 1 [December 30, 2019]	IX	AA 1533-1697
12/31/19	Trial Transcript - Day 2 [December 31, 2019]	X	AA 1698-1785
1/2/20	Trial Transcript - Day 3 [January 2, 2020]	XI	AA 1786-1987
1/3/20	Trial Transcript - Day 4 [January 3, 2020]	XII	AA 1988-2163
1/6/20	Trial Transcript - Day 5 [January 6, 2020]	XIII	AA 2164-2303
1/7/20	Trial Transcript - Day 6 [January 7, 2020]	XIV	AA 2304-2421



1 **OMCM**
2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No. 2419
5 1840 East Sahara Avenue, #106
6 Las Vegas, Nevada 89104
7 Telephone: 702-386-7002
8 Facsimile: 702- 386-9135
9 E-Mail: jmuije@muijelawoffice.com
10 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

16 Plaintiffs,

17 vs.

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

Entity Defendants.

CASE NO: A-16-740689-B

DEPT NO: XV

Date of Hearing: June 6, 2018

Time of Hearing: 9:00 a.m.

OPPOSITION TO MOTION TO COMPEL

-AND-

COUNTER-MOTION REQUIRING DISCLOSURE OF
UNREDACTED EMAILS BETWEEN DEFENDANTS
AND THEIR ACCOUNTANT

COME NOW, Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC (hereinafter collectively referred to as "NYPE"), and oppose the Motion to Compel Complete Responses to

1 Interrogatories and Requests for Production of Documents as filed by the Mitchell Defendants herein
2 (hereinafter referred to collectively as "LVLP"). Additionally, pursuant to EDCR 2.20(f), NYPE
3 respectfully requests a determination that there is no applicable client accountant privilege, and
4 further requiring the Mitchell Defendants to promptly supply unredacted copies of emails previously
5 disclosed in Defendant's Third Supplemental Disclosure, served on NYPE on or about April 3, 2018.

6
7 This Opposition and Counter-Motion is made and based upon the Points and Authorities that
8 follow, the exhibits attached hereto, all of the pleadings and documents on file herein, and the
9 arguments to be adduced at the hearing hereon.

10 DATED this 11th day of May, 2018.

11 JOHN W. MUIJE & ASSOCIATES

12
13 By: /s/ JOHN W. MUIJE
14 JOHN W. MUIJE, ESQ.
15 Nevada Bar No. 2419
16 1840 East Sahara Avenue, #106
17 Las Vegas, Nevada 89104
18 Telephone: 702-386-7002
19 Facsimile: 702- 386-9135
20 E-Mail: jmuije@mujelawoffice.com
21 *Attorneys for Plaintiffs*

22 **I.**

23 **INTRODUCTION**

24 As the Court was previously advised, NYPE is the holder of a substantial judgment
25 against Defendant Las Vegas Land Partners, LLC (one of the defendants herein), a true and
26 correct copy of which is attached hereto as Exhibit "1" and by this reference incorporated herein.
27 That case will be referred to hereinafter as the "Original Case." That judgment was recently
28 (November 2017) affirmed in substantial part by the Nevada Supreme Court, and a true and

1 correct copy of the Nevada Supreme Court's decision regarding the same is attached hereto as
2 Exhibit "2".

3 Just recently, the Nevada Supreme Court has denied the Judgment Debtor's Petition for
4 Rehearing. A copy of the Order Denying that Application for Rehearing is attached hereto as
5 Exhibit "3" and by this reference incorporated herein. Although the Supreme Court reversed a
6 modest portion of the costs awarded NYPE in the original case, the full principal amount was
7 ratified, the interest accruals were not challenged, and a very substantial cost component also
8 remains outstanding. In the aggregate, an amount slightly in excess of \$4 million plus accruing
9 interest remains outstanding at this time.
10

11 As was mentioned by the Mitchell Defendants in their Motion to Compel, vigorous
12 efforts to enforce the judgment have been in progress since mid-2015, which efforts resulted in
13 the decision to pursue the current litigation by the later Summer of 2016, insofar as post-
14 judgment discovery and information procured subsequent to the judgment was making clear that
15 there existed a course and pattern of conduct by Las Vegas Land Partners and various Associated
16 Affiliated and Subsidiary Entities, to undertake actions to effectively render the judgment
17 uncollectible. Significantly, the judgment ran against only one of the LVLP entities, i.e. Las
18 Vegas Land Partners, LLC.
19
20

21 The Mitchell Defendants are also correct that the gravamen of the current proceeding,
22 deriving from the judgment in the Original proceeding, is an action essentially claiming alter ego
23 conduct as between Las Vegas Land Partners, LLC and its various Associates. A true and correct
24 list of all those Associate Entities is attached hereto as Exhibit "4" and by this reference
25 incorporated herein. The Court will note that in addition to the two individual principals, David
26

27
28

1 Mitchell and Barnet Liberman, the current defendants appearing herein constitute 14 of the
2 identified Associate Entities.

3 To say that the two separate cases are substantially related is perhaps an understatement.
4 Indeed, two of the named Affiliated Entities, Livework, LLC and Zoe Properties, LLC, were
5 original named Plaintiffs in the Original Case. That case derives from activity spanning 2005
6 through early 2007, wherein NYPE rendered valuable services to Las Vegas Land Partners, LLC
7 and its Associates, resulting in the creation and establishment of various joint venture
8 arrangements between Las Vegas Land Partners, LLC and its Associates on the one hand, and an
9 alleged independent third-party, Forest City Enterprises, on the other. A true and correct copy of
10 the Findings of Fact and Conclusions of Law and the Decision in the original case are attached
11 hereto as Exhibit "5" and by this reference incorporated herein.
12

13
14 As an aside, under separate cover, on May 7, 2018, NYPE separately filed an Application
15 for Order to Show Cause as to why multiple Forest City Affiliated Entities Should Not Be Held
16 In Contempt of Court for wholly and completely refusing and failing to comply with subpoenas
17 issued to discover detailed financial information, transactional information, and records
18 regarding what happened to the dozens of real estate parcels and millions of dollars of property
19 which Las Vegas Land Partners, LLC and its Associates contributed to and conveyed into the
20 joint venture arrangements between themselves and Forest City Enterprises.
21

22 By way of history, it would also be safe to say that LVLP has conducted the litigation of
23 these related matters in an obstructionist and fashion. The matter has now twice gone to the
24 Supreme Court, with NYPE prevailing on both occasions. Even worse, however, having spent
25 years obtaining basic transactional and financial data in the original case, it was only after
26 judgment was entered in the original case, and post-judgment collection efforts began, that
27
28

1 NYPE was able to procure sufficient accounting and bank records, and financial back-up, to
2 place him on notice and alert him that LVLP had been for years, spinning off various valuable
3 real estate interests on the one hand, and dissipating its monetary assets on the other, to the extent
4 that for the last several years, despite having filed tax returns showing multiple million dollars of
5 net worth, LVLP has been functionally insolvent not even able to pay its own attorneys fees,
6 organizational expenses, etc. Allegedly, based on self-serving documentation supplied by
7 LVLP, those expenses had been borne primarily by David Mitchell individually, and often by
8 using his credit card to pay the corporate expenses of LVLP and its Associates.

10 In the context of post-judgment discovery in the Original Case, and pursuant to the debtor
11 examination issued by the Honorable Judge Israel, and subsequently resolving a discovery
12 dispute regarding the same by stipulating that documentation would be produced, partial
13 financial documentation was in fact obtained the Fall fo 2015, including tax returns, bank
14 statements, organizational documents, and some accounting ledgers. Even then, there were
15 conspicuous gaps in the documentation that was produced. Much of the documentation that must
16 have existed and would have more fully explained the financial gyrations and machinations
17 undertaken by LVLP still has NOT been produced or disclosed to this very day, despite an Order
18 Compelling Discovery entered in the original case, a true and correct copy of which is attached
19 hereto as Exhibit "6" and by this reference incorporated herein.

22 Indeed, although enough hints and scraps of evidence were produced during the Fall of
23 2015 to inform NYPE, his attorneys, and their retained forensic accountant, that misconduct and
24 shenanigans were a foot, the gaps were so large that even new more carefully focused discovery
25 requests in the late Summer of 2016, submitted at approximately the time that this litigation was
26 filed, still did not produce complete and comprehensive data sufficient to reconcile and explain
27
28

1 all the financial conduct and activity of LVLP and its Associates. Hence, in the early Fall of
2 2016, shortly after the present litigation was filed, but before it was served, NYPE filed a Motion
3 to Compel Discovery, which was granted, as noted *supra*, resulting in the Order contained at
4 Exhibit "6".

5
6 Ironically, despite the Order calling for comprehensive production of missing
7 documentation, including specifically detailed and itemized accountings of joint venture and
8 Tenancy in Common revenue as between LVLP and its Associates on the one hand, and Forest
9 City Enterprises on the other (See Exhibit "6", page 3, line 28 - page 4, line 4, LVLP continued
10 to drag its feet, producing dribbles and degs of documentation sporadically and often in a totally
11 unorganized or incoherent fashion. Finally, in this regard, the Court should be advised that
12 NYPE is in the process of preparing an Application for Order to Show Cause directed to LVLP,
13 its principals, and its attorneys as to why they should not be held in contempt for flaunting the
14 specific and direct mandate of Exhibit "6". It is anticipated that the motion will be filed within
15 the week, including substantial itemized back-up documentation as to what has and has not been
16 produced, as well as the horrendous expense imposed upon NYPE by LVLP's continued
17 flaunting of its discovery obligations and litigation requirements. A copy of that filing in the
18 Original Case will be supplied as a supplement thereto.
19
20

21 While all of that was going on, NYPE served the summons and complaints in the current
22 case, and LVLP responded with the Motion to Dismiss, which was denied, leading to a
23 substantial amendment of the original complaint. At approximately that same time, NYPE
24 determined that it was appropriate to initiate additional efforts to seek relevant data from third-
25 party sources, in this case specifically, LVLP's long time CPA, Mr. Sam Spitz. The deposition
26 of Spitz was duly noticed in the original case. Low and behold, Mr. Spitz produced many
27
28

1 hundreds of pages of new documentation which LVLP had never before disclosed or produced,
2 despite the fact that LVLP almost certainly had actual possession of such additional
3 documentation, and certainly had constructive possession of the same through their long-time
4 CPA.

5 Spitz further disclosed, an alleged long-standing document destruction policy, whereby he
6 purged records after a limited number of years, and apparently admonished his clients to preserve
7 important source and maintain records. It should be noted that the purged and voluntarily
8 destroyed records that Spitz acknowledged destroying were done during the course of the
9 ongoing 2007 litigation in the Original Case, constituting knowing and willful spoliation of
10 evidence, by not only the CPA, but his clients who allegedly signed annual engagement letters
11 acknowledging the document destruction policy, during a time they were in active litigation
12 regarding their business and finances!

13 Indeed, after waiting another six weeks subsequent to the actual testimony of Spitz, the
14 Mitchell Defendants finally produced 350 pages of heavily redacted emails and a privilege log,
15 asserting that the communications between LVLP and its accountant were privileged. That
16 contention is the focus and subject of the counter-motion in Section III, hereinafter, insofar as
17 neither New Jersey nor New York recognize any client-accountancy privilege. Mr Spitz is
18 licensed in both jurisdictions, and maintains his office in New Jersey, while the business offices
19 of LVLP and its Associates are maintained in New York City. Indeed, LVLP files New York
20 State Tax Returns on an annual basis.

21 In the exercise of hindsight, much of the post-judgment accumulation of data and
22 discovery could have occurred in the present case, since it was already in progress, however and
23 under an Order compelling LVLP to produce documents, much of that discovery was done in the
24
25
26
27
28

1 original case. In the meantime, however, the discovery which was originally undertaken in the
2 original case has been produced and disclosed in this case, pursuant to multiple 16.1
3 supplements, such as the email communications between LVLP and Spitz.

4 Before turning to the applicable law, and an analysis of the circumstances of this case, it
5 is worth noting that the Mitchell Defendants' Motion for More Complete and specific discovery
6 responses from NYPE assumes and pre-supposes that NYPE actually has additional information
7 to disclose. Even a cursory examination of the preamble and related documentation, including
8 the Application for Order to Show Cause directed against the Forest City Entities, and the Order
9 to Show Cause directed to LVLP and its principals (to be filed within the week) amply
10 demonstrate, it is quite difficult for a litigant to provide greater specificity and detail when a
11 defendant, such as LVLP, has for over a decade continued to obfuscate, conceal, hide, refuse to
12 produce, and destroy evidence, such as is the case with LVLP.

13 II.

14 OPPOSITION TO MOTION TO COMPEL

15 LVLP and its counsel have written a very lengthy motion, incident to which they
16 reproduced all of their original discovery requests and all of NYPE's responses, assuring that the
17 Court at least has a full record before it. What they did not produce, significantly, was a copy of
18 NYPE'S most recent disclosure designation, which is referred to in numerous of the responses to
19 interrogatories and requests for production of documents. A true and correct copy of the same is
20 attached hereto as Exhibit "18".

21 NYPE acknowledges that much of this documentation derives from the underlying case,
22 and from early post-judgment discovery efforts in the original case. Turning to page 11 of
23 Exhibit "18", the Court will note that there are six separate waves of disclosed documents in
24
25
26
27
28

1 response to the original debtor examination order and stipulated agreement regarding discovery.
2 While that sounds impressive on its face, the fact of the matter is that there were missing bank
3 statements, missing tax returns, missing financial ledgers, and no explanation or reconciliation of
4 why the ledgers in question did not reconcile to the subject tax returns.

5 Independent discovery efforts were undertaken as regards the RTC, an entity which is
6 paying hundreds of thousands of dollars per year in rent to a joint venture created between LVLP
7 and Forest City Enterprises. See Exhibit "18", Item 9. NYPE also provided the enclosed cursory
8 and summary responses provided by Forest City Enterprises to original subpoenas to them. See
9 Exhibit "18", Item 10. NYPE also provided various City of Las Vegas documents, remembering
10 that that same joint venture entered into contracts to develop and sell to the City of Las Vegas the
11 property on which City Hall is currently located.

12 Part of the continuing obstructionist and delaying tactics engaged in by LVLP, for
13 example, is discussed in the Declaration of John W. Muije attached as Exhibit "13", page 24,
14 paragraphs 22 - 23. Exhibit "18" clarifies the items belatedly trickled in over the course of two
15 months subsequent to Jan 11, 2017, constituting Items 14 through 17. Indices for those
16 documents are attached. Nevertheless, much of that documentation was duplicative of what had
17 been produced before, and none of those documents explained or reconciled the differences
18 between the financial ledgers of LVLP and the tax returns as filed. Exhibit "13", page 4,
19 Paragraph 24.

20 Most importantly, while it is acknowledged that the first 18 items covered documents
21 generated and produced either in the initial litigation, or through NYPE's discovery efforts to
22 procure documentation in that case post-judgment, what LVLP's Motion to Compel likely
23 overlooks is the fact that substantial new documentation was produced in the disclosures.
24
25
26
27
28

1 Specifically, the Court is respectfully referred to Items 19, 20, and 21, which constitute specific
2 itemized detailed analyses of the various real estate parcels owned in Southern Nevada by the
3 various defendant entities, to whom they were conveyed, and the dates and reference information
4 regarding said transactions. See Item 19 to Exhibit "17". Item 20 in turn covers the specific
5 parcels that were conveyed into and became part of the joint venture between LVLP and Forest
6 City. Item 21 includes an updated analysis of various named defendants, and related entities, as
7 to their corporate name and current status.
8

9 Items 19 through 21 constitute a joint work effort of Plaintiff's counsel, the Plaintiff
10 himself, and retained Forensic Consultant, Mr. Mark Rich, a designated witness in these
11 proceedings. See Exhibit "18", page 10, designation number 34.
12

13 It is respectfully represented to the Court that Mr. Rich is working on and in the process
14 of preparing an expert witness report which will be responsive to many of the specific questions
15 and requests for greater specificity sought by defendants. The deadline to disclose expert witness
16 reports, however, is July 31, 2018, a date almost three months away.
17

18 More importantly, the primary defense to the vague and overly broad motion to compel is
19 that it is difficult to respond with specificity when dozens of critical documents and big gaps in
20 the financial history of the defendants continue to exist, despite three years of post-judgment
21 discovery activity, and approximately six months of affirmative discovery activity in the present
22 proceeding.
23

24 As noted in Exhibit "13", Page 6, paragraph 36, new written requests for production of
25 documents have been served on the various LVLP Entities, and those will be coming due in the
26 near future. It can only be hoped that LVLP will take its discovery obligations hereunder more
27 seriously. In order to help assure the same, however, NYPE is in the process of preparing a
28

1 comprehensive Order to Show Cause and for Contempt of Judge Israel's Order compelling
2 Discovery (Exhibit "6"), including a new itemized detailed Declaration of Mark Rich, identifying
3 the substantial withheld, hidden, destroyed, or otherwise absent documentation which should
4 exist and which should have long since been produced by LVLP, but hasn't been.

5 Ironically, Mr. Rich provided a detailed Declaration in Opposition to Defendants' Motion
6 to dismiss on or about June 14, 2017, as Exhibit "3" to Plaintiff's Opposition to that motion,
7 detailing the inconsistencies in documentation produced to date, and identifying gaps and holes
8 in what had been produced. A true and correct copy of that declaration, without Sub-Exhibits, is
9 attached hereto as Exhibit 7 and by this reference incorporated herein. Not much has changed
10 since then, especially given the conduct by LVLP and its counsel. By way of example, when
11 finally forced to produce emails between LVLP and their accountants, the documents were
12 delayed for two months, and when finally produced, had been improperly redacted so as to render
13 them essentially useless in terms of providing any meaningful no information. That issue will be
14 explored in greater detail in Section III below.

15 Respectfully, while a great number of transactional documents and some source financial
16 data has been produced, and tax returns have been produced as well, the tax returns as filed do
17 not reconcile or balance to the bank statements, K-1's, and the financial ledgers and transactional
18 documents that have been made available. The various adjusting journal entries, accounting
19 treatment, etc. all of which are necessary to explain what NYPE believes to be substantial
20 ongoing misconduct by LVLP, is absent. NYPE's new discovery requests in this proceeding
21 specifically solicit and seek much of that data, but by the same token much of that data was
22 subpoenaed from LVLP's CPA, Sam Spitz, whose evasive answer suggested only that much of
23 the critical data had been destroyed, based on suspicious signed engagement letters produced
24
25
26
27
28

1 long after Spitz' initial comprehensive document production. It should be noted again that Spitz
2 failed and to this date continues to refuse to produce any electronic data so that the same may be
3 properly analyzed, and further affirms the destruction and disposal of critical financial records,
4 despite knowing, or being in a position where he reasonably should have known, about the
5 ongoing litigation between NYPE and various LVLP "disregarded entities".
6

7 The sole authority cited by LVLP is a generic reference to NRCP 26(b)(1) indicating that
8 discovery may be had of any matter not privileged, and citing an older Nevada case for the same
9 proposition. Reference is also made to NRCP 37(a)(2)(b), without going into detail and without
10 doing a detailed analysis or review of the parameters and application of the same.
11

12 Very simply stated, NYPE has been working very hard to generate and achieve data.
13 Virtually all information obtained has already been disclosed, either by NYPE or by LVLP itself.
14 What is still missing, primarily because the defendants have been consciously evasive and have
15 refused to turn over critical data, are complete detailed specific legal theories and analyses as to
16 exactly how LVLP manipulated various transactions, and managed to effectively make itself
17 judgment proof.
18

19 Respectfully, the analysis and legal theories in question constitute attorney work product
20 on the one hand, as well as work in progress of a forensic accountant whose report is not due for
21 approximately 80 more days hereafter.
22

23 Plaintiffs wish to assure the Court that they are working diligently in their efforts to
24 obtain the necessary and relevant evidence, and that such evidence will be promptly disclosed, in
25 accordance with NRCP 26(e), as soon as it is obtained and readily available. What has not yet
26 been disclosed or responded to defendants, however, is the ongoing analysis and work-in
27 progress regarding specific details of Plaintiff's legal theories, which in fact will be disclosed
28

1 incident to NYPE's expert witness report. Even then, much of the foundational data and
2 information necessary to formulate those opinions and conclusions is already contained in Items
3 19, 20, and 21, attached as Exhibit "18" to this Opposition and Counter-Motion.

4 Respectfully, once LVLP complies with their discovery obligations to produce their
5 records, NYPE will be in a position to fully and completely respond to each of the subject
6 discovery requests. Until that time, respectfully, LVLP's current motion is premature and
7 inappropriate. The Motion to Compel should be denied.
8

9 **III.**

10 **COUNTER-MOTION TO OVERRULE ASSERTED**
11 **PRIVILEGE AND COMPEL DISCLOSURE OF**
12 **COMMUNICATIONS BETWEEN DEFENDANTS**
13 **AND THEIR NEW JERSEY ACCOUNTANT**

14 As set forth in Section I herein above, NYPE initiated efforts to obtain some of the
15 missing documentation it was seeking from the defendants' previously disclosed New Jersey
16 CPA, Mr. Sam Spitz. That deposition was originally scheduled to occur on February 8, 2018,
17 and the subpoena therefore was served on January 22, 2018, a true and correct copy of which is
18 attached hereto as Exhibit "8" and by this reference incorporated herein. The subpoena was in
19 fact served on Spitz on or about January 22, 2018. See Exhibit "9" hereto. The Court will note
20 that Exhibit "A", the last 2 pages of Exhibit "8" is a memorandum previously produced by
21 counsel for Defendants herein regarding numerous "disregarded entities", which include multiple
22 defendants in the present proceeding. The Court will also note that Exhibit "8", regarding items
23 to be produced, specifically included all documents constituting or concerning email messages
24 sent or received in the course of preparing the 2007 to 2016 tax returns of LVLP Holdings, LLC
25 (See p. 5 of subpoena, Item 5), as well as all emails regarding the provision of professional
26
27
28

1 services. See Exhibit "8", Subpoena, p. 5, Item 6. The subpoena also included within definitions
2 of documents "any information contained in any computer or information storage and/or retrieval
3 devices are immediate . . ." See Subpoena, p. 10 to p. 11, Definition of Document. To date, the
4 deponent has adamantly refused NYPE's request for access to the electronic media and meta-data
5 underlying the documents he did produce. NYPE is in the process of preparing an appropriate
6 motion to compel as directed to Mr. Spitz, which NYPE contemplates filing shortly.
7

8 After several fits and starts, in part occasion by Spitz' unilateral assertion as to how busy
9 he was, and in part caused by a serious blizzard on the first continued deposition date, the
10 deposition was ultimately convened on March 5, 2018. At the time of that deposition, inquiry
11 was made as to the location of the emails which had been subpoenaed, and Spitz testified that he
12 had just not had time to produce those. He indicated, under oath and on the record, that he would
13 be able to produce those within one week.
14

15 Contrary to Spitz' representation, the emails were not produced within a week. When
16 they ultimately were produced, they went first to counsel for the defendants, who meticulously and
17 extensively redacted them. The first disclosure of the emails occurred on April 3, 2018, and a
18 copy of the Third Supplemental Disclosures provided by defendants, as to the index and privilege
19 log, is attached hereto as Exhibit "10" attached hereto by this reference incorporated herein. The
20 actual extensively redacted emails are being submitted, UNDER SEAL, in an envelope delivered
21 to Chambers, designated as Exhibit "11" constituting bates numbered pages SPZ1130 through
22 SPZ001475 approximately 345 pages of emails. Even a cursory examination will disclose to the
23 Court that any meaningful information regarding the preparation of financial and tax returns,
24 financial transactions, etc. has been redacted!
25

26
27
28

1 The reason the documents are being submitted under seal is that counsel for the
2 Defendants has designated them as Confidential. A true and correct copy of the party's
3 Stipulated Protective Order is attached hereto as Exhibit "12" and by this reference incorporated
4 herein. NYPE's counsel is objecting to the designation of these redacted emails as confidential,
5 but pursuant to the terms of the Stipulated Protective Order, that objection has not yet been
6 addressed or resolved.
7

8 As is noted in Exhibit "12", however, the basis for redacting the subject emails is based
9 on alleged accountant-client privilege communication. See Exhibit "11".

10 Attached hereto as Exhibit "13" and by this reference incorporated herein is a Sworn
11 Declaration of Counsel for NYPE indicating his efforts to resolve this discovery dispute,
12 pursuant to EDCR 2.34, without the need of court intervention. As simply noted, both at the
13 time of the Meet and Confer on which counsel for LVLP bases its motion, as well as in several
14 phone calls and emails both before and after the same, counsel for NYPE emphasized to counsel
15 for LVLP that there is no viable client accountant privilege recognized under either New York or
16 New Jersey law, the two potential jurisdictions which would have oversight and governance of
17 the alleged conversations between a client and an accountant.
18

19 Specifically, as noted in the Declaration of Counsel, the subject clients are domiciled in
20 New York, operating out of the New York City offices of individual defendant David Mitchell,
21 as is indicated in various correspondence, on the face of their tax returns, and in the sworn
22 testimony of Sam Spitz.
23

24 Mr. Spitz, on the other hand, allegedly maintains an office in New York City, but he
25 primarily offices approximately 50 miles away in New Jersey, and is licensed in both New Jersey
26 and New York. On information and belief, Spitz is not licensed in Nevada and never has been.
27
28

1 Furthermore, all of the subject communications passed back and forth, via email, between
2 defendants' New York City offices, and Spitz's New Jersey offices, never passing through or
3 touching Nevada in any way.

4 Turning to the applicable law, and analyzing New Jersey first, Jersey Title 45:2B-65
5 addresses client information in the possession of an accountant and specifically notes. . . .

6 "Nothing herein shall be construed as prohibiting
7 the disclosure of information required to be disclosed
8 or as prohibiting disclosures in court proceedings
9

10 A true and correct copy of the statute is attached hereto as Exhibit "14" and by this
11 reference incorporated herein."

12 In the sole New Jersey reported opinion that the undersigned has located regarding the
13 same, the Appellate Division of the New Jersey Superior Courts noted in its analysis, that an
14 accountant had refused to disclose his client's names, claiming a non-existent accountant client
15 privilege. First National State Bank of New Jersey vs. Kron, 464 A.2d 1146, 1147-1148
16 (N.J.App. 1983). A true and correct copy of the Kron decision is attached hereto as Exhibit "15"
17 and by this reference incorporated herein. Turning to applicable New York law, as noted by the
18 Court in Peerenboom vs. Marvel Entertainment, LLC, 148 Appellate Div. 531 at 532 "there is no
19 client-accountant privilege in this state." See also 50 New York Supp.3d, 49 which was decided
20 in Appellate Div. N.Y.App. 2017. A true and correct copy of the Peerenboom vs. Marvel
21 Entertainment decision is attached hereto as Exhibit "16" and by this reference incorporated
22 herein.
23

24 Nor does recourse the Federal Law afford defendants any additional authority, as the U.S.
25 Supreme Court has consistently rejected all claims and assertions of a client accountant privilege
26
27
28

1 under Federal Law. The Seminal case regarding the same is found at Couch vs. United States,
2 409 U.S. 322 (1973). More recently, the U.S. Supreme Court has further ratified its declaration
3 that no such privilege exists in a case entitled United States vs. Arthur Young & Company, 465
4 U.S. 805 (1984). A true and correct copy of the latter decision in United States vs. Arthur Young
5 is attached hereto as Exhibit "17" and by this reference incorporated herein.

6
7 Hence, under Federal Law, New York Law, and New Jersey Law, the purported privilege
8 claimed by the defendants herein is non-applicable and improper.

9 Accordingly, the parties having been unable to amicably resolve their difference of
10 opinion as to this through their efforts to meet and confer, it is respectfully requested that this
11 Court determine that there is no applicable client-accountant privilege as regards this matter, and
12 that the Court Order defendants' to produce a complete unredacted set of the subject emails
13 within ten (10) days of the date of hearing and decision herein.

14 IV.

15 CONCLUSION

16
17 The Defendants, LVLP, have produced a voluminous Motion to Compel, including their
18 discovery requests and Plaintiff's responses, with really only one salient characteristic to the
19 same: their contention that initial discovery responses are not sufficiently specific.

20
21 LVLP's Motion to Compel is very weak on persuasive authority or underlying precedent,
22 and long on hyperbole. In response, NYPE has tendered herewith his explanation of the history
23 of these proceedings, and the status of discovery, and backed up that narrative with detailed
24 itemized documentation, constituting 18 exhibits.

25
26 NYPE has produced all documentation currently available, and is in the process of
27 formulating appropriate expert opinions which might satisfy Plaintiff's request for greater
28

1 specificity. In any event, the expert witness disclosure deadline is July 31, 2018, approximately
2 80 days away, and NYPE anticipates being able to submit a comprehensive report, which will be
3 even more definitive and comprehensive if LVLP actually complies with its discovery
4 obligations in the interim.

5 In this regard, there remains pending before the Court at the present time a request for
6 contempt against Forest City Enterprises, the joint venture partner of LVLP. A separate
7 Application for Order to Show Cause and Request for Contempt is being filed against LVLP in
8 the Original case, and it is anticipated that said application will be filed within approximately a
9 week. A copy thereof will be supplied to the Court as a supplement once it is prepared and
10 submitted to Judge Israel and to Commissioner Bulla.

11 Based upon all of the above and foregoing, LVLP's Motion to Compel should be denied.
12 Conversely, part of the root of the problem is the focus of NYPE's Counter-Motion regarding the
13 improper assertion of privilege, and NYPE requests that LVLP be ordered to produce unredacted
14 emails. The Court has been provided appropriate law and authority, and can see by this one
15 example just how blatantly defendants continue to hide the ball and play games with the
16 litigation process. The Court should summarily order LVLP to produce a full set of unredacted
17 emails as between LVLP and its accountants, on short notice, so as to assure the orderly and
18 timely completion of discovery.
19
20
21

22

23

24

25

26

27

28

1 In Summary, LVLP's Motion should be denied and NYPE's Counter-Motion should be
2 granted.

3 DATED this 11th day of May, 2018.

4 JOHN W. MUIJE & ASSOCIATES

5
6
7 By: /s/ JOHN W. MUIJE
8 JOHN W. MUIJE, ESQ.
9 Nevada Bar No. 2419
10 1840 East Sahara Avenue, #106
11 Las Vegas, Nevada 89104
12 Telephone: 702-386-7002
13 Facsimile: 702- 386-9135
14 E-Mail: jmuije@muijelawoffice.com
15 *Attorneys for Plaintiffs*
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of JOHN W. MUIJE & ASSOCIATES, and that on the 11th day of May, 2018, I caused to be served a true and correct copy of the foregoing **OPPOSITION TO MOTION TO COMPEL AND COUNTER-MOTION REQUIRING DISCLOSURE OF UNREDACTED EMAILS BETWEEN DEFENDANTS AND THEIR ACCOUNTANT**, 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; 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:

Garry L. Hayes, Esq.
HAYES & WELSH
199 No. Arroyo Grande Blvd., #200
Henderson, Nevada 89074
Telephone: (702) 509-9555
Facsimile: (702) 434-3739
E-Mail: ghayes@lvlaw.com
Attorneys for Mitchell Defendants

Harry Paul Marquis, Esq.
HARRY PAUL MARQUIS, CHTD.
400 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
Telephone: (702) 382-6700
Facsimile: (702) 384-0715
E-Mail: harry@marquislaw.net
*Attorneys for Defendants
Barnet Liberman and 305 Las Vegas, LLC*

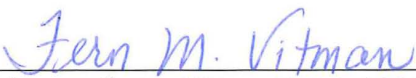

An employee of JOHN W. MUIJE & ASSOCIATES

EXHIBIT “2”

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS LAND PARTNERS, LLC;
LIVEWORK, LLC; AND ZOE
PROPERTIES, LLC,

Appellants,

vs.

RUSSELL L. NYPE; AND REVENUE
PLUS, LLC,

Respondents.

LAS VEGAS LAND PARTNERS, LLC;
LIVEWORK, LLC; AND ZOE
PROPERTIES, LLC,

Appellants,

vs.

RUSSELL L. NYPE; AND REVENUE
PLUS, LLC,

Respondents.

No. 68819

FILED

NOV 14 2017

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

No. 70520

*ORDER AFFIRMING IN DOCKET NO. 68819, AND REVERSING IN
PART AND REMANDING IN DOCKET NO. 70520*

These are consolidated appeals from a final judgment in Docket No. 68819, and an award of attorney fees and costs in Docket No. 70520, in an action for unjust enrichment/quantum meruit. Eighth Judicial District Court, Clark County; Ronald J. Israel, Judge.

Appellants Las Vegas Land Partners, LLC, LiveWork, LLC, and Zoe Properties (collectively, LVLP) owned five blocks of land in downtown Las Vegas. In 2005, LVLP enlisted respondents Russell L. Nype and his company Revenue Plus, LLC (collectively, Nype) to help find investors and bring in equity and debt capital for a development project. Nype enlisted First Wall Street Capital International (FWS) to assist with

the search and LVLP and FWS entered into a written agreement under which FWS agreed to advise LVLP and to introduce them to potential investors, including his former employer Forest City. Nype was not named in the FWS agreement, although he understood he was a party to the agreement and his job was to introduce potential investors to LVLP. The compensation agreement between LVLP and FWS indicated that LVLP would pay FWS a transaction fee equal to four percent of all equity capital and one percent of all debt.

FWS did not perform, and LVLP decided to terminate its relationship with FWS and continue to work solely through Nype to secure a contract with Forest City. Forest City and LVLP negotiated a partnership, but Forest City initially backed out and Nype worked with Forest City to get them to reconsider. Nype then attempted to enter into a separate written contract with LVLP, using the terms from LVLP's prior agreement with FWS. The parties never reached an agreement, but several communications between LVLP and Nype indicate that LVLP intended to pay Nype for the Forest City introduction. Forest City gave the project a second look, and, in June of 2006, LVLP and Forest City entered into a letter of intent (LOI) to form a limited liability company (LLC).

The LOI contemplates the formation of the LLC and does not mention the sale of real estate. However, on June 22, 2007, LVLP and Forest City reached a deal, wherein Forest City purchased an undivided 60 percent tenancy-in-common interest in LVLP's downtown Las Vegas property. LVLP executives acknowledged that the goal of the partnership was a capital investment, and that the potential sale of real property was first introduced by Forest City after Nype was no longer involved with the transaction.

In November 2007, LVLP filed a complaint against Nype seeking declaratory judgment that Nype lacked the necessary license to act as a real estate broker, and thus, it did not owe Nype any compensation or fee. Nype countersued seeking compensation for his services. The district court granted LVLP's motion for summary judgment, determining that because the final agreement between LVLP and Forest City was a land sale contract, Nype was required to have a license. Nype appealed that decision and we reversed the district court's grant of summary judgment, holding that "genuine issues of material fact remain concerning whether Nype is entitled to compensation" as "the evidence shows only that the final transaction was a land sale contract, but not that the initial work and agreements contemplated that result or that Nype engaged in specific actions reserved by NRS 645.030 to licensed real estate brokers." *Nype v. Las Vegas Land Partners, LLC*, No. 59940, 2013 WL 5477158, at *3 (Nev., Sept. 26, 2013) (Order of Reversal and Remand).

On remand, the district court held a bench trial focusing on Nype's actions and whether Nype acted as a real estate broker. Following the conclusion of trial, the district court granted Nype's action for unjust enrichment/quantum meruit and awarded him \$2,608,979.50 for his services. LVLP then filed a motion to alter or amend the decision, which the district court denied. LVLP appeals that decision in Docket No. 68819. After that appeal was docketed in this court, the district court entered an order granting in part and denying in part LVLP's motion to retax and settle costs. The district court awarded Nype \$191,938.19 in costs, plus interest. LVLP appeals that decision in Docket No. 70520. These appeals have been consolidated.

Standard of review

We review a district court's factual findings for an abuse of discretion and will not set aside those findings unless they are clearly erroneous and not supported by substantial evidence. *Sowers v. Forest Hills Subdivision*, 129 Nev. 99, 105, 294 P.3d 427, 432 (2013). Similarly, "fact-based conclusions of law are entitled to deference, and they will not be disturbed if supported by substantial evidence." *Manwill v. Clark Cty.*, 123 Nev. 238, 241, 162 P.3d 876, 879 (2007). "Substantial evidence is that which a reasonable mind might accept as adequate to support a conclusion." *Mason-McDuffie Real Estate, Inc. v. Villa Fiore Dev., LLC*, 130 Nev., Adv. Op. 83, 335 P.3d 211, 214 (2014) (internal quotation marks omitted).

Substantial evidence supports the district court's finding that Nype did not act as a real estate broker

LVL P argues that the district court erred in its determination that Nype did not act as a real estate broker. LVL P points to several places in the trial exhibits, primarily e-mails, to support its argument that Nype acted as a real estate broker and that he knew a real estate license was required in order to do certain activities relating to LVL P's development project. Nype argues that the district court correctly determined that he did not act as a real estate broker and should not be precluded from collecting a reasonable compensation for services rendered. We agree.

NRS 645.230 requires a real estate broker or salesperson to be licensed to conduct real estate transactions in Nevada. NRS 645.270 bars unlicensed persons from collecting compensation for work done in the capacity of a real estate broker:

A person . . . engaged in the business or acting in the capacity of a real estate broker or a real estate salesperson within this State may not commence or

maintain any action in the courts of this State for the collection of compensation *for the performance of any of the acts mentioned in NRS 645.030* without alleging and proving that the person . . . was a licensed real estate broker or real estate salesperson at the time the alleged cause of action arose.

(Emphasis added.) NRS 645.030 defines "[r]eal estate broker," in pertinent part, as:

a person who, for another and for compensation or with the intention or expectation of receiving compensation:

(a) Sells, exchanges, options, purchases, rents or leases, or negotiates or offers, attempts or agrees to negotiate the sale, exchange, option, purchase, rental or lease of, or lists or solicits prospective purchasers, lessees or renters of, any real estate

We previously held that a court must analyze the individual circumstances of the services performed in order to determine whether the services are of the type contemplated by NRS 645.030, and, if so, the person performing such services is acting without a license cannot recover a commission. *Islandia, Inc. v. Marechek*, 82 Nev. 424, 427-28, 420 P.2d 5, 7 (1966). The district court found that NRS 645.270 does not bar Nype from collecting compensation in this matter, because Nype never performed or contracted to perform any leasing services and is not suing to collect compensation for the purported real estate broker's act of offering to perform leasing services. Substantial evidence in the record supports the district court's findings. For instance, LVLP co-owner David Mitchell repeatedly testified that Nype's role was that of a finder and that Nype was not a leasing broker. Nype testified that he was responsible for creating

opportunities to introduce potential business partners, and he had no role in determining what the final agreement would be. Further, neither the FWS agreement nor the LOI refer to the sale of land or property. Although LVLP points to several instances in the trial record where Nype stated that he thought he might need a real estate license or may have been acting as a real estate broker, as the district court determined, his beliefs were “legal conclusions that Mr. Nype was not equipped to make.”

Viewing the evidence in a light most favorable to Nype, we conclude that substantial evidence supports the district court’s finding that Nype acted to create opportunities and introductions of various potential business partners, rather than to sell a property or business. *See Yamaha Motor Co., U.S.A., v. Arnoult*, 114 Nev. 233, 238, 955 P.2d 661, 664 (1998) (“This court is not at liberty to weigh the evidence anew, and where conflicting evidence exists, all favorable inferences must be drawn towards the prevailing party.”).¹ Accordingly, we hold that the district court did not abuse its discretion in concluding that Nype did not act as a real estate broker as defined by NRS 645.270.

Substantial evidence supports the district court’s finding that Nype did not sell a security

LVLP next argues that the district court erred by allowing Nype to recover damages for selling securities while unlicensed. Specifically, LVLP argues that Nype violated NRS Chapter 90 by offering to sell an

¹LVLP’s request for this court to consider caselaw from sister jurisdictions appears to be an invitation to reweigh evidence and engage in appellate fact-finding, which we decline to do. *See Law Offices of Barry Levinson, P.C. v. Milko*, 124 Nev. 355, 365, 184 P.3d 378, 385 (2008) (“[I]t is not the role of this court to reweigh the evidence.”).

interest in an LLC, and LVLP points to multiple exhibits in the record that show that Nype considered himself a broker when selling LVLP's equity interest. Further, LVLP argues that the district court erred when it concluded that Nevada law only prohibits selling a fully formed LLC interest, and that the district court improperly analyzed the issue using federal securities law in addition to Nevada law.² LVLP argues that Nype offered to sell an interest in an LLC by holding the initial meetings, including property tours in Las Vegas, which led to the LOI negotiations. Nype contends that the district court correctly concluded that the apportionment of interests in a newly created LLC does not constitute an offer to sell a security within the meaning of NRS 90.280. Nype further argues that he did not offer to sell a security, since NRS 90.280(1) assumes that a security already exists and that its ownership is being transferred through a sale, disposition, or purchase. We agree.

NRS 90.310(1) makes it unlawful for "any person to transact business in this State as a broker dealer . . . unless licensed or exempt from licensing under [NRS Chapter 90]." NRS 90.220 defines a "[b]roker-dealer" as "any person engaged in the business of effecting transactions in securities for the account of others or for the person's own account." Securities are statutorily defined, and include, among other things, "an interest in a limited-liability company." NRS 90.295. In the context of

²Although it does appear that the district court improperly analyzed Nype's action based on criteria under federal law, the district court did a complete analysis based solely on Nevada law and ultimately reached the correct result. "This court will affirm a district court's order if the district court reached the correct results, even if for the wrong reason." *Saavedra-Sandoval v. Wal-Mart Stores, Inc.*, 126 Nev. 592, 599, 245 P.3d 1198, 1202 (2010).

securities, NRS 90.280 defines “[s]ale” and “[s]ell,” in pertinent part, as follows:

“Sale” includes every contract of sale, contract to sell, or other disposition, of a security or interest in a security for value. “Sell” has a corresponding meaning. In this context:

1. “Offer to sell” includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.

....

6. The terms defined in this section do not include:

(a) The creation of a security interest or a loan.

In looking at the plain language of NRS 90.280, and in particular NRS 90.280(6)(a), the definitions of “sell” and “offer to sell” do not include the creation of an LLC. Because the parties’ LOI created a new LLC, with the parties apportioning newly-created member units in relation to their future capital contributions, Nype did not sell or offer to sell a security interest in an LLC. Accordingly, we hold that substantial evidence supports the district court’s finding that “interests in an LLC were not being sold, disposed of[,] or purchased,” and the district court did not abuse its discretion in concluding that “Nype did not engage in the performance of a contract in violation of NRS 90.310.”

The district court did not abuse its discretion in awarding Nype damages in quantum meruit

The district court awarded Nype damages in quantum meruit, determining that Nype was a significant, contributing factor in Forest City’s investment in LVLP’s development project, and that LVLP profited from approximately six months of Nype’s unpaid services. LVLP argues that

substantial evidence does not support the district court's judgment, arguing that the district court did not consider all of the possible methods of calculating damages to determine what the lesser value would be. LVLP points to sections in the record where it had proposed lower fee structures and fixed payments rather than the four percent/one percent formula, arguing that these alternate fee structures would have generated considerably less in the amount of damages awarded. However, LVLP concedes that Nype's fee was never agreed upon, and that communications between Nype and Mitchell demonstrate that Nype expected that he would be paid consistent with the FWS agreement. Nype contends that the district court based its damage award on the fact that "LVLP had expressed a willingness to pay a fee equal to 4% of all equity capital and 1% of all debt capital committed for the [p]roject," and that formula resulted in less damages than the fair market value of Nype's services and was thus appropriate. We agree.

A quantum meruit claim may be brought where a benefit is conferred with a reasonable expectation of payment. *Certified Fire Prot., Inc. v. Precision Constr., Inc.*, 128 Nev. 371, 381, 283 P.3d 250, 257 (2012). A party seeking to recover in quantum meruit must demonstrate that his services "confer[red] a benefit on the [other party]." *Id.* "[T]he proper measure of damages under a quantum meruit theory of recovery is the reasonable value of [the] services." *Flamingo Realty, Inc. v. Midwest Dev., Inc.*, 110 Nev. 984, 987, 879 P.2d 69, 71 (1994) (second alteration in original) (internal quotation marks omitted). Industry custom and any agreement between the parties may be relevant, *id.* at 988-89, 879 P.2d at 71-72, but recovery in quantum meruit "is usually the lesser of (i) market value and (ii) a price the defendant has expressed a willingness to pay." *Certified Fire,*

128 Nev. at 381 n.3, 283 P.3d at 257 n.3 (internal quotation marks omitted). The district court has “wide discretion in calculating an award of damages and an award will not be disturbed on appeal absent an abuse of discretion.” *Flamingo Realty*, 110 Nev. at 987, 879 P.2d at 71.

Substantial evidence in the record supports the district court’s conclusions, including, among other evidence, e-mails between LVLP and Nype discussing the four percent/one percent formula, an executive summary of the project between LVLP and Forest City, the signing agent/financing letter between LVLP and FWS that includes the four percent/one percent formula, e-mails between LVLP and Nype discussing potential compensation agreements, and LVLP’s loan financing agreements for the project. Moreover, Nype’s expert witness testified regarding industry standards and valued Nype’s services at \$5,217,595. The district court found that this amount should be reduced by 50 percent for work done by Nype while he was associated with FWS.

Although LVLP points to various portions of the record to support its argument, including testimony from its own expert witness, the district court evaluated the credibility of both parties’ expert witnesses and weighed the evidence in reaching its decision. “This court accords ‘deference to the point of view of the trial judge since he had the opportunity to weigh evidence and evaluate the credibility of witnesses—an opportunity foreclosed to this court.’” *Jackson v. Groenendyke*, 132 Nev., Adv. Op. 25, 369 P.3d 362, 365 (2016) (quoting *Harris v. Zee*, 87 Nev. 309, 311, 486 P.2d 490, 491-92 (1971)). Accordingly, we conclude that the district court did not abuse its discretion in awarding Nype damages in quantum meruit.

The district court did not abuse its discretion in allowing Revenue Plus to recover damages

LVLP argues that the district court erroneously awarded Revenue Plus damages, despite it not being a registered business in Nevada. NRS 86.548(2) provides that “[e]very foreign limited-liability company transacting business in this State which fails or neglects to register with the Secretary of State . . . may not commence or maintain any action, suit or proceeding in any court of this State until it has registered with the Secretary of State.” Although LVLP brought the initial lawsuit against Revenue Plus, LVLP contends that Revenue Plus should not have been able to countersue and should be barred from recovering damages. LVLP further argues that the district court improperly relied on *Walker Bank & Trust Co. v. Smith*, 88 Nev. 502, 501 P.2d 639 (1972), in support of its holding that Revenue Plus could assert defenses and counterclaims. Nype argues that the district court’s reliance on *Walker* is proper as it is analogous to the case at hand. We agree.

In *Walker*, we analyzed whether a company that “did not qualify to do business as a foreign corporation” in Nevada was prohibited from defending an action and asserting claims when the applicable statute indicated “that such a corporation shall not be allowed to commence, maintain, or defend any action.” 88 Nev. at 507, 501 P.2d at 642 (internal quotation marks omitted). We determined that even when a company “[does] not qualify to do business as a foreign corporation in this State[,] . . . it is established law that a plaintiff waives its right to question capacity to defend when it brings suit against such a corporation and compels it to appear and answer.” *Id.* The *Walker* court also examined the analogous question of whether an unlicensed contractor could assert claims and defenses when “[NRS] 624.320 provides that one engaged in the

business of acting in the capacity of a contractor must allege and prove that he was duly licensed if he maintains an action in the courts of this State.” *Id.* We held that the statute “may not be construed to mean that an unlicensed contractor may not defend an action brought against him.” *Id.*

Since LVLP included Revenue Plus in its lawsuit, it cannot now be permitted to question Revenue Plus’s ability to defend. *Walker*, 88 Nev. at 507, 501 P.2d at 642; see also *Scott v. Day-Bristol Consol. Mining Co.*, 37 Nev. 299, 304, 142 P. 625, 626 (1914) (“To permit a plaintiff . . . to sue a corporation, bring it into court under process commanding it to answer, then to permit such plaintiff to strike the answer and take judgment by default, cannot be tolerated To seek equitable relief in a court and then question the right of the other party to be heard, does not comport with the principles of equity.”). We thus hold that the district court did not abuse its discretion when it awarded Revenue Plus damages, despite the fact that Revenue Plus was not registered with the Secretary of State. See *Dynamic Transit Co. v. Trans Pac. Ventures, Inc.*, 128 Nev. 755, 762-63, 291 P.3d 114, 118 (2012) (“Broad discretion is given to a district court in calculating an award of damages, and such award will not be reversed unless there is an abuse of discretion.”).

The district court’s award of costs for a nontestifying expert was an abuse of discretion

NRS 18.005 defines recoverable costs, and subsection 5 allows for the recovery of “[r]easonable fees of not more than five expert witnesses in an amount of not more than \$1,500 for each witness, unless the court allows a larger fee after determining that the circumstances surrounding the expert’s testimony were of such necessity as to require the larger fee.” LVLP argues that the district court abused its discretion in awarding more than \$1,500 in costs to Nype for nontestifying experts Mark Rich and John

Knott.³ LVLP contends that the district court's award of expert witness expenses was unwarranted because Rich was stricken by the district court and never testified, and Nype never called Knott to testify. Nype argues that the district court properly considered factors from *Frazier v. Drake*, 131 Nev., Adv. Op. 64, 357 P.3d 365 (Ct. App. 2015), and determined that circumstances necessitating a larger fee were established for both Mark Rich and John Knott. We disagree.

To be recoverable, costs "must be actual and reasonable." *Bobby Berosini, Ltd. v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352, 971 P.2d 383, 385 (1998). "A district court's decision regarding an award of costs will not be overturned absent a finding that the district court

³LVLP also argues that the district court abused its discretion by awarding Nype mediation costs and travel, lodging, and meals costs. We conclude that this argument is without merit. NRS 18.005(17) is a catchall provision that allows for the recovery of costs for "[a]ny other reasonable and necessary expense incurred in connection with the action." The district court concluded that the mediation costs incurred by Nype were associated with a court-ordered mediation and were reasonable and necessarily incurred. Similarly, the district carefully considered the amount initially requested by Nype and rejected almost \$5,000 before concluding that the remainder of Nype's travel, lodging, and meal costs were reasonable and necessarily incurred. Given the district court's wide latitude in calculating costs, we conclude that the district court's decision to award these costs was not an abuse of discretion. See *Dynamic Transit Co. v. Trans Pac. Ventures, Inc.*, 128 Nev. 755, 762-63, 291 P.3d 114, 118 (2012). We note that other jurisdictions also allow for recovery of travel, lodging, and meals costs. See, e.g., *Lewis, Wilson, Lewis & Jones, Ltd. v. First Nat. Bank of Tuscumbia*, 435 So. 2d 20, 23 (Ala. 1983) (concluding that various costs, including travel expenses, are "considered appropriate for reimbursement"); *Madison Capital Co., LLC v. Star Acquisition VIII*, 214 P.3d 557, 561-62 (Colo. App. 2009) (upholding trial court's award of costs for prevailing party's travel and meal expenses); *Nygaard v. Lucchesi*, 654 A.2d 410, 414 (Del. Super. Ct. 1994) ("Travel expenses, including meals and lodging are generally recoverable by the prevailing party.").

abused its discretion.” *Vill. Builders 96, L.P. v. U.S. Labs., Inc.*, 121 Nev. 261, 276, 112 P.3d 1082, 1092 (2005). A district court’s decision that is based on an incorrect interpretation of law is an abuse of discretion. *Bergmann v. Boyce*, 109 Nev.670, 674, 856 P.2d 560, 563 (1993) *superseded by statute on other grounds as recognized in Matter of DISH Network Derivative Litigation*, 133 Nev., Adv. Op. 61 n.6, 401 P.3d 1081, 1093 n.6 (2017).

Recently, in *Public Employees’ Retirement System of Nevada v. Gitter*, 133 Nev., Adv. Op. 18, 393 P.3d 673, 681 (2017), we clarified the law with respect to expert witness fees under NRS 18.005(5). We held that “[u]nder NRS 18.005(5), an expert witness who does not testify may recover costs equal to or under \$1,500, and consistent with *Khoury*, ‘[w]hen a district court awards expert fees in excess of \$1,500 per expert, it must state the basis for its decision.’” *Id.* (quoting *Khoury v. Seastrand*, 132 Nev., Adv. Op. 52, 377 P.3d 81, 95 (2016)). “With respect to cases in which the expert acts only as a consultant and does not testify, however, district courts may award \$1,500 or less, so long as the district court finds such costs constitute ‘[r]easonable fees.’” *Id.* (quoting NRS 18.005(5)).

Here, neither Rich nor Knott testified. Thus, under *Gitter*, the district court abused its discretion by awarding more than \$1,500 per nontestifying expert, regardless of whether it stated an adequate basis for the decision. *See id.* Accordingly, we reverse that portion of the district court’s judgment and remand this matter to the district court for it to amend its judgment and award Nype \$3,000 for his nontestifying expert witness fees.

For the reasons set forth above, we ORDER the judgment of the district court AFFIRMED in Docket No. 68819, and AFFIRMED in part and

REVERSED in part in Docket No. 70520, and we remand this matter to the district court to enter an amended judgment consistent with this order.

Cherry, C.J.
Cherry

Douglas, J.
Douglas

Gibbons, J.
Gibbons

Pickering, J.
Pickering

Hardesty, J.
Hardesty

Parraguirre, J.
Parraguirre

Stiglich, J.
Stiglich

cc: Hon. Ronald J. Israel, District Judge
Michael H. Singer, Settlement Judge
Marquis Aurbach Coffing
Reisman Sorokac
Eighth District Court Clerk

EXHIBIT “3”

IN THE SUPREME COURT OF THE STATE OF NEVADA

LAS VEGAS LAND PARTNERS, LLC;
LIVEWORK, LLC; AND ZOE
PROPERTIES, LLC,

Appellants,

vs.

RUSSELL L. NYPE; AND REVENUE
PLUS, LLC,

Respondents.

No. 68819

LAS VEGAS LAND PARTNERS, LLC;
LIVEWORK, LLC; AND ZOE
PROPERTIES, LLC,

Appellants,

vs.

RUSSELL L. NYPE; AND REVENUE
PLUS, LLC,

Respondents.

No. 70520

FILED

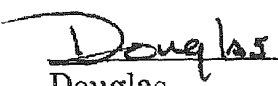
APR 27 2018

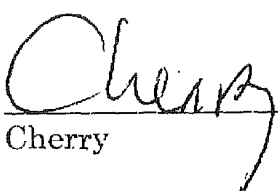
ELIZABETH A. BROWN
CLERK OF SUPREME COURT
BY  DEPUTY CLERK


ORDER DENYING REHEARING

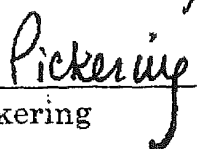
Rehearing denied. NRAP 40(c).

It is so ORDERED.

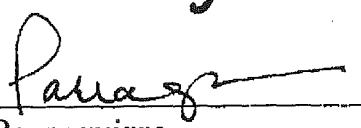
 , C.J.
Douglas

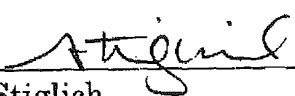
 , J.
Cherry

 , J.
Gibbons

 , J.
Pickering

 , J.
Hardesty

 , J.
Parraguirre

 , J.
Stiglich

cc: Hon. Ronald J. Israel, District Judge
Marquis Aurbach Coffing
Reisman Sorokac
Eighth District Court Clerk

EXHIBIT “4”

**“LVLP AFFILIATED ENTITIES”, INCLUDE BUT
ARE NOT LIMITED TO THE FOLLOWING:**

- (a) AARON PROPERTY LLC
- (b) ADRIAN PROPERTY LLC
- (c) AQUARIUS OWNER, LLC
- (d) AVA PROPERTY LLC
- (e) BARNET LIBERMAN
- (f) CASA MITCHELL, LLC
- (g) CASINO COOLIDGE, LLC
- (h) DAVID J. MITCHELL
- (i) LEAH PROPERTY, LLC
- (j) LAS VEGAS BONNEVILLE PARTNERS LLC
- (k) LAS VEGAS LAND PARTNERS, LLC
- (l) LIBERMAN HOLDINGS, LLC
- (m) LIVE WORK, LLC
- (n) LIVE WORK MANAGER, LLC
- (o) LIVE WORKS TIC SUCCESSOR, LLC
- (p) LVLP HOLDINGS
- (q) LVLP HOLDINGS, LLC
- (r) L/W TIC SUCCESSOR, LLC
- (s) MARC PROPERTY, LLC
- (t) MEYER PROPERTY, LLC
- (u) MEYER PROPERTY LTD
- (v) MITCHELL HOLDINGS, LLC
- (w) STELLA PROPERTY LLC
- (x) WINK ONE, LLC
- (y) ZOE PROPERTY, LLC
- (z) 305 LAS VEGAS, LLC

EXHIBIT “6”



CLERK OF THE COURT

1 DCRR
JOHN W. MUIJE, ESQ.
2 JOHN W. MUIJE & ASSOCIATES
Nevada Bar No. 2419
3 1840 E. Sahara Avenue, Suite 106
Las Vegas, Nevada 89104
4 Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
5 Email: jmuije@mujelawoffice.com
Attorneys for Defendants/Judgment Creditors

6 DISTRICT COURT
7
8 CLARK COUNTY, NEVADA

9 LAS VEGAS LAND PARTNERS, LLC; LIVE
WORK, LLC and ZOE PROPERTIES, LLC,

10 Plaintiffs,

CASE NO: A-07-551073

11 vs.

DEPT. NO: XXVIII

12 RUSSELL L. NYPE; REVENUE PLUS, LLC;
13 DOES I through III, and ROE CORPORATIONS I
through III, inclusive,

14 Defendants.

DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS

15 RUSSELL L. NYPE; REVENUE PLUS, LLC

DATE: October 14, 2016

16 Judgment Creditors,

TIME: 9:00 a.m.

17 vs.

18 LAS VEGAS LAND PARTNERS, LLC,

19 Judgment Debtor.

20
21 DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION

22 Hearing Date: October 14, 2016

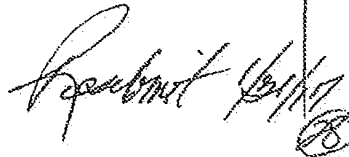
23 Hearing Time: 9:00 a.m.

24 Attorney for Judgment Creditor, Russell L. Nype; Revenue Plus, LLC):

25 JOHN W. MUIJE, ESQ., of the Law Offices of John W. Muje &
26 Associates

27 Attorney for Judgment Debtor (Las Vegas Land Partners, LLC):

28 GARRY HAYES, ESQ., of the Law Offices of Hayes & Welsh.



I.

FINDINGS

On October 14, 2016, a hearing was conducted with respect to Defendants/Judgment Creditors Motion to Compel Discovery & For Sanctions.

Having considered Defendant's Motion to Compel Discovery and For Sanctions, the Plaintiff's Opposition, and the Defendant's Reply In Support of its Motion to Compel, the Discovery Commissioner makes the following Findings with respect to the above-referenced Motion to Compel:

The Court finds that the Judgment Creditor's (hereinafter collectively referred to as "Nype") Motion to Compel consists of three separate components, each of which should be addressed in a slightly different fashion.

IT IS THE FURTHER FINDING of the Court that despite designating the discovery request as a notice of deposition, in essence what Nype has undertaken with regard to his attempt to schedule the deposition of the Person Most Knowledgeable of the Judgment Debtor (hereinafter referred to as LVLP), is an updated post-judgment examination of judgment debtor.

THE COURT FURTHER FINDS that although the Rules of Civil Procedure and a Notice of Deposition promulgated thereunder, arose subsequent to the enactment of Nevada's traditional debtor examination statute, i.e. NRS 21.270, that said statute has never been overruled, and requires that a judgment debtor be examined at the *situs* where they regularly reside.

THE COURT FURTHER FINDS that in the Court's experience, video conferencing arrangements, especially when there are substantial geographic distances involved, when properly coordinated, provide an effective, economical and appropriate alternative to out-of-state travel and live depositions.

THE COURT FURTHER FINDS, based on the second distinct issue raised by Nype in his Motion to Compel, that the attorney-client privilege should not apply to the issue as to the source

....

....

....

1 and amount of payments made by a litigant to various attorneys, based on the case law produced and
2 referenced by Nype.

3 **THE COURT FURTHER FINDS** that the actual cancelled checks, all of which were
4 represented to be located at the New York offices of LVLP, are relevant and important to post-
5 judgment collections, and should be produced and made available as addressed hereinafter for
6 inspection and copying.

7 **THE COURT FURTHER FINDS** that LVLP's earlier objection to production regarding
8 information as to the identity, amounts, and source of funds for paying attorneys who have
9 represented LVLP in these proceedings is not and should not be held to be privileged, and that the
10 general ledger produced on or about September 1, 2016 provides partial information regarding the
11 same.

12 **THE COURT FURTHER FINDS** that the anticipated production of documents sought is
13 likely to be voluminous, and that it is appropriate that Judgment Creditor Nype pay the cost of
14 reproducing the documents he seeks.

15 **THE COURT FURTHER FINDS**, subject to the above provisions, that Nype is clearly
16 entitled to the documentation he has requested, especially with regard to the August, 2016, updates
17 and supplementation requested, and that LVLP can and should produce all of the documentation
18 sought, in accordance with NRCP Rule 34 and the specific requests and items enumerated in Nype's
19 2016 request for production of documents.

20 **THE COURT FURTHER FINDS**, however, that the obligation to produce records means
21 to produce such records in accordance with NRCP Rule 34 as they are normally maintained, at its
22 regular business offices in New York City, likely best done through the use of an independent copy
23 service.

24 **THE COURT FURTHER FINDS** that in addition to the 2016 document request, LVLP can
25 and should complete and supplement its production for the 2015 request, and should produce any
26 non-completed documents for payment of attorneys fees for all periods addressed in the 2015
27 document production requests, as well as interim tax returns, bank statements, accounting
28 statements, etc., not heretofore produced, including but not limited if in LVLP's possession, to all

1 of the following for LVLP's subsidiaries:

- 2 (1) All "TIC" Accounting statements;
- 3 (2) All K-1's issued by said subsidiaries;
- 4 (3) All Bank statements for said subsidiaries.

5 The Court notes that LVLP has agreed to produce such documentation at its offices ^{9 m} in
6 New York.

7 **THE COURT FURTHER FINDS** that K-1's related to the various "affiliates", subsidiaries,
8 and entities in which LVLP has a beneficial interest are particularly relevant and can and should be
9 produced.

10 **THE COURT FURTHER FINDS**, given the geographic distance mentioned in the Court's
11 prior findings set forth hereinabove, that the most efficacious mechanism is for Nype to arrange an
12 appropriately qualified litigation document service or copying service to go to the offices of LVLP,
13 in the New York area, and copy and/or scan all of the documentation in place, and transfer those to
14 electronic media, whether in the form of CD-Roms, DVD's, or flash memory sticks, differentiated
15 indexed and cataloged according to the various designations and categories set forth on the files,
16 folders, and document repositories as maintained by LVLP on the one hand, by categories and/or
17 responding to the specific requests made by Nype on the other.

18 **THE COURT FURTHER FINDS** that once reproduction of the documents produced has
19 been completed, and the images converted to electronic media, that said electronic media be
20 provided to counsel for LVLP, i.e. Garry Hayes at his offices located at 199 N. Arroyo Grand Blvd.,
21 Ste 200, Henderson, Nevada 89074, and that Mr. Hayes shall have ten (10) working days (i.e. two
22 weeks) from the date of receipt of the documentation within which to review the same and determine
23 whether or not there may be an issue of privilege as to particular documents.

24 **THE COURT FURTHER FINDS** that to the extent Mr. Hayes in good faith believes the
25 document to be privileged, he will need to prepare a detailed privilege log referencing specifically
26 the document in question, identifying the same, and describing the nature of the redaction.

27 **THE COURT FURTHER FINDS** that once said review and redaction by Attorney Garry
28 Hayes has occurred on behalf of LVLP, that Mr. Hayes shall promptly communicate said information

1 to the litigation document service or copying service employed by Nype, which will substitute
2 redacted pages for the original images on their electronic media, while also making an appropriate
3 copy of any privilege log, and only then provide the images to counsel for Nype, John W. Muje at
4 his offices located at 1840 East Sahara Avenue, Suite 106, Las Vegas, Nevada 89104, i.e. the
5 complete document production, (subject to redactions by Mr. Hayes with Mr. Hayes's privilege log
6 as to any documents withheld or redacted).

7 **THE COURT FURTHER FINDS** that once that documentation has been provided to Mr.
8 Muje, Nype may make arrangements for either a live physical sworn examination to occur in the
9 New York City area, or in the alternative, may make arrangements for a video conferencing sworn
10 examination/deposition, at Nype's option, to occur no sooner than two weeks subsequent to Nype's
11 receipt of the subject documentation, and that said sworn examination should commence and
12 continue until Nype has been afforded a reasonable opportunity to inquire as to the financial affairs
13 of LVLFP, not previously covered in the earlier examination, subject to any limitation under NRCP
14 & EDCR, as well as ask relevant questions regarding the documentation so produced.

15 **THE COURT FURTHER FINDS** that there is no basis for sanctions against LVLFP.

16 **II.**

17 **RECOMMENDATIONS**

18 **IT IS HEREBY ACCORDINGLY RECOMMENDED** that Defendant/Judgment
19 Creditors' Motion be granted in part as to documentation still needing to be produced, which
20 documents shall be produced in New York City as more specifically delineated herein;

21 **IT IS FURTHER RECOMMENDED**, however, that Defendant/Judgment Creditor's
22 Motion be denied in part as to requiring the Judgment Debtor to appear and be deposed in Las
23 Vegas, Nevada, under oath, and that the Court instead order said sworn examination to occur in New
24 York City after completion of the document production process discussed herein.

25 **IT IS FURTHER RECOMMENDED** that the Court order production of all of the
26 documentation sought by Judgment Creditor Nype as detailed in the above and foregoing findings,
27 including specifically the full documentation sought in Plaintiff's 2016 document production request,
28 and the above enumerated supplemental documents as to the 2015 requests.

1 IT IS FURTHER RECOMMENDED that the Court notes that LVLP has agreed to produce
2 such documentation at its offices in New York.

3 IT IS THEREFORE RECOMMENDED that completion of the documentation production
4 addressed hereinafter, the parties will arrange for a sworn examination of judgment debtor, i.e. the
5 deposition of the Person Most Knowledgeable of LVLP, with the LVLP representative (believed to
6 be a Mr. David Mitchell) required to appear at the offices of LVLP in New York City, New York,
7 or at the offices of a court reporter or video conferencing service located in the same locale, for
8 purposes of sworn testimony under oath.

9 IT IS FURTHER RECOMMENDED that Nype shall have the option to take said sworn
10 debtor examination before an appropriately qualified court reporter, live and in person, through either
11 Nevada or New York counsel, and that Nype's counsel may have present, at Nype's option, an
12 appropriate forensic accountant and/or one paralegal to assist in the examination process.

13 IT IS ALSO FURTHER RECOMMENDED that Nype, in the alternative, may arrange to
14 undertake such sworn examination through the use of video conferencing facilities, with LVLP's
15 representative to appear at the video conferencing locale in the New York City area, while Nype's
16 counsel and appropriate assistance may attend and participate through video conferencing
17 arrangements from their base of operations in Las Vegas, Nevada.

18 IT IS FURTHER RECOMMENDED, based upon the above findings regarding the absence
19 of attorney-client privilege in regard to documentation regarding the payment of attorneys fees, that
20 all documentation requested by Nype but not previously produced, shall be produced, utilizing the
21 logistical constraints recommended hereinafter, in the New York City area, and other related
22 documentation showing the source of funds, the amount of payments, and the mechanisms utilized
23 for and on behalf of LVLP in the payment of LVLP's attorneys fees.

24
25
26
27
28

1 IT IS FURTHER RECOMMENDED that the logistical arrangements discussed in the
2 above and foregoing findings be deemed appropriate, and that Nype be responsible for making
3 said arrangements and paying for the copying and/or litigation document production services.

4 IT IS FURTHER RECOMMENDED that the mechanisms, logistics, and mechanical
5 procedures which set forth in the above findings should be deemed appropriate, and should be
6 implemented for purposes of the document production ordered hereby.

7 CONCLUDING RECOMMENDATIONS

8 Based upon all of the above and foregoing, the undersigned recommends a resolution of
9 Nype's Motion to Compel as follows, partially granting and partially denying said motion.

- 10 1. The Motion to Compel in part, as to the appearance by the Judgment
11 Debtor in Las Vegas, Nevada is denied, and it is instead ordered that
12 said sworn examination under oath shall occur in the New York

- 13 City area, after production of documents as discussed herein *and*
videotaping remains an option as discussed herein.
14 2. It is further recommended that claims of attorney-client privilege
15 previously asserted by the Judgment Debtor, LVLP, be denied,
16 the undersigned expressly finding and recommending that the items
17 in question are not privileged, and should be produced, including
18 all cancelled checks related to the payment of LVLP's attorneys
19 fees; and ¹

- 20 3. It is further recommended, pursuant to the Motion to Compel, that said
21 motion be granted in part, as regards the document production,
22 insofar as Nype's requests are well founded, appropriate, and relevant,
23 and the documentation in question shall be produced by the Judgment
24 Debtor in the New York City area, for copying and duplication
25 at the Judgment Creditor's expense, in accordance with the
26 logistical arrangements set forth hereinabove.

27 *1 To the extent that billing records are required*
28 *to be produced, these records may be redacted*
to protect attorney-client privilege where necessary.

LAS VEGAS LAND

NYPE

ASSISTANT

10/14/16, Hearing

4. Nype's request for sanctions is denied.

DATED this 20 day of ^{December} November, 2016.


DISCOVERY COMMISSIONER

Submitted by:

JOHN W. MUIJE & ASSOCIATES


By:

JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
1840 E. Sahara Avenue, Suite 106
Las Vegas, Nevada 89104
Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
Email: jmuije@mujelawoffice.com
Attorneys for Defendants/Judgment Creditors

Approved as to form and content by:

HAYES & WELSH

By:


GARRY L. HAYES, ESQ.
Nevada Bar No. 1540
199 N. Arroyo Grande Blvd., #200
Henderson, Nevada 89074
Telephone: (702) 434-3444
Facsimile: (702) 434-3739
E-Mail: ghayes@nevlaw.com
Attorneys for Plaintiff/Counter-Defendant, LAS VEGAS LAND PARTNERS, LLC

LAW OFFICES
JOHN W. MUIJE & ASSOCIATES

1840 E. SAHARA AVE. #106
LAS VEGAS, NEVADA 89104
Phone: (702) 386-7002 Fax: (702) 386-9135

NOTICE

Pursuant to N.R.C.P. 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

The Commissioner's Report is deemed received three (3) days after mailing to a party or the party's attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's Office. E.D.C.R. 2.34(f).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on
the _____ day of _____, 20_____.

_____ Placed in the folder of counsel in the Clerk's Office on the
_____ day of _____, 20_____.

✓ _____ Electronically served counsel on DEC. 21, 20 14
Pursuant to N.E.F.C.R. Rule 9.

By: Natiki Fekam
Commissioner Designee

LAW OFFICES
JOHN W. MUJE & ASSOCIATES
1940 E. SAHARA AVE. #735
LAS VEGAS, NEVADA 89104
Phone: (702) 996-7332 Fax: (702) 295-6135

CASE NAME: Russell L. Nype vs.
Las Vegas Land Partners, LLC
CASE NUMBER: A-07-551073

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

- _____ The parties having waived the right to object thereto,
- _____ No timely objection having been received in the office of
the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),
- _____ Having received the objections thereto and the written
arguments in support of said objections, and good cause
appearing,

* * *

AND

IT IS HEREBY ORDERED the Discovery Commissioner's Report
& Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED the Discovery Commissioner's Report
and Recommendations are affirmed and adopted as modified in the
following manner. (Attached hereto)

IT IS HEREBY ORDERED that a hearing on the Discovery
Commissioner's Report and Recommendations is set for

_____ 20____ a.m.
DATED this 1 day of Feb, 2017


DISTRICT COURT JUDGE

RAJ Files\Nype vs Las Vegas Land Partners\37921\Pleadings\11.29.16 Discovery Commissioner's Report & Recommendation.wpd

EXHIBIT “7”

1 **DECL**
2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No. 2419
5 1840 East Sahara Avenue, #106
6 Las Vegas, Nevada 89104
7 Telephone: 702-386-7002
8 Facsimile: 702- 386-9135
9 E-Mail: jmuije@mujelawoffice.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 CORPORATIONS
13 I through X; and DOES PARTNERSHIPS I through X,

CASE NO: A-16-740689-B

DEPT NO: XV

Plaintiffs,

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; LVLV HOLDINGS, LLC; MITCHELL
21 HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC;
22 305 LAS VEGAS, LLC; LIVE WORKS TIC
23 SUCCESSOR, LLC; CASINO COOLIDGE LLC;
24 DOES I through III, and ROE CORPORATIONS I
25 through III, inclusive,

Entity Defendants.

**SWORN DECLARATION UNDER PENALTY
OF PERJURY OF MARK RICH**

26 STATE OF NEVADA)
27) ss.:
28 COUNTY OF CLARK)

Your declarant being first duly sworn under oath, declares under penalty of perjury as follows:

1
2 1. My name is Mark Rich and I have been a Nevada licensed CPA since July, 1981,
3 almost 36 years ago.

4 2. Attached hereto as Exhibit "A" and by this reference incorporated herein is my
5 current updated CV setting forth my professional experience and training, as well as the history of
6 various significant cases with which I have been involved.

7
8 3. As the Court can readily determine, *inter alia*, I have developed expertise in
9 financial forensics, and have had training and background work in fraud investigations and
10 examinations.

11 4. I have been involved in the efforts of Plaintiffs, Russell Nype and Revenue Plus,
12 LLC (hereinafter collectively "Nype") to assist in analyzing Nype's original transactions with LVLP,
13 the ultimate outcome of those transactions, and the financial considerations relevant to the same,
14 even prior to the judgment in the original case.

15
16 5. In the context of the original case, although it took extraordinary efforts to obtain,
17 we ultimately obtained multiple years of tax returns for LVLP as early as 2010, up to and including
18 2012.

19 6. Unfortunately, though we were provided copies of the source tax returns, we did
20 not receive nor were we able to obtain various critical backup records relating to the same, such as
21 general ledgers, check books, banking records, disbursement journals, etc.

22
23 7. The reason those documents are so critically important is that without understanding
24 how the underlying transactions occurred, it is impossible to determine the exact course and effect
25 of such transactions.

26
27
28

1
2 8. For example, when the IRS audits a taxpayer's return, the return itself tells very
3 little: it is absolutely critical to an IRS audit or investigation that the underlying supporting
4 financial records be present, so that the IRS may trace and follow cash flow, and determine the
5 legal, and financial character and impact of various transactions.
6

7 9. In point of fact, despite herculean efforts on the part of Nype and his counsel, the
8 various underlying financial records of LVLP, including most importantly the various financial
9 records regarding it's affiliated and associated entities and subsidiaries, were never obtained pre-
10 judgment.
11

12 10. In checking my records, and consulting with John W. Muije, collection counsel
13 for Nype, the first wave of significant backup and underlying documents allegedly supporting the
14 LVLP tax returns, including banking records and general ledgers, were not obtained until the Fall
15 of 2015, commencing in September 2015 and initially spanning approximately three months
16 thereafter.
17

18 11. Even those general ledgers and banking records were not complete, resulting in
19 Nype having to file a Motion to Compel on information and belief, on or about August 31, 2016.
20

21 12. After several months of briefing and multiple hearings, on information and belief,
22 the Court ultimately entered a Order Compelling Discovery, a true and correct copy of which is
23 attached hereto as Exhibit "B".
24

25 13. I have been in regular touch with Nype and his various counsel as to the progress
26 of obtaining documents subsequent to the motion to compel.
27

28 14. I am advised, informed and therefore believe and state that even after the order
compelling production of documents, (Exh. "B"), which required significant financial

1
2 information regarding the affiliates and associated entities, the records produced in multiple
3 waves remain incomplete, with numerous deficiencies, gaps, and missing documents that should
4 exist and should have been produced.

5 15 I am informed and believe by Nype and his counsel that a new Order to Show
6 Cause and/or Motion to Compel predicated upon the deficiencies in compliance with Exhibit "B"
7 is in the process of preparation and will be forthcoming in the near future.
8

9 16. 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 17. As one key example, however, of the importance of having accurate and complete
12 source records, attached hereto as Exhibit "C" and by this reference incorporated herein is a
13 certification by LVLP's New Jersey CPA for the first time disclosing that various affiliated and
14 associated entities are disregarded for tax and accounting purposes, and are all reported through
15 LVLP's business tax return..
16

17 18. The partial and incomplete documentation produced in both the fall of 2015, and
18 2017, does show extensive co-mingling, a failure to keep separate and adequate accounting
19 records for various affiliates and associated companies, a decided lack of concrete detail, and an
20 absolute failure to account for and explain various cash flow entries.
21

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

24 20. 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 to pay bills and
26 cover expenses as needed, and not in any coherent or recurring logical form.
27
28

1
2 21. The data that has been provided does not even match the tax returns, for example, by
3 failing to disclose substantial income.

4 22. Part of the data provided appears to account for, in part, the financial transactions
5 and relationship between LVLP and its joint venture partner (the entity which Nype procured to
6 provide financing for LVLP's projects), Forest City Enterprises.

7
8 23. The data available to date appears to show that arrangements were made with
9 Forest City to utilize LVLP's share of revenue and cash flow to reduce debt and build equity,
10 resulting in an absence of actual cash receipts by LVLP.

11 24. Despite what those records are showing, however, the tax returns are wholly silent
12 and fail to disclose the accrual of any imputed income or equity with respect to the Forest City
13 Joint Ventures, despite the fact that the joint venture documents suggest that LVLP's share of
14 revenue is being used to pay down debt and build equity, which would legally result in the
15 accrual of taxable income which the law requires to be accurately reported
16

17 25. What is critically important, however, is that only in the Fall of 2015 and
18 continuing to the present, has LVLP actually started producing underlying source and financial
19 documentation critically necessary to understand its many transactions, and the financial impact
20 thereof.
21

22 26. In this regard, attached hereto as Exhibit "D" and by this reference incorporated
23 herein is are several indices for the Fall 2015 production showing that only as of that date, years after
24 the underlying transaction occurred, were general ledger and bank records relevant to the 2006
25 through 2014 transactions first produced.
26

27
28

1
2 27. Indeed, the source documentation produced in the Fall of 2015 was virtually all
3 outdated, and did not even include significant records for the bulk of 2014 or any for 2015.

4 28. Only with the Order Compelling discovery and the belated partial production
5 which occurred early in 2017 did we first learn that the many transactions undertaken by LVLP have
6 rendered it functionally insolvent, and unable to pay its own current bills, as evidenced in part by the
7 fact that the individual principals of LVLP, including specifically David Mitchell, had been paying
8 the substantial attorneys fees accrued by LVLP for and on its behalf. See Exhibit "E" attached hereto
9 and by this reference incorporated herein as an example.
10

11 29. As noted hereinabove, the ledgers and bank records do not match and reconcile to
12 the tax returns supplied.
13

14 30. The source documents in question, even with LVLP's accountant's explanation
15 that multiple subsidiary and affiliate entities are consolidated, still do not account for or match
16 what LVLP is reporting to the IRS!

17 31. Most importantly, however, until the Fall of 2015, at the earliest, the tax returns
18 that had been produced showed an entity which theoretically had substantial positive equity, but
19 in reality, based upon its general ledger and actual bank records, because functionally insolvent
20 and unable to pay its own accruing bills.
21

22 32. Indeed, until the preliminary information was received in the Fall of 2015 as
23 supplemented by the early 2017 production, LVLP, based on the tax returns and documentation it
24 had previously supplied, continued to operate, appeared to have assets, appeared to be paying
25 taxes as incurred, and continued to vigorously defend itself, as shown in part by Exhibit "E", all
26 of which suggested that it was not insolvent.
27
28

1
2 33. Once the reality of the underlying financial transactions first was discovered,
3 however, starting in the Fall of 2015, it became readily apparent that contrary to its public fasade
4 and appearances, LVLP's prior transactions had and did in fact render it functionally insolvent,
5 and unable to respond to or pay the judgment awarded Nype.

6
7 FURTHER YOUR DECLARANT SAYETH NAUGHT.

8
9
10 
11 MARK RICH

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 R:\J Files\Nype vs Las Vegas Land Parnters,J3792H\2016--05 - Alter Ego SUIT\Pleadings\6.13.17 Sworn Declaration of Mark Rich.wpd
27
28

EXHIBIT “13”

**DECLARATION OF JOHN W. MUIJE IN SUPPORT OF
OPPOSITION TO MOTION TO COMPEL AND COUNTER-MOTION
REGARDING ALLEGED ACCOUNTANCY PRIVILEGE**

STATE OF NEVADA)
) SS
COUNTY OF CLARK)

Your declarant being first duly sworn under penalty of perjury, deposes and states as follows:

1. My name is John W. Muije and I am an attorney for the Plaintiffs, RUSSELL NYPE and REVENUE PLUS (hereinafter collectively "NYPE") in the above-captioned proceeding.

2. I make this declaration based upon personal knowledge and my review of the literally hundreds of pleadings and thousand of documents produced in the context of both this case, as well as the predecessor Original case in which NYPE obtained a Judgment, Case No: 07-A-551073, and I make this declaration based upon personal knowledge, except as to the items on information and belief, which I reasonably believe to be true, especially after I have expended literally hundreds of hours on the two related cases.

3. I personally authored the opposition and counter-motion in this matter, and to the best of my knowledge, and to a reasonably degree of legal probability, everything stated therein is true, correct, and accurate.

4. My review of the Original case discloses that the Judgment Debtor, Las Veas Land Partners, LLC was obstructionist, obstreperous, and that obtaining relevant discovery from it proved difficult, time-consuming and almost impossible.

5. Indeed, although the litigation started in 2007, the relevant tax returns for LAS VEGAS LAND PARTNERS, LLC that were ultimately produced, were first produced in approximately 2011 (I have not recently verified the date and it could be a year earlier or a year later), multiple years after the litigation had commenced, and only after an Order Compelling their production.

....

....

1 6. Unfortunately, those tax returns show very little, other than a net worth of
2 approximately 20 million dollars, which varied somewhat over the limited time period
3 disclosed.

4 7. Judgment was obtained by NYPE in April 2015, and I was retained in late May
5 or early June, 2015, in an effort to help enforce the Judgment.

6 8. My initial efforts included preparation of Judgment Debtor Examination
7 documents, which were duly served upon the Resident Agent for LAS VEGAS LAND
8 PARTNERS, LLC.

9 9. After discussions and arguments with opposition counsel regarding the same,
10 the parties stipulated to the production of the documents and the deposition of one of the two
11 principals of LAS VEGAS LAND PARTNERS, LLC, Mr. David Mitchell.

12 10. Incident to that examination, for the first time, NYPE was able to obtain bank
13 statements, and financial ledger documents covering numerous years, which told a far different
14 story than that reflected on the tax returns, including multi-million dollar distributions in cash
15 to the two principals of LAS VEGAS LAND PARTNERS, LLC, Mr. David Mitchell and Barry
16 Liberman, which went a long way towards rendering the Judgment Debtor functionally insolvent,
17 and unable to pay its regular debts, including the pending substantial monetary claims asserted
18 by NYPE.

19 11. Indeed, during the course of the sworn examination, and subsequent document
20 production, it became clear that LAS VEGAS LAND PARTNERS, LLC had very little in the
21 way of liquid or attachable assets, and it was ultimately determined that David Mitchell was
22 funding the litigation defense of LAS VEGAS LAND PARTNERS, LLC through personal
23 funds and his American Express card.

24 12. Careful analysis and examination of the documentation which was produced
25 led me to conclude that numerous insider transactions had occurred between LAS VEGAS
26 LAND PARTNERS, LLC and its affiliated and associated companies, so that the valuable assets
27 and property which might have been sufficient to respond to NYPE's judgment were all
28 nominally held in different entities other than LAS VEGAS LAND PARTNERS, LLC.

1 13. Not only were these not arms-length Transactions for the most part, but the
2 nominal prices and values attributed to the same often appeared significantly different than
3 appropriate market values would have been.

4 14. After consulting with our clients and our retained expert forensic accountant, it was
5 determined that the available evidence obtained by Mid-2016 indicated that LAS VEGAS LAND
6 PARTNERS, LLC (and the entity that had filed all the tax returns, LVLP HOLDINGS, LLC), had
7 basically co-mingled and operated with all of its associated entities as if they were all were one and
8 the same, and the alter-egos of one another.

9 15. As a result of the available information at the time, we filed a fraudulent
10 conveyance action and an action alleging alto-ego, while continuing our discovery efforts in the
11 Original case.

12 16. Surprisingly, our suspicions regarding *prima facie alter ego* conduct were born
13 out in a letter I received from defense counsel, Mr. Garry Hayes, on or about Jan 23, 2017. See
14 Exhibit "18", page 12, Item # 15 to our opposition and counter-motion) wherein his explanation
15 for the fact that most of the associated entities had little if any in the way of financial documentation
16 was a two-page memorandum from defendants' accountant to LVLP'S principal, DAVID
17 MITCHELL, a true and correct copy of which is contained at *Exhibit "18"*, BATES #'S = LVLP -
18 00047 - 00048. See Also Exhibit "8", the last two pp of which are labeled Sub-Exhibit "A", which
19 is a true and correct copy of the memo attached to the letter of Mr. Hayes.

20 17. While that memo speaks for itself, it suggests that more than a half dozen of the
21 named defendants in this action, as well as a few additional entities not yet named, were
22 "disregarded entities" and were all included in the tax returns filed by LVLP HOLDINGS, LLC.
23 Significantly, one of the included entities was LAS VEGAS LAND PARTNERS, the Judgment
24 debtor in the original action.

25 18. Indeed, two of the disregarded entities, LIVEWORK, LLC and ZOE
26 PROPERTY, LLC were named plaintiffs in the original case wherein NYPE obtained his Judgment.

27 19. Additional comprehensive discovery was done in late July or early August,
28 2016, to which numerous objections were lodged.

20. Under the circumstances, I had no choice to file a Motion to Compel, which was ultimately resolved in our favor, resulting in an Order Compelling Discovery, a true and correct copy of which is attached as *Exhibit "6"* to the current Opposition and Counter-Motion.

21. Despite a direct and clear mandate to LAS VEGAS LAND PARTNERS, LLC, which included the requirement that it produce the various financial, tax, and organizational documents as to its associated and affiliated entities, the Defendants herein continue their Scorched Earth defense and game playing.

22. For example, NYPE incurred very substantial expenses pursuant to the guidelines contained in Exhibit "6" in commissioning an on-site examination of documents on or about January 11, 2017, only to receive a very limited number of documents (less than 350 pp) on that date.

23. A disorganized box of approximately 2350 additional pages of documents was served on us almost 6 weeks later, on or about 02-23-2017.

24. Having reviewed the documentation that was sporadically and intermittantly produced, and having met with NYPE's forensic accountant who also carefully analyzed the same, it is my professional opinion, to a reasonable degree of legal certainly, that the ledger documents and financial records that have been produced to us cannot and do not reasonably correlate to the tax returns as filed.

25. Additionally, to date, we have never seen actual work papers or appropriate journal entries explaining these differences, despite multiple requests for the same.

26. Much to my surprise, at the time of his deposition, Mr. Spitz also testified as to a document retention/destruction policy, having produced allegedly complete available records approximately two weeks before, and belatedly produced highly suspicions signed engagement letters containing a never before disclosed document retention policy literally a day or two prior to the deposition.

27. I am convinced, on information and belief, to a reasonable degree of legal probability, that Spitz knew or absolutely should have known of the on-going litigation between

....

1 LAS VEGAS LAND PARTNERS, LLC and NYPE almost from its inception, since he was the
2 alleged sole accountant doing accounting work for and on behalf of the entities involved.

3 28. Despite that knowledge, and despite working directly for the principals of the
4 entities involved in the litigation, Spitz testified under oath that on a recurring annual basis, records
5 more than a few years old were disposed of and destroyed.

6 29. Ironically, however, in the chronologically recent records he did produce, there
7 were hundreds of pages of new documentation and information which we had never received
8 previously, the majority of which should also been retained and filed in the computers, and
9 document repositories of LVLP HOLDINGS, LLC and its principals, David Mitchell and Barry
10 Liberman.

11 30. It is patently obvious that serious spoliation of evidence has occurred, and this
12 Court will be requested to and certainly should draw and inference that the defendants are actively
13 hiding and concealing evidence of their misconduct, in part by destroying and disposing of relevant
14 data, and in part, on information and belief, by belatedly disposing, concealing, and continually
15 refusing to produce and disclose the same.

16 31. In any event, when I received Defendant's Third Supplemental Disclosure and
17 reviewed the subject emails, I determined that virtually all of the meaningful substantive
18 information that should and would of been contained therein had been redacted.

19 32. Even prior to that disclosure, when discussing the delay and overdue production
20 of those documents with defense counsel, I emphasized that there was no recognized client-
21 accountant privilege in either New York or New Jersey, and that in my professional legal opinion
22 the email needed to be produced directly to me, with no redaction.

23 33. Mr. Hayes respectfully disagreed and indicated they would not be produced directly,
24 and had to go through his office first, which yielded additional weeks of delay in getting the
25 documentation we had subpoenaed and had been waiting for since January 22, 2018.

26 34. Shortly after the redacted emails were produced, Mr. Hayes and his associate
27 Megan K. McHenry met with me at my office to have a EDCR 2.34 conference. We addressed and
28

1 discussed various discovery concerns, including their demand for more specific and more detailed
2 responses to their original discovery requests.

3 35. I pointed out to them that much of the source data and information which would be
4 relevant, discoverable, and important to proving the theories of our case had yet to be properly and
5 completed disclosed, despite my repeated efforts and requests for the same, and an Order
6 Compelling Discovery in the Original case.

7 36. We have now served new comprehensive Requests For Production of documents
8 on all 14 defendant entities, and the same will be due in the not too distant future.

9 37. I believe, on information and belief, that in addition to the formal EDCR 2.34
10 conference, Mr. Hayes and I had two or three separate telephone conferences which touched upon
11 various discovery issues, and during each such conversation, the issue of the alleged client-
12 accountant privilege was raised, yet Mr. Hayes continually insisted that the privilege was available
13 under Nevada law (which in my professional legal opinion is not an accurate statement of the status
14 of Nevada law in the context of relevant materials being sought in the context of litigation — SEE
15 *McNair vs. Eighth Judicial District Court*, 110 Nev. 1285, 885 P.2d 576 (1994)), and that based
16 on his advice, his clients were asserting the same and claiming such privilege as to all
17 communications, no matter how relevant the data communicated was to the issues in our pending
18 case.

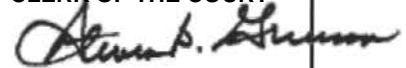
19 38. I respectfully disagreed and cautioned him that if he maintained his position, I
20 would have no alternative but to bring the matter properly before the Court, which is the purpose
21 of our counter-motion herein.

22 39. I make the above and forgoing declarations under penalty of perjury and if called
23 as a witness I could and would competently testify thereto.

24 FURTHER YOUR DECLARANT SAYETH NAUGHT.

25 /s/ JOHN W. MUIJE

26 JOHN W. MUIJE, ESQ.



ROPP
GARRY L. HAYES, ESQ.
Nevada State Bar No. 1540
MEGAN K. MAYRY MCHENRY, ESQ.
Nevada State Bar No. 9119
LAW OFFICE OF HAYES & WELSH
199 North Arroyo Grande Blvd., Suite 200
Henderson, Nevada 89074
Phone: 702-832-5592
Fax: 702-434-3739
m.mayry@lvlaw.com ; L.finchio@nevlaw.com
Attorneys for Mitchell Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE; REVENUE PLUS, LLC;
DOES I-X; DOE CORPORATIONS I-X; and
DOE PARTNERSHIPS I-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;
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-III; and
ROE CORPORATIONS I-III, inclusive,

Defendants.

Case No. A-16-740689-B
Department 15

Date of Hearing: June 6, 2018
Time of Hearing: 9:00 a.m.

**MITCHELL DEFENDANTS' REPLY TO OPPOSITION TO MOTION TO COMPEL
COMPLETE RESPONSES TO INTERROGATORIES AND REQUESTS FOR
PRODUCTION OF DOCUMENTS**


COME NOW Defendants, DAVID J. MITCHELL; 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,

1 LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS,
2 LLC; LIVE WORKS TIC SUCCESSOR, LLC; and, CASINO COOLIDGE LLC (hereinafter
3 "Mitchell Defendants"), by and through their attorneys of record, the Law Office of Hayes &
4 Welsh, and hereby file their *Reply to Opposition to Motion to Compel Responses to*
5 *Interrogatories and Requests for Production of Documents*, pursuant to NRCP 33, 34 and 37.
6

7 This Reply is made and based upon the papers and pleadings on file herein, the
8 Memorandum of Points and Authorities, the Exhibits attached hereto, and any oral argument to
9 be heard at the time of hearing on this matter.

10 DATED this 30 day of May, 2018.

11 LAW OFFICE OF HAYES & WELSH

12
13 
14 GARRY L. HAYES, ESQ.
15 Nevada State Bar No. 1540
16 199 N. Arroyo Grande Blvd., Ste. 200
17 Henderson, NV 89074
18 Attorneys for Mitchell Defendants

19 **MEMORANDUM OF POINTS AND AUTHORITIES**

20 **I.**

21 **LAW AND ARGUMENT**

22 As the Plaintiffs in this case, Plaintiffs bear the burden of establishing the elements of
23 their claims against each and every defendant. Allegedly, Plaintiffs were in possession of
24 evidence supporting their claims at the time they filed their Complaint in this case, on July 26,
25 2016. Allegedly, Plaintiffs were in possession of evidence supporting their claims at the time
26 that Defendants filed their Motion to Dismiss, on April 6, 2017. Allegedly, Plaintiffs are in
27 possession of evidence supporting their claims at this time. Despite repeatedly asserting
28 through broad and unsupported allegations that there is evidence supporting their claims,

1 Plaintiffs still have not produced or even articulated what the facts and evidence are in support
2 of their claims.

3 The Plaintiffs' argument at this point seems to be that as the holder of a judgment, they
4 are entitled to seek enforcement against every person and entity that might have even the most
5 tenuous connection to the debtor entity. It is axiomatic that in Nevada, piercing the corporate
6 veil is not favored and that the corporate cloak is not to be lightly cast aside. Every judgment
7 creditor would like to be able to add, such as in this case, 15 additional sources of recovery
8 from persons and entities that have no connection with the underlying debt. Plaintiffs cannot
9 continue to justify the present lawsuit based solely on the fact that they have a judgment against
10 Las Vegas Land Partners LLC.
11

12 Plaintiffs at this point know most if not all factual details concerning the companies
13 related to Las Vegas Land Partners. Not only was Mr. Nype involved early on in the real estate
14 transactions involving LVLP, but has had many years of conducting discovery, had a trial and
15 appeal to fill in any factual blanks concerning the business operation of Defendants. At this
16 point Plaintiffs should be able to point to some facts that give rise to their claims. Instead, they
17 can only lay the blame for their factual omissions on Defendants.
18

19 Plaintiffs also fail to mention that in January all parties met at Mr. Muije's law office
20 for a meet and confer conference. Mr. Muije stated in that conference that he could not present
21 all of the facts to justify his case due to the discovery he was still hoping to obtain. Counsel for
22 Defendants reminded Mr. Muije that he could respond to the requests with what information he
23 then had and could always amend his responses as discovery continued. He acknowledged this
24 obvious fact, but said he was reluctant to lock his client into taking a position. After much
25 discussion, Mr. Muije agreed that he would amend his responses to Defendants' discovery
26 requests no later than thirty days. *See Exhibit A.* No objection to Exhibit A was sent by Mr.
27
28

1 Muije. Counsel for Defendants believed that the nonresponsive answers to the discovery
2 requests had been resolved and that court involvement would be avoided. Instead, contrary to
3 his promise, Mr. Muije did not supplement his responses thus requiring the present motion. In
4 justifying the lack of responses to discovery requests, Plaintiffs point to their potential expert
5 Mark Rich and his affidavit. There are several problems with this excuse.
6

7 First, if plaintiffs intend on relying on the affidavit of Mark Rich, why not respond to
8 the interrogatories by citing the Mark Rich affidavit? Defendants should not be forced to guess
9 if the Mark Rich affidavit is in fact the intended responses to Defendants' interrogatories.
10

11 The second problem with this line of argument is that Mr. Rich failed to provide any
12 detail in his affidavit. A copy of the affidavit is attached and marked as **Exhibit B**. Below are
13 the paragraphs from the Mark Rich affidavit that Plaintiffs suggest outline their case sufficient
14 to allow Defendant's to defend themselves.

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

19 19. *Given the incomplete documentation produced to date, we are unable to*
20 *determine where LVLP's cash flow is coming from, or where the resulting cash flow is being*
21 *applied.*
22

23 20. *On information and belief, the documentation available shows that LVLP, its*
24 *affiliates and associated entities are shifting money between one entity and the other to pay*
25 *bills and cover expenses as needed, and not in any coherent or recurring logical form.*
26

27 ...
28

1 22. *Part of the data provided appears to account for, in part, the financial*
2 *transactions and relationship between LVLP and its joint venture partner (the entity which*
3 *Nype procured to provide financing for LLP's projects), Forest City Enterprises.*

4 23. *The data available to date appears to show that arrangements were made with*
5 *Forest City to utilize LVLP's share of revenue and cash flow to reduce debt and build equity,*
6 *resulting in an absence of actual cash receipts by LVLP.*

7 Mr. Rich merely states that he has issues with his review of accounting documents. Mr.
8 Rich never specifically states what he finds to be in error. For example, shouldn't Mr. Rich at
9 this point be able to say something like, I see a problem on line X of the 20XX tax return that
10 does not seem to comport with the bank statement for X of 20XX. No such detail has ever
11 been provided to Defendants.

12 The paragraphs from the Mark Rich Affidavit are again intended to convince this Court
13 of wrongdoing on the part of the Defendants. If Mr. Rich is making these serious accusations
14 about Defendants to the Court, then Mr. Rich and his clients should back up their assertions
15 with facts by responding to the timely and reasonable discovery requests of the Defendants.
16 Mr. Rich uses terms such as "co-mingling", "failure to account for and explain various cash
17 flow entries", "shifting money between one entity and the other", and "arrangements to reduce
18 debt and build equity". Plaintiffs should be required, seven months after being served with
19 discovery requests, to point to examples of commingling, shifting money and other instances of
20 financial wrongdoing that supports their case.

21 In an effort to distract the Court from their lack of evidence, Plaintiffs allege that
22 Defendants have failed to comply with discovery requests. Plaintiffs in their Opposition use
23 inflammatory and disparaging terms hoping to win favor with the Court that include
24 "obstructionist", "producing dribbles and dregs of documentation sporadically and often in a
25

1 totally unorganized and incoherent fashion” (It should be noted that Defendants have taken
2 the laboring oar in this litigation to organize and bates stamp all exhibits, including
3 Plaintiffs’), “destroy evidence”, “obfuscate, conceal hide”, etc. Plaintiffs have only in the
4 last two weeks served Defendants discovery requests. The last time Defendants appeared
5 before the Discovery Commissioner was in late 2016 and the primary issue before the
6 Discovery Commissioner was whether a deposition would be required to take place in
7 Nevada or New York. See Exhibit C, Discovery Commissioner’s Report &
8 Recommendations. Plaintiff, in that case Las Vegas Land Partners, prevailed and the
9 deposition took place in New York. No other discovery motions have been filed in well over
10 18 months.

11
12 Plaintiffs allege that Defendants have failed to produce documents requested in the
13 2007 case. Defendants have repeatedly told Plaintiffs that they have produced all documents
14 responsive to the requests made that are in their possession, custody and control It appears
15 that Plaintiffs will not be satisfied unless Defendants create specific documents that Plaintiffs
16 believe should exist.

17
18 Defendants have already produced 15,000+ pages of documents to Plaintiffs,
19 including sensitive and confidential information such as tax returns, ledgers, etc. At
20 Plaintiffs’ request, Defendants spent numerous hours indexing and bate stamping all of the
21 documents which were produced in the post-judgment proceedings of the 2007 case.
22 Defendants will produce in open court at the hearing copies of all tax returns, bank
23 statements and general ledgers that have been in the possession of Plaintiffs for years.

24
25 Additionally, in the 2007 case, LVLP’s accountant, Sam Spitz, was served with a
26 Subpoena Duces Tecum to produce documents specified by Plaintiffs. In response to the
27 Subpoena, Mr. Spitz produced 1,475 pages of documents to Plaintiffs. Mr. Spitz further
28

1 allowed his deposition to be taken during tax season and affirmed to Plaintiffs that all of the
2 documents in his possession, custody and control were produced.

3 To date, Plaintiffs have not initiated a meet and confer conference with Defendants
4 regarding the Privilege Log or the Document Index for the Spitz documents. However,
5 Defendants have now removed most redactions from the Spitz documents asserting only
6 limited claims of attorney client privilege and attorney work product privilege.
7

8 Although the issue is now probably moot, Plaintiffs' position that confidential
9 communications should not have been redacted from the e-mail correspondence produced by
10 Mr. Spitz is in error. Nevada law clearly makes accountant-client communications
11 privileged.

12 The accountant-client privilege is codified in NRS 49.185, which states:

13 A client has a privilege to refuse to disclose, and to prevent any other person
14 from disclosing, confidential communications:

- 15 1. Between the client or the client's representative and the client's
16 accountant or the representative of the client's accountant.
- 17 2. Between the client's accountant and the accountant's representative.
- 18 3. Made for the purpose of facilitating the rendition of professional
19 accounting services to the client, by the client or the client's accountant to an
20 accountant representing another in a matter of common interest.

21 As the client of Mr. Spitz, LVLP has asserted the accountant-client privilege and redacted the
22 privileged communications with Mr. Spitz.

23 Plaintiffs have repeatedly stated that they need more time to respond to Defendants'
24 written discovery requests because discovery is still continuing. Plaintiffs are correct that
25 discovery is still open, but that does not excuse them from providing complete responses
26 with the information that they already have discovered or believe that they may discover.
27
28

1 Plaintiffs have repeatedly alluded that there are suspect transactions between LVLP and its
2 subsidiaries, yet Plaintiffs have failed to provide the basic details for these transactions to
3 enable Defendants to investigate and prepare their defense. As outlined in detail in
4 Defendants' Motion to Compel, Plaintiffs should be ordered to provide complete responses
5 to the written discovery requests immediately. Defendants should further be awarded their
6 attorneys' fees related to the Motion to Compel.
7

8 II.

9 CONCLUSION

10 Based on the foregoing and Defendants' Motion to Compel, the Mitchell Defendants
11 respectfully request that this Court grant their *Motion to Compel Complete Responses to*
12 *Interrogatories and Requests for Production of Documents*. Specifically, Plaintiffs should be
13 ordered to provide complete responses to all of Defendants' Interrogatories, and produce all
14 documents in their possession, custody and control in response to Defendants' Requests for
15 Production Nos. 32 – 33, 37 – 38 and 40 – 45. Each of these discovery requests is relevant
16 and necessary to Plaintiffs' alleged claims in this case and Defendants' defenses. Without
17 the information and documents requested, Defendants are unable to prepare their defense in
18 this case.
19

20
21 ...

22 ...

23 ...

24 ...

25 ...


26 ...

27
28

1 Therefore, Plaintiffs should be ordered to supplement their written discovery
2 responses to provide all of the information and documents requested. The Mitchell
3 Defendants should further receive an award of attorneys' fees for having to file this Motion.

4 DATED this 30th day of May, 2018.

6 LAW OFFICE OF HAYES & WELSH

7
8 
9 GARRY L. HAYES, ESQ.
10 Nevada State Bar No. 1540
11 199 N. Arroyo Grande Blvd., Ste. 200
12 Henderson, NV 89074
13 *Attorneys for Mitchell Defendants*

14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
199 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3739

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), and EDCR 8.05, I hereby certify that on the 30th day of May, 2018, I served a true and correct copy of the foregoing MITCHELL DEFENDANTS' REPLY TO OPPOSITION TO MOTION TO COMPEL COMPLETE RESPONSES TO INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS through the Court's electronic filing and service system to:

JOHN W. MUIJE, ESQ.
John W. Muije & Associates
1840 E. Sahara Avenue, Ste. 106
Las Vegas, NV 89104
jmuije@muijelawoffice.com
Attorneys for Plaintiffs

HARRY PAUL MARQUIS, ESQ.
Harry Paul Marquis, Chartered
400 South 4th Street, Ste. 300
Las Vegas, NV 89101
harry@marquislaw.net
*Attorneys for Defendants 305 Las Vegas, LLC
and Barnet Liberman*


Employee of the Law Office of Hayes & Welsh

EXHIBIT A

LAW OFFICE OF HAYES & WELSH

Attorneys at Law
199 N Arroyo Grande, Suite 200
Henderson, NV 89074
(702) 434-3444
(702) 434-3739 (Fax)
www.lvlaw.com

February 22, 2018

Garry L. Hayes
Martin L. Welsh
Megan K. Mayry McHenry
Larson A. Welsh

☒ U.S. Mail
☐ Certified Mail
☐ Facsimile
☐ Overnight
☐ Hand Delivery
☒ Email

John W. Muije, Esq.
John W. Muije & Associates
1840 E. Sahara Ave., Ste. 106
Las Vegas, NV 89104
Jmuije@muijelawoffice.com

Re: *Nype, et al v. Mitchell, et al*
Eighth Judicial District Court Case No. A-16-740689-B

Dear John:

This is a follow up to the meet and confer conference held at your office on February 13, 2018. The primary purpose of the meeting was to address what we consider to be inadequate responses to Defendants' written discovery requests, specifically all the Responses to Interrogatories, as well as the Responses to Requests for Production Nos. 32 – 33 and 35 – 45 (as outlined in detail in our letter dated February 6, 2018). Several extensions were granted to you to allow responses to be prepared. We were disappointed at the lack of any specificity in your initial responses given the amount of extra time allowed for you to prepare your responses.

At our meet and confer conference, you agreed to provide supplemental responses within 30 days. We discussed and acknowledged that you are still conducting discovery and that the responses may be supplemented as discovery proceeds. However, at this time, you are required to provide all of the documents in your or your clients' possession, custody and control, and all of the information responsive to the requests to the best of your and your clients' knowledge at this time. In order for my clients to prepare their

defenses and proceed with discovery, you need to provide specific factual details to support the allegations in your complaint at this time.

Sincerely,

LAW OFFICE OF HAYES & WELSH


Garry L. Hayes, Esq.
Direct Dial: (702) 509-9555
Ghayes@lvlaw.com

GLH:lmf

cc: Harry Marquis, Esq. (*Via email: harry@marquislaw.net*)

Subject: Nype, et al v. Mitchell, et al A740689
Date: Thursday, February 22, 2018 at 4:27:30 PM Pacific Standard Time
From: Lil Finchio
To: John W. Muije, harry@marquislaw.net
CC: Garry Hayes, Megan McHenry, Larson Welsh, Samantha Dukart, Fern Vitman, Carrie Kovacs
Attachments: Letter GLH to JWM re 2-13 meet and confer.pdf

John, please see attached letter.

Lil Finchio
Paralegal
LAW OFFICE OF HAYES & WELSH
199 N. Arroyo Grande Blvd., Ste. 200
Henderson, NV 89074
Direct: (702) 832-5592
Fax: (702) 434-3739
L.finchio@nevlaw.com

EXHIBIT B

1 **DECL**
2 **JOHN W. MUJE & ASSOCIATES**
3 **JOHN W. MUJE, ESQ.**
4 Nevada Bar No. 2419
5 1840 East Sahara Avenue, #106
6 Las Vegas, Nevada 89104
7 Telephone: 702-386-7002
8 Facsimile: 702-386-9135
9 E-Mail: jmujje@mujelawoffice.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 CORPORATIONS
13 I through X; and DOES PARTNERSHIPS I through X,

Plaintiffs,

CASE NO: A-16-740689-B

DEPT NO: XV

vs.

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

Entity Defendants.

**SWORN DECLARATION UNDER PENALTY
OF PERJURY OF MARK RICH**

25 STATE OF NEVADA)
26) ss.:
27 COUNTY OF CLARK)

28 Your declarant being first duly sworn under oath, declares under penalty of perjury as
follows:

1
2 1. My name is Mark Rich and I have been a Nevada licensed CPA since July, 1981,
3 almost 36 years ago.

4 2. Attached hereto as Exhibit "A" and by this reference incorporated herein is my
5 current updated CV setting forth my professional experience and training, as well as the history of
6 various significant cases with which I have been involved.

7
8 3. As the Court can readily determine, *inter alia*, I have developed expertise in
9 financial forensics, and have had training and background work in fraud investigations and
10 examinations.

11 4. I have been involved in the efforts of Plaintiffs, Russell Nype and Revenue Plus,
12 LLC (hereinafter collectively "Nype") to assist in analyzing Nype's original transactions with LVLP,
13 the ultimate outcome of those transactions, and the financial considerations relevant to the same,
14 even prior to the judgment in the original case.

15
16 5. In the context of the original case, although it took extraordinary efforts to obtain,
17 we ultimately obtained multiple years of tax returns for LVLP as early as 2010, up to and including
18 2012.

19
20 6. Unfortunately, though we were provided copies of the source tax returns, we did
21 not receive nor were we able to obtain various critical backup records relating to the same, such as
22 general ledgers, check books, banking records, disbursement journals, etc.

23 7. The reason those documents are so critically important is that without understanding
24 how the underlying transactions occurred, it is impossible to determine the exact course and effect
25 of such transactions.

26
27
28

1
2 8. For example, when the IRS audits a taxpayer's return, the return itself tells very
3 little: it is absolutely critical to an IRS audit or investigation that the underlying supporting
4 financial records be present, so that the IRS may trace and follow cash flow, and determine the
5 legal, and financial character and impact of various transactions.
6

7 9. In point of fact, despite herculean efforts on the part of Nype and his counsel, the
8 various underlying financial records of LVLP, including most importantly the various financial
9 records regarding it's affiliated and associated entities and subsidiaries, were never obtained pre-
10 judgment.
11

12 10. In checking my records, and consulting with John W. Muje, collection counsel
13 for Nype, the first wave of significant backup and underlying documents allegedly supporting the
14 LVLP tax returns, including banking records and general ledgers, were not obtained until the Fall
15 of 2015, commencing in September 2015 and initially spanning approximately three months
16 thereafter.
17

18 11. Even those general ledgers and banking records were not complete, resulting in
19 Nype having to file a Motion to Compel on information and belief, on or about August 31, 2016.
20

21 12. After several months of briefing and multiple hearings, on information and belief,
22 the Court ultimately entered a Order Compelling Discovery, a true and correct copy of which is
23 attached hereto as Exhibit "B".
24

25 13. I have been in regular touch with Nype and his various counsel as to the progress
26 of obtaining documents subsequent to the motion to compel.
27

28 14. I am advised, informed and therefore believe and state that even after the order
compelling production of documents, (Exh. "B"), which required significant financial

1
2 information regarding the affiliates and associated entities, the records produced in multiple
3 waves remain incomplete, with numerous deficiencies, gaps, and missing documents that should
4 exist and should have been produced.

5
6 15 I am informed and believe by Nype and his counsel that a new Order to Show
7 Cause and/or Motion to Compel predicated upon the deficiencies in compliance with Exhibit "B"
8 is in the process of preparation and will be forthcoming in the near future.

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

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

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

23
24 19. Given the incomplete documentation produced to date, we are unable to determine
25 where LVLP's cash flow is coming from, or where the resulting cash flow is being applied.

26
27 20. On information and belief, the documentation available shows that LVLP, its
28 affiliates and associated entities are shifting money between one entity and the other to pay bills and
cover expenses as needed, and not in any coherent or recurring logical form.

1
2 21. The data that has been provided does not even match the tax returns, for example, by
3 failing to disclose substantial income.

4 22. Part of the data provided appears to account for, in part, the financial transactions
5 and relationship between LVLP and its joint venture partner (the entity which Nype procured to
6 provide financing for LVLP's projects), Forest City Enterprises.
7

8 23. The data available to date appears to show that arrangements were made with
9 Forest City to utilize LVLP's share of revenue and cash flow to reduce debt and build equity,
10 resulting in an absence of actual cash receipts by LVLP.

11 24. Despite what those records are showing, however, the tax returns are wholly silent
12 and fail to disclose the accrual of any imputed income or equity with respect to the Forest City
13 Joint Ventures, despite the fact that the joint venture documents suggest that LVLP's share of
14 revenue is being used to pay down debt and build equity, which would legally result in the
15 accrual of taxable income which the law requires to be accurately reported
16

17 25. What is critically important, however, is that only in the Fall of 2015 and
18 continuing to the present, has LVLP actually started producing underlying source and financial
19 documentation critically necessary to understand its many transactions, and the financial impact
20 thereof.
21

22 26. In this regard, attached hereto as Exhibit "D" and by this reference incorporated
23 herein is are several indices for the Fall 2015 production showing that only as of that date, years after
24 the underlying transaction occurred, were general ledger and bank records relevant to the 2006
25 through 2014 transactions first produced.
26

27
28

1
2 27. Indeed, the source documentation produced in the Fall of 2015 was virtually all
3 outdated, and did not even include significant records for the bulk of 2014 or any for 2015.

4 28. Only with the Order Compelling discovery and the belated partial production
5 which occurred early in 2017 did we first learn that the many transactions undertaken by LVLP have
6 rendered it functionally insolvent, and unable to pay its own current bills, as evidenced in part by the
7 fact that the individual principals of LVLP, including specifically David Mitchell, had been paying
8 the substantial attorneys fees accrued by LVLP for and on its behalf. See Exhibit "E" attached hereto
9 and by this reference incorporated herein as an example.
10

11 29. As noted hereinabove, the ledgers and bank records do not match and reconcile to
12 the tax returns supplied.
13

14 30. The source documents in question, even with LVLP's accountant's explanation
15 that multiple subsidiary and affiliate entities are consolidated, still do not account for or match
16 what LVLP is reporting to the IRS!
17

18 31. Most importantly, however, until the Fall of 2015, at the earliest, the tax returns
19 that had been produced showed an entity which theoretically had substantial positive equity, but
20 in reality, based upon its general ledger and actual bank records, because functionally insolvent
21 and unable to pay its own accruing bills.

22 32. Indeed, until the preliminary information was received in the Fall of 2015 as
23 supplemented by the early 2017 production, LVLP, based on the tax returns and documentation it
24 had previously supplied, continued to operate, appeared to have assets, appeared to be paying
25 taxes as incurred, and continued to vigorously defend itself, as shown in part by Exhibit "E", all
26 of which suggested that it was not insolvent.
27
28

LAW OFFICES
JOHN W. MUJJE & ASSOCIATES
1840 E. SAHARA AVE. #106
LAS VEGAS, NEVADA 89104
Phone: (702) 388-7002 Fax: (702) 388-0195

1
2 33. Once the reality of the underlying financial transactions first was discovered,
3 however, starting in the Fall of 2015, it became readily apparent that contrary to its public facade
4 and appearances, LVLP's prior transactions had and did in fact render it functionally insolvent,
5 and unable to respond to or pay the judgment awarded Nype.

6
7 FURTHER YOUR DECLARANT SAYETH NAUGHT.

8
9 
10 MARK RICH

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26 RAJ Files\Nype vs Las Vegas Land Painters, J3792H2016-05 - Alter Ego SUTN\Pleadings\6.13.17 Sworn Declaration of Mark Rich.wpd
27
28

EXHIBIT C



CLERK OF THE COURT

1 DCRR
2 JOHN W. MUIJE, ESQ.
3 JOHN W. MUIJE & ASSOCIATES
4 Nevada Bar No. 2419
5 1840 E. Sahara Avenue, Suite 106
6 Las Vegas, Nevada 89104
7 Telephone No: (702) 386-7002
8 Facsimile No: (702) 386-9135
9 Email: jmuije@mujelawoffice.com
10 Attorneys for Defendants/Judgment Creditors

DISTRICT COURT

CLARK COUNTY, NEVADA

11 LAS VEGAS LAND PARTNERS, LLC; LIVE
12 WORK, LLC and ZOE PROPERTIES, LLC,

Plaintiffs,

CASE NO: A-07-551073

vs.

DEPT. NO: XXVIII

13 RUSSELL L. NYPE; REVENUE PLUS, LLC;
14 DOES I through III, and ROE CORPORATIONS I
15 through III, inclusive,

Defendants.

DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS

16 RUSSELL L. NYPE; REVENUE PLUS, LLC

DATE: October 14, 2016

TIME: 9:00 a.m.

Judgment Creditors,

vs.

18 LAS VEGAS LAND PARTNERS, LLC,

Judgment Debtor.

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION

Hearing Date: October 14, 2016

Hearing Time: 9:00 a.m.

Attorney for Judgment Creditor, Russell L. Nype; Revenue Plus, LLC):

JOHN W. MUIJE, ESQ., of the Law Offices of John W. Muije &
Associates

Attorney for Judgment Debtor (Las Vegas Land Partners, LLC):

GARRY HAYES, ESQ., of the Law Offices of Hayes & Welsh.



I.

FINDINGS

On October 14, 2016, a hearing was conducted with respect to Defendants/Judgment Creditors Motion to Compel Discovery & For Sanctions.

Having considered Defendant's Motion to Compel Discovery and For Sanctions, the Plaintiff's Opposition, and the Defendant's Reply In Support of its Motion to Compel, the Discovery Commissioner makes the following Findings with respect to the above-referenced Motion to Compel:

The Court finds that the Judgment Creditor's (hereinafter collectively referred to as "Nype") Motion to Compel consists of three separate components, each of which should be addressed in a slightly different fashion.

IT IS THE FURTHER FINDING of the Court that despite designating the discovery request as a notice of deposition, in essence what Nype has undertaken with regard to his attempt to schedule the deposition of the Person Most Knowledgeable of the Judgment Debtor (hereinafter referred to as LVLDP), is an updated post-judgment examination of judgment debtor.

THE COURT FURTHER FINDS that although the Rules of Civil Procedure and a Notice of Deposition promulgated thereunder, arose subsequent to the enactment of Nevada's traditional debtor examination statute, i.e. NRS 21.270, that said statute has never been overruled, and requires that a judgment debtor be examined at the *situs* where they regularly reside.

THE COURT FURTHER FINDS that in the Court's experience, video conferencing arrangements, especially when there are substantial geographic distances involved, when properly coordinated, provide an effective, economical and appropriate alternative to out-of-state travel and live depositions.

THE COURT FURTHER FINDS, based on the second distinct issue raised by Nype in his Motion to Compel, that the attorney-client privilege should not apply to the issue as to the source

....

....

....

1 and amount of payments made by a litigant to various attorneys, based on the case law produced and
2 referenced by Nype.

3 **THE COURT FURTHER FINDS** that the actual cancelled checks, all of which were
4 represented to be located at the New York offices of LVLP, are relevant and important to post-
5 judgment collections, and should be produced and made available as addressed hereinafter for
6 inspection and copying.

7 **THE COURT FURTHER FINDS** that LVLP's earlier objection to production regarding
8 information as to the identity, amounts, and source of funds for paying attorneys who have
9 represented LVLP in these proceedings is not and should not be held to be privileged, and that the
10 general ledger produced on or about September 1, 2016 provides partial information regarding the
11 same.

12 **THE COURT FURTHER FINDS** that the anticipated production of documents sought is
13 likely to be voluminous, and that it is appropriate that Judgment Creditor Nype pay the cost of
14 reproducing the documents he seeks.

15 **THE COURT FURTHER FINDS**, subject to the above provisions, that Nype is clearly
16 entitled to the documentation he has requested, especially with regard to the August, 2016, updates
17 and supplementation requested, and that LVLP can and should produce all of the documentation
18 sought, in accordance with NRCP Rule 34 and the specific requests and items enumerated in Nype's
19 2016 request for production of documents.

20 **THE COURT FURTHER FINDS**, however, that the obligation to produce records means
21 to produce such records in accordance with NRCP Rule 34 as they are normally maintained, at its
22 regular business offices in New York City, likely best done through the use of an independent copy
23 service.

24 **THE COURT FURTHER FINDS** that in addition to the 2016 document request, LVLP can
25 and should complete and supplement its production for the 2015 request, and should produce any
26 non-completed documents for payment of attorneys fees for all periods addressed in the 2015
27 document production requests, as well as interim tax returns, bank statements, accounting
28 statements, etc., not heretofore produced, including but not limited if in LVLP's possession, to all

1 of the following for LVLP's subsidiaries:

- 2 (1) All "TIC" Accounting statements;
- 3 (2) All K-1's issued by said subsidiaries;
- 4 (3) All Bank statements for said subsidiaries.

5 The Court notes that LVLP has agreed to produce such documentation at its offices ^{Q.M.} in
6 New York.

7 **THE COURT FURTHER FINDS** that K-1's related to the various "affiliates", subsidiaries,
8 and entities in which LVLP has a beneficial interest are particularly relevant and can and should be
9 produced.

10 **THE COURT FURTHER FINDS**, given the geographic distance mentioned in the Court's
11 prior findings set forth hereinabove, that the most efficacious mechanism is for Nype to arrange an
12 appropriately qualified litigation document service or copying service to go to the offices of LVLP,
13 in the New York area, and copy and/or scan all of the documentation in place, and transfer those to
14 electronic media, whether in the form of CD- Roms, DVD's, or flash memory sticks, differentiated
15 indexed and cataloged according to the various designations and categories set forth on the files,
16 folders, and document repositories as maintained by LVLP on the one hand, by categories and/or
17 responding to the specific requests made by Nype on the other.

18 **THE COURT FURTHER FINDS** that once reproduction of the documents produced has
19 been completed, and the images converted to electronic media, that said electronic media be
20 provided to counsel for LVLP, i.e. Garry Hayes at his offices located at 199 N. Arroyo Grand Blvd.,
21 Ste 200, Henderson, Nevada 89074, and that Mr. Hayes shall have ten (10) working days (i.e. two
22 weeks) from the date of receipt of the documentation within which to review the same and determine
23 whether or not there may be an issue of privilege as to particular documents.

24 **THE COURT FURTHER FINDS** that to the extent Mr. Hayes in good faith believes the
25 document to be privileged, he will need to prepare a detailed privilege log referencing specifically
26 the document in question, identifying the same, and describing the nature of the redaction.

27 **THE COURT FURTHER FINDS** that once said review and redaction by Attorney Garry
28 Hayes has occurred on behalf of LVLP, that Mr. Hayes shall promptly communicate said information

1 to the litigation document service or copying service employed by Nype, which will substitute
2 redacted pages for the original images on their electronic media, while also making an appropriate
3 copy of any privilege log, and only then provide the images to counsel for Nype, John W. Muje at
4 his offices located at 1840 East Sahara Avenue, Suite 106, Las Vegas, Nevada 89104, i.e. the
5 complete document production, (subject to redactions by Mr. Hayes with Mr. Hayes's privilege log
6 as to any documents withheld or redacted).

7 **THE COURT FURTHER FINDS** that once that documentation has been provided to Mr.
8 Muje, Nype may make arrangements for either a live physical sworn examination to occur in the
9 New York City area, or in the alternative, may make arrangements for a video conferencing sworn
10 examination/deposition, at Nype's option, to occur no sooner than two weeks subsequent to Nype's
11 receipt of the subject documentation, and that said sworn examination should commence and
12 continue until Nype has been afforded a reasonable opportunity to inquire as to the financial affairs
13 of LVLP, not previously covered in the earlier examination, subject to any limitation under NRCF
14 & EDCR, as well as ask relevant questions regarding the documentation so produced.

15 **THE COURT FURTHER FINDS** that there is no basis for sanctions against LVLP.

16 **II.**

17 **RECOMMENDATIONS**

18 **IT IS HEREBY ACCORDINGLY RECOMMENDED** that Defendant/Judgment
19 Creditors' Motion be granted in part as to documentation still needing to be produced, which
20 documents shall be produced in New York City as more specifically delineated herein;

21 **IT IS FURTHER RECOMMENDED**, however, that Defendant/Judgment Creditor's
22 Motion be denied in part as to requiring the Judgment Debtor to appear and be deposed in Las
23 Vegas, Nevada, under oath, and that the Court instead order said sworn examination to occur in New
24 York City after completion of the document production process discussed herein.

25 **IT IS FURTHER RECOMMENDED** that the Court order production of all of the
26 documentation sought by Judgment Creditor Nype as detailed in the above and foregoing findings,
27 including specifically the full documentation sought in Plaintiff's 2016 document production request,
28 and the above enumerated supplemental documents as to the 2015 requests.

1 **IT IS FURTHER RECOMMENDED** that the Court notes that LVLP has agreed to produce
2 such documentation at its offices in New York.

3 **IT IS THEREFORE RECOMMENDED** that completion of the documentation production
4 addressed hereinafter, the parties will arrange for a sworn examination of judgment debtor, i.e. the
5 deposition of the Person Most Knowledgeable of LVLP, with the LVLP representative (believed to
6 be a Mr. David Mitchell) required to appear at the offices of LVLP in New York City, New York,
7 or at the offices of a court reporter or video conferencing service located in the same locale, for
8 purposes of sworn testimony under oath.

9 **IT IS FURTHER RECOMMENDED** that Nype shall have the option to take said sworn
10 debtor examination before an appropriately qualified court reporter, live and in person, through either
11 Nevada or New York counsel, and that Nype's counsel may have present, at Nype's option, an
12 appropriate forensic accountant and/or one paralegal to assist in the examination process.

13 **IT IS ALSO FURTHER RECOMMENDED** that Nype, in the alternative, may arrange to
14 undertake such sworn examination through the use of video conferencing facilities, with LVLP's
15 representative to appear at the video conferencing locale in the New York City area, while Nype's
16 counsel and appropriate assistance may attend and participate through video conferencing
17 arrangements from their base of operations in Las Vegas, Nevada.

18 **IT IS FURTHER RECOMMENDED**, based upon the above findings regarding the absence
19 of attorney-client privilege in regard to documentation regarding the payment of attorneys fees, that
20 all documentation requested by Nype but not previously produced, shall be produced, utilizing the
21 logistical constraints recommended hereinafter, in the New York City area, and other related
22 documentation showing the source of funds, the amount of payments, and the mechanisms utilized
23 for and on behalf of LVLP in the payment of LVLP's attorneys fees.

24

25

26

27

28

1 IT IS FURTHER RECOMMENDED that the logistical arrangements discussed in the
2 above and foregoing findings be deemed appropriate, and that Nype be responsible for making
3 said arrangements and paying for the copying and/or litigation document production services.

4 IT IS FURTHER RECOMMENDED that the mechanisms, logistics, and mechanical
5 procedures which set forth in the above findings should be deemed appropriate, and should be
6 implemented for purposes of the document production ordered hereby.

7 **CONCLUDING RECOMMENDATIONS**

8 Based upon all of the above and foregoing, the undersigned recommends a resolution of
9 Nype's Motion to Compel as follows, partially granting and partially denying said motion.

- 10 1. The Motion to Compel in part, as to the appearance by the Judgment
11 Debtor in Las Vegas, Nevada is denied, and it is instead ordered that
12 said sworn examination under oath shall occur in the New York

13 City area, after production of documents as discussed herein *and*
videconferencing remains an option as discussed herein.

- 14 2. It is further recommended that claims of attorney-client privilege
15 previously asserted by the Judgment Debtor, LVLP, be denied,
16 the undersigned expressly finding and recommending that the items
17 in question are not privileged, and should be produced, including
18 all cancelled checks related to the payment of LVLP's attorneys
19 fees; and ¹

- 20 3. It is further recommended, pursuant to the Motion to Compel, that said
21 motion be granted in part, as regards the document production,
22 insofar as Nype's requests are well founded, appropriate, and relevant,
23 and the documentation in question shall be produced by the Judgment
24 Debtor in the New York City area, for copying and duplication
25 at the Judgment Creditor's expense, in accordance with the
26 logistical arrangements set forth hereinabove.

27 *I to the extent that billing records are required*
28 *to be produced, these records may be redacted*
to protect attorney-client privilege where necessary.

LAS VEGAS LAND

NYPE

ASSISTANT

10/14/16, Hearing

4. Nype's request for sanctions is denied.

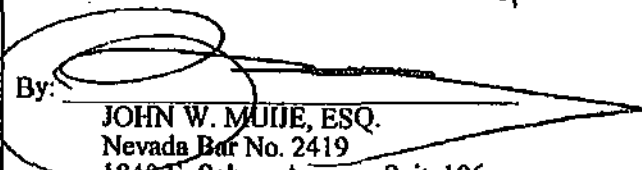
DATED this 20 day of ^{December} November, 2016.


DISCOVERY COMMISSIONER

Submitted by:

JOHN W. MUIJE & ASSOCIATES


By:


JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
1840 E. Sahara Avenue, Suite 106
Las Vegas, Nevada 89104
Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
Email: jmuje@mujelawoffice.com
Attorneys for Defendants/Judgment
Creditors

Approved as to form and content by:

HAYES & WELSH

By:


GARRY L. HAYES, ESQ.
Nevada Bar No. 1540
199 N. Arroyo Grande Blvd., #200
Henderson, Nevada 89074
Telephone: (702) 434-3444
Facsimile: (702) 434-3739
E-Mail: ghayes@nevlaw.com
Attorneys for Plaintiff/Counter-
Defendant, LAS VEGAS LAND
PARTNERS, LLC

LAW OFFICES
JOHN W. MUIJE & ASSOCIATES
1840 E. SAHARA AVE. #106
LAS VEGAS, NEVADA 89104
Phone: (702) 386-7002 Fax: (702) 386-9135

NOTICE

Pursuant to N.R.C.P. 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

The Commissioner's Report is deemed received three (3) days after mailing to a party or the party's attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's Office. E.D.C.R. 2.34(f).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on
the _____ day of _____, 20____.

_____ Placed in the folder of counsel in the Clerk's Office on the
_____ day of _____, 20____.

✓ _____ Electronically served counsel on DEC. 21, 20 14
Pursuant to N.E.F.C.R. Rule 9.

By: *Notiki Fekanson*
Commissioner Designee

CASE NAME: Russell L. Nye vs.
Las Vegas Land Partners, LLC
CASE NUMBER: A-07-551073

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

- _____ The parties having waived the right to object thereto,
- _____ No timely objection having been received in the office of
the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),
- _____ Having received the objections thereto and the written
arguments in support of said objections, and good cause
appearing,

* * *

AND

IT IS HEREBY ORDERED the Discovery Commissioner's Report
& Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED the Discovery Commissioner's Report
and Recommendations are affirmed and adopted as modified in the
following manner. (Attached hereto)

IT IS HEREBY ORDERED that a hearing on the Discovery
Commissioner's Report and Recommendations is set for
_____, 20____, _____ a.m.

DATED this 1 day of Feb, 2017.

Ronald L. Israel
DISTRICT COURT JUDGE

R:\V Files\Nye vs Las Vegas Land Partners\379251\Pleadings\1.29.16 Discovery Commissioner's Report & Recommendation.wpd

1 attorney, HARRY PAUL MARQUIS, ESQ., of the law firm of HARRY PAUL MARQUIS,
2 CHARTERED., hereby joins in the Mitchell Defendants' Reply to Opposition to Motion to
3 Compel Complete Responses to Interrogatories and Requests for Production of Documents.

4 DATED this 31st day of May, 2018.

6 **HARRY PAUL MARQUIS, CHTD.**

7
8 By: 

HARRY PAUL MARQUIS, ESQ.

Nevada Bar No. 001252

400 South 4th Street, Suite 300

Las Vegas, Nevada 89101

Tel No.: (702) 382-6700

Fax No.: (702) 384-0715

Email: harry@marquislaw.net

***305 Las Vegas, LLC and
Barnet Liberman***

CERTIFICATE OF SERVICE

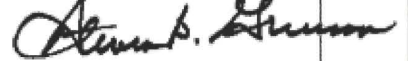
The undersigned, an employee of HARRY PAUL MARQUIS, CHTD., hereby certifies that on the 30th day of May, 2018, I served a true and correct copy of the *Joinder of Barnett Liberman and 305 Las Vegas, LLC in the Mitchell Defendants' Reply to Opposition to Compel Complete Responses to Interrogatories and Requests for Production of Documents* electronically via the Court's ECF system upon all parties listed on the electronic service list, as follows:

JOHN W. MUIJE, ESQ.
JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Avenue, Suite 106
Las Vegas, Nevada 89104
Telephone: (702) 386-7002
Facsimile (702) 386-9135
Email: jmuije@mujelawoffice.com
Attorney for Plaintiffs
Russell L. Nype and
Revenue Plus, LLC

GARRY L. HAYES, ESQ.
LAW OFFICES OF HAYES & WELSH
199 N. Arroyo Grande Blvd., Suite 200
Henderson, Nevada 8907
Telephone (702) 434-3444
Facsimile (702) 434-3739
Email: ghayes@lvlaw.com
Attorney for Defendants
Aquarius Owner LLC, Casino Coolidge LLC,
Las Vegas Land Partners LLC
Leah Property LLC, Liberman Holdings LLC,
Live Work LLC, Live Works Manager LLC,
LVLP Holdings LLC, Meyer Property Ltd,
David J. Mitchell and Mitchell Holdings LLC



An Employee of:
HARRY PAUL MARQUIS, CHTD.



1 **SUPP**
2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No. 2419
5 1840 East Sahara Avenue, #106
6 Las Vegas, Nevada 89104
7 Telephone: 702-386-7002
8 Facsimile: 702- 386-9135
9 E-Mail: jmuije@muijelawoffice.com
10 *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; 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,

Entity Defendants.

CASE NO: A-16-740689-B

DEPT NO: XV

Date of Hearing: June 6, 2018

Time of Hearing: 9:00 a.m.

SUPPLEMENT TO PLAINTIFFS' OPPOSITION TO
MOTION TO COMPEL AND COUNTER-MOTION
REQUIRING DISCLOSURE OF UNREDACTED EMAILS

As previewed in Plaintiffs' Opposition to Motion to Compel and Counter-Motion
requiring disclosure of unredacted emails, as filed on May 11, 2018, Plaintiffs have been in the
process of compiling and preparing a comprehensive Application for Order to Show Cause
seeking contempt sanctions, attorneys fees and costs which regard to LVLP and its principals'

1
2 blatant and intentional ongoing failure and refusal to produce critical and important
3 documentation through the discovery process.

4 Attached hereto as Exhibit "1" and by this reference incorporated herein is the
5 Declaration of Mark D. Rich, Plaintiffs' Forensic Accountant, who has spent literally at least a
6 hundred hours reviewing the documentation that has been produced, and who has compiled a
7 detailed itemization of various documentation that necessarily must have existed and should have
8 been produced, but which to date, despite comprehensive efforts by Plaintiffs, are still totally
9 missing in action.
10

11 It should be noted that the original signed Declaration will be filed in the original case
12 before the Honorable Ron Israel, who rendered judgment against LVLP. The original Stipulated
13 Judgment Debtor Examination documents were undertaken in that matter, as well as
14 comprehensive discovery requests, and an Order Compelling Discovery, a true and correct copy
15 of which is attached hereto as Exhibit "2" and by this reference incorporated herein.
16

17 Despite ongoing substantial efforts to obtain compliance with said order compelling
18 discovery, Exhibit "1" respectfully demonstrates that almost two years after comprehensive
19 discovery requests, and almost eighteen months after the Order Compelling Discovery, Las
20 Vegas Land Partners, LLC and its principals continue in their failure and refusal to produce
21 documentation which necessarily must exist, should have been maintained, and long since should
22 have been produced.
23

24

25

26

27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

In this regard, the Court is respectfully and specifically referred to Exhibit "2" to Exhibit "1", a five-page summary of missing documentation.

DATED this 5th day of June, 2018.

JOHN W. MUIJE & ASSOCIATES

By: 

JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
1840 East Sahara Avenue, #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Facsimile: 702- 386-9135
E-Mail: jmuje@mujelawoffice.com
Attorneys for Plaintiffs

.....
.....
.....
.....
.....
.....
.....
.....
.....
.....

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of JOHN W. MUIJE & ASSOCIATES, and that on the 5th day of June, 2018, I caused to be served a true and correct copy of the foregoing **SUPPLEMENT TO PLAINTIFFS' OPPOSITION TO MOTION TO COMPEL AND COUNTER-MOTION REQUIRING DISCLOSURE OF UNREDACTED EMAILS**, 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; and
- ☐ 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

Garry L. Hayes, Esq.
HAYES & WELSH
199 No. Arroyo Grande Blvd., #200
Henderson, Nevada 89074
Telephone: (702) 509-9555
Facsimile: (702) 434-3739
E-Mail: ghayes@lvlaw.com
Attorneys for Mitchell Defendants

Harry Paul Marquis, Esq.
HARRY PAUL MARQUIS, CHTD.
400 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
Telephone: (702) 382-6700
Facsimile: (702) 384-0715
E-Mail: harry@marquislaw.net
Attorneys for Defendants
Barnet Liberman and 305 Las Vegas, LLC


An employee of JOHN W. MUIJE & ASSOCIATES

EXHIBIT “1”

DECL
 JOHN W. MUIJE & ASSOCIATES
 JOHN W. MUIJE, ESQ.
 Nevada Bar No. 2419
 1840 E. Sahara Ave #106
 Las Vegas, Nevada 89104
 Telephone No: (702) 386-7002
 Facsimile No: (702) 386-9135
 Email: Jmuije@muijelawoffice.com
Attorneys for Defendants/Judgment Creditors

DISTRICT COURT
 CLARK COUNTY, NEVADA

LAS VEGAS LAND PARTNERS, LLC; LIVE
 WORK, LLC and ZOE PROPERTIES, LLC,

Plaintiffs,

CASE NO: A-07-551073

vs.

DEPT. NO: XXVIII

RUSSELL L. NYPE; REVENUE PLUS, LLC;
 DOES I through III, and ROE CORPORATIONS I
 through III, inclusive,

Defendants.

Date of Hearing: June 6, 2018

Time of Hearing: 9:00 a.m.

RUSSELL L. NYPE; REVENUE PLUS, LLC

Judgment Creditors

vs.

LAS VEGAS LAND PARTNERS, LLC.

Judgment Debtor.

**DECLARATION OF MARK D. RICH IN SUPPORT
 OF APPLICATION FOR ORDER TO SHOW CAUSE
 WHY LAS VEGAS LAND PARTNERS, LLC, AND
 ITS PRINCIPALS, SHOULD NOT BE HELD IN CONTEMPT
 AND FOR SANCTIONS**

STATE OF NEVADA)
) ss.:
 COUNTY OF CLARK)

Your declarant being first duly sworn upon oath, under penalty of perjury, declares and
 states as follows:

1 1. My name is Mark D. Rich and I am a licensed CPA in the State of Nevada. A true
2 and correct copy of my recent CV is attached hereto as Exhibit "A" and by this reference
3 incorporated herein.

4 2. I have been a licensed Certified Public Accountant in Nevada for approximately
5 37 years, and I am also Certified in Financial Forensics by the American Institute of Certified
6 Public Accountants.

7 3. I was originally engaged by Judgment Creditors Russell L. Nype and Revenue
8 Plus, LLC (hereinafter collectively referred to as "NYPE"), to assist them in the underlying
9 litigation, pre-trial, in terms of analyzing the financial transactions involved therein as well as the
10 conduct and actions of the parties regarding the numerous real property transactions, loans, joint
11 ventures, etc. underlying the original litigation.

12 4. I have continued to work with Nype post-judgment in reviewing and analyzing
13 documentation obtained from the Judgment Debtor and its affiliates, as well as specifically
14 analyzing the numerous conspicuous inconsistencies, gaps, and critical missing documentation
15 which LVLP, its principals, and its attorneys have continually failed and refused to produce,
16 despite substantial efforts on Nype's part.

17 5. As part of my role and work in the context of both this litigation, as well as the
18 related litigation case against Las Vegas Land Partners, LLC (hereinafter "LVLP"), its principals
19 individually, and numerous affiliated entities under Case No. A-16-740689. I and my staff
20 indexed and organized substantial LVLP records relating to properties it and its affiliates had
21 interests in and reviewed the same.

22 6. Since a promulgation of new written discovery requests on or about July 27,
23 2017, I have also assisted and facilitated Nype and counsel in reviewing the documentation that
24 has been produced, and more recently and specifically, I and my firm have assisted in narrowing
25 and focusing various discovery requests and additional discovery efforts in an ongoing effort to
26 actually obtain the substantial important documentation which could and should have been
27 produced by LVLP, its principals and its affiliates.

28

1 7. For purposes of the present motion seeking contempt sanctions against LVLP,
2 its principals, and its counsel, since the date of the promulgation of the July 2016 discovery
3 (which led to an ensuing motion to compel discovery and this court's order compelling discovery
4 entered on or about February 2, 2017), I would conservatively estimate that I and my staff have
5 devoted at least 100 hours in focused efforts to determine exactly what had been produced and
6 what key and necessary accounting documents were absent, missing, and yet to be produced by
7 LVLP and its principals.

8 8. I would estimate that the blended rate for myself and my professional staff
9 working on this matter to identify and evaluate the documentation obtained and compile such so
10 that we could determine what should have been produced would be \$350 per hour.

11 9. I am ready willing and able to prepare an appropriate detailed itemized accounting
12 of time and expenses incurred by myself and my professional staff in these tasks, for purposes of
13 allowing the court to evaluate an appropriate amount of sanctions.

14 10. A summary of our analysis and work product in this regard, as to critical
15 documentation that LVLP and its principals have failed and refused to produce to date, despite
16 years of vigorous effort by Nype and his counsel, is contained at Exhibit "B" and by this
17 reference incorporated herein.

18 11. Having participated in the ongoing discovery processes with Nype and his
19 counsel, and having actively reviewed the documentation that has been produced, as well as
20 identifying the documentation that has NOT been produced, I can say to a reasonable degree of
21 professional forensic accounting certainty that LVLP, its principals, and its attorneys have not
22 produced documents that would be forensically be expected for the administration of more than
23 25 entities handling over 60 real estate parcels and related transactions worth over \$50,000,000
24 for more than a ten-year period, and have affirmatively chosen not to cooperate, insofar as the
25 vast bulk of unproduced items identified in Exhibit "B" necessarily must exist, should have been
26 maintained, and certainly should have been produced by LVLP, its principals and its counsel in
27 response to Nype's prior discovery requests, and this Court's order compelling discovery.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. I make this declaration based upon personal knowledge, and if called as a witness
I could and would competently testify hereto.

13. All of the above and foregoing statements are made under penalty of perjury.
FURTHER YOUR DECLARANT SAYETH NAUGHT.

/s/ MARK D. RICH

MARK D. RICH

R:\J Files\Nype,J3792H\Pleadings\2018---06-05b Declaration of Mark D. Rich.wpd

EXHIBIT “A”

Mark D. Rich
Certified Public Accountant
Certified in Financial Forensics

Rich, Wightman & Company
1301 S. Jones Blvd.
Las Vegas, Nevada 89146
(702) 878-0959

EDUCATION/CERTIFICATIONS:

Licensed by the State of Nevada as a Certified Public Accountant -July, 1981

Certified in Financial Forensics, CFF (AICPA designation)

BSBA - Accounting. University of Nevada, Las Vegas - May, 1979 (With Distinction)

PROFESSIONAL EXPERIENCE:

1-96 to Present	Rich, Wightman & Company, CPA's, Managing Partner
2-94 to 1-96	Mark Rich & Company, CPA's, Managing Partner
4-82 to 2-94	Mark D. Rich, CPA, P.C.
6-79 to 3-82	McGladrey, CPAs
9-77 to 5-79	Oesterle & Company

PROFESSIONAL MEMBERSHIPS:

Nevada Society of CPA's
Past: Elected to Board of Directors
Served on Financial Accounting Standards Committee
Served on Litigation Consulting Services Committee
Served on various other committees since 1981
American Institute of Certified Public Accountants
American Institute of Certified Public Accountants, Certified in Financial Forensics
Association of Certified Fraud Examiners
Institute of Internal Auditors (inactive)
Participant in AICPA/Nevada Society Quality Review Program (Peer Review)
Phi Kappa Phi Honor Society
UNLV Alumni Association Board Member/Membership Chair
UNLV Planned Estate Giving Advisors Council
Enrolled to Practice before Gaming Control Board
Served on Board of Directors of Habitat for Humanity (CFO)
Industry Partner in Institute of Real Estate Management (IREM)

SPECIALIZED AREAS OF INDUSTRY EXPERIENCE:

Construction
Real Estate and Development
Mortgage Banking
Retail
Gaming
Entertainment
Computer Tech
Transportation
Professionals
Estate and Trust
Not-For-Profit/Charitable Organizations
Manufacturing
Wholesale Distributors

ADDITIONAL TRAINING AND PROFESSIONAL COURSES:

AFCE International Global Fraud Conferences
Forensic and Fraud Interview Conference
AICPA Family Law Conference
Forensic Accounting and Fraud GCB
Certified Audit Preparation and Disclosure
Financial Statement Analysis
Yellow Book Audits and Controls
Estate Planning Utilizing Charitable Entities
Advanced Reviewed and Compiled Financial Statement Preparation
Forensic Accounting Conference
Forensic Electronic Data Analysis and Retrieval
Litigation Strategies
Fraud Detection and Calculations of Losses
Business Valuations
Construction Claims
Bankruptcy
Divorce
Damage Studies
Employee Theft Investigations
High Income Individual Tax Strategies
Estate Planning for High Income Individuals
Estate Planning for the Small Business Owner
Advanced Partnership Taxation
Individual Taxation
S-Corporation Taxation
Partnership Taxation
Trust Taxation
Estate Taxation
Advanced Reviewed and Compiled Financial Statement Preparation
Contractors Tax and Accounting Strategies
Gaming MICS

PUBLICATIONS:

National Business Institute: Real-Life Ethics for Nevada CPAs

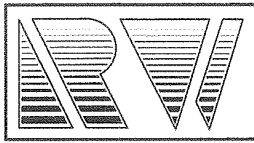
FIRM BILLING RATES EFFECTIVE 2016:

Partner	\$250-\$350
Manager	\$200-\$250
Supervisor	\$175-\$200
Senior	\$125-\$175
Professional Staff	\$ 70-\$125
Admin.	\$ 70

SIGNIFICANT CASE HISTORY:

Type	Court	Status	Client	Attorney
Damage	District/Deposition	Closed	So. West/MGM	Galane
Bankruptcy	Federal/Testified	Closed	Steel	Foley
Damage	District/Special Master	Closed	Brokerage	Massey
Damage	District/Testified	Closed	Irish	McGarry
Bankruptcy	Federal/Testified	Closed	Nevco	Kane
Bankruptcy	Federal/Testified	Court Appt	Rojac	Kane
Valuation	District	Closed	Defonseka	Mitchell
Damages	District	Settled	Covington	Mitchell
Valuation	District	Settled	Fraizer	Frame
Divorce	District	Closed	Day & Night	Frame
Fraud	District	Closed	Soubry	Alverson
Tax Criminal	Federal/Testified	Closed	Nevco	Kelesis
Tax Civil	Federal	Closed	Haught	Lieberman
Criminal	District	Closed	Fidelity	DA
Criminal	District	Closed	So NV Movers	DA
Criminal	District	Closed	RH & M	DA
Criminal	District	Closed	Acoustical	DA
Valuation	District	Closed	Worthen	McGarry
Damages	District/Deposition	Closed	LVGT	Frame
Valuation	District	Settled	Eastern NV	Hunt
Estate	District/Deposition	Settled	Clark	Morris/Cook
Tax	Federal/Deposition	Closed	Clark	Silets
Tax Criminal	Federal	Closed	Kloehn	Katz
Damage	District/Testified	Closed	Gilcrease	Cook
Damage	District	Closed	Yerramsetti	Cook
Estate	District	Closed	Ward	Cook
Damage	Arbitration/Testified	Closed	National	Ellis
Damage	Arbitration/Testified	Closed	Massanari	Albright
Estate	District/Report	Closed	Heatley	Lowe
Damage	District/Report	Closed	Sands	Morris
Estate	District/Report	Closed	Danner	Morgan
Damage	District/Testified/Repot	Closed	Desert Land	Peterson
Tax Civil	Federal/Deposition	Settled	Behnen	Aloi
Divorce	Family/Testified/Report	Closed	Keeter	LoBello
Divorce	Family/Deposition/Report	Closed	Bloch	Ecker
Divorce	Family	Settled	Costello	Ecker
Divorce	Family/ Consultant	Closed	Higgins	Kainen
Damage	District/Testified/Report	Closed	CBC	Marquis
Divorce	Family/Report	Closed	McGill	Ecker/LoBello
Damage	District/Consultant	Closed	CSI	Hutchison
Damage	District/Consultant	Closed	Revenue Plus	Carroll
Recovery	Federal/Report/Forensic	Closed	FDIC	McCoy/Morris
Consultant	District/Consultant	Closed	Forsman	Marquis
Damage	District/Report	Closed	Emerald	Carroll
Damage	District/Report	Closed	PT Corp.	Sylvester
Damage	District	Settled	Renown	Peterson
Damage	District/Consultant	Closed	MGM	Morris
Damage	District/Rebuttal	Closed	Harris/LVB	Marquis
Consulting	Various/Forensic	Pending	NV Attorney Gen	Various
Consulting	Federal/Testified/Consult	Closed	T. Hunt	Johnson
Damage	District/Depositon/Report	Closed	Hard Rock	Carroll
Damage	Arbitration/Testified/Rept	Closed	Dr. Life	Marquis
Damage	District/Rebuttal	Closed	NV Mutual/Trean	Brimmer
Damage	Arbitration/Testified/Rept	Closed	Lift Equip	Marquis
Damage	District/Deposition/Report	Closed	14 Rings	Gayan
Damage	District/Deposition/Report	Closed	IGT	Connelly
Damage	FINRA/Testified/Forensic	Closed	Matthews	Hubley
Damage	District/Report	Closed	Oasis	Carroll
Damage	District/Deposition	Report	Ellis	Gayan
Damage	District	Report	Findlay	Carroll

EXHIBIT “B”



RICH
WIGHTMAN
& COMPANY
Certified Public Accountants
(A Limited Liability Company)

1301 SOUTH JONES BOULEVARD
LAS VEGAS, NV 89146

PHONE: (702) 878-0959
FAX: (702) 878-1325

Summary of Missing documents as to LVLP

General Supporting Documents (The time period covered would be 2007-2017):

1. The entities included in the CPA's list of disregarding entities do not have separate and distinct checking accounts, general ledgers, or accounting records for each of the entities.
2. Other company or personal activity is comingled with the LVLP accounting records as evidenced by the partner loan accounts.
3. Commingling of funds of all entities continues through November, 2015 when the Signature Bank account is no longer used and G/L entries are by journal entry.
4. Millions of dollars in unsupported adjusting journal entries have been entered into the general ledgers as evidenced on the print outs provided.
5. The CPA's records contain detailed supporting accounting records that the LVLP records do not. From a forensic standpoint it is generally the opposite. One would expect that LVLP's population of documents would represent nearly 100% of the accounting documents. This is especially problematic because the CPA claims to have purged his records from 2007 to 2012.
6. There are millions of dollars in transactions entered through the general ledgers that are unsupported as evidenced by the activity listed in the G/Ls with no supporting accounting documents.
7. Some of the general ledgers provided still do not agree with the tax returns. (2007 and 2006).
8. Property listings and depreciation schedules have not been provided for several years. (2006 to 2012).
9. Millions of dollars in real estate has been disposed of with virtually no supporting accounting documents provided. (see our schedule of real estate transactions previously provided).
10. We have no emails in their electronic form and electronic documents such as word, excel or Quickbooks of LVLP.

11. We have no meaningful written communications between LVLP and their CPAs.
12. We have no Financial statements as provided to banks 2007 to 2017 for financing purposes related to any and all of the LVLP, its disregarded entities, including Lieberman and Mitchell.

RTC Rental Documents:

13. The RTC rental activity provided by LVLP (bates LVLP046 to 74) consists of only a few page Forrest City summary for each year from relating to FC RTC39, LLC and FC RTC20, LLC with no accounting for the rental activity relating to LVLP/ Wink One, LLC.
14. The RTC ground lease covers a 40 year period and totals over \$106,000,000 in rents. We do not have the actual accounting documents that account for the RTC rental activity associated with Wink One, LLC.
15. Wink One, LLC is not shown on the CPA's list of disregarded entities included on the tax return of LVLP.
16. The FC RTC TIC agreement (First Amendment vs. Term Sheet) with Wink appears to be in conflict as to the percentage of rent split between the parties.

Other Specific Issues:

17. The rents of Aquarius (noted as sold in 2007) appear in the G/L through 2012, but do not appear in the tax returns of LVLP.
18. The 2010 G/L and tax return has a Note Receivable due from "Aquarius" of \$1.7m that is removed by journal entry in 2011. (We need specific details of how it was removed).
19. The 2015 Tax Return of FC/LW Vegas, LLC was marked as FINAL and the 10% interest of Livework, LLC is now \$0. There is no explanation nor is there any documentation to explain or substantiate this significant occurrence.
20. The 2015 FINAL Tax Return of FC/LW Vegas, LLC shows assets with the original cost basis of \$28M were sold for \$8.5m.
21. The 2015 Tax Return of QH was marked as FINAL and the 40% interest of Stella Property, LLC is \$0. There is no explanation nor is there any documentation to explain or substantiate this significant occurrence.

22. The 2015 Tax Return of PQ was marked as FINAL and the 10% interest of Livework, LLC is either moved to an unknown entity or liquidated. There is no explanation nor is there any documentation to explain or substantiate this significant occurrence.
23. PQ ground lease, last appears on 2012 tax return as passive activity, it no longer appears on latter year tax returns. There is no explanation nor is there any documentation to explain or substantiate this significant occurrence.
24. We do not have any PQ or QH accounting records.
25. The sale of Coolidge held in Leah, LLC in 2014 for \$1,000,000 appears to be to Barnett Lieberman (According to the 2014 G/L he deposited \$250,000 in cash and credited \$750,000 noncash journal entry), yet we are missing the documentation underlying this insider transaction.
26. The sale of Coolidge resulted in a \$1.5m loss to LVLP.
27. Leah, LLC is noted as a "partial sale in 2007" by CPA on his list of disregarding entities, yet we are missing the documentation underlying this insider transaction.
28. 2007 to 2013 there appears to G/L expenses noted as "RMI expenses" consisting of AMx. (RMI appears to be Realty Management, Inc., under contract for management services with FC and LW!? Yet there is no entry or explanation of mgt income?)
29. There is a \$21million dollar note payable on the G/L and Tax Returns of LVLP to Key Bank that does not appear correct. No back up or explanation as to the same provided.

CPA documents LVLP should have:

30. We need additional document from the CPA workpapers for LVLP tax returns:
 - a. Electronic worksheets and word documents given to CPA by LVLP.
 - b. Emails to/from LVLP/CPA.
 - c. Accounting documents destroyed by CPA for 2007 to 2012.
 - d. Details of Notes receivables to related parties and how they were repaid.
 - e. Depreciation schedules (2007-2012).
 - f. Cost Basis schedules for all land parcels (2007-2012).
 - g. Calculation of loan amortizations for all loans.
 - h. Support for loan balances, including related party loans.
 - i. Support for all journal entries made by LVLP.
 - j. Capital Account detail for each LLC member **by entity**.

- k. Details of all sales and documents provided to CPA to calculate gain/loss.
- l. Details of how each disregarded entity is included on the LVLP tax return.
- m. Wink One, LLC, PQ, and HQ, detailed accountings provided to CPA.
- n. Working Trial Balances that agree with the tax returns (2006 and 2007).
- o. Supporting work papers that LVLP gave CPA to prepare tax returns.

FC documents LVLP should have:

- 31. Escrow documents arising from the sale, transfer or exchange of all properties owned by FC and its affiliated entities, related to the TIC parcels acquired from LVLP, Mitchel/Lieberman and all their affiliated entities.
- 32. **Specific sale:** All documents including Escrow documents and appraisals, related to the sale on 12-24-15 of all properties sold to 1060 Broadway/Oakwood Plaza.
- 33. All appraisals obtained for all properties related to the TIC parcels, including PQ Las Vegas, LLC, Wink One, LLC acquired from LVLP, Mitchel/Lieberman and all of their affiliated entities.
- 34. All FC entity and third party loan documents related to the TIC parcels acquired from LVLP, Mitchel/Lieberman and all of their affiliated entities.
- 35. Operating agreements, including restatements and amendments for FC entities with common ownership in all properties related to the TIC parcels acquired from LVLP, Mitchel/Lieberman and all their affiliated entities.
- 36. All checks, payments, electronic transfers or funds disbursed from FC entities to LVLP, Mitchel/Lieberman and all their affiliated entities.
- 37. All noncash transactions FC entities have made for the benefit of LVLP, Mitchel/Lieberman and all their affiliated entities, including but not limited to equity adjustments, reductions of indebtedness, transfers of property or any other in-kind transactions FC entities have made for the benefit of LVLP, Mitchel/Lieberman and all their affiliated entities.
- 38. List of all FC entities that have common ownership with LVLP, Mitchel/Lieberman and all their affiliated entities.
- 39. Annual Schedules of all loan transactions and loan balances between FC entities, third parties and LVLP, Mitchel/Lieberman and all their affiliated entities.

40. Annual Schedules of all equity transactions and equity balances related to FC entities and LVLP, Mitchel/Lieberman and all their affiliated entities.
41. All signed and binding TIC agreements, including restatements and amendments that FC entities have entered into related to the parcels acquired from LVLP, Mitchel/Lieberman and all their affiliated entities.

EXHIBIT “2”



CLERK OF THE COURT

1 DCRR
JOHN W. MUIJE, ESQ.
2 JOHN W. MUIJE & ASSOCIATES
Nevada Bar No. 2419
3 1840 E. Sahara Avenue, Suite 106
Las Vegas, Nevada 89104
4 Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
5 Email: jmuije@muijelawoffice.com
Attorneys for Defendants/Judgment Creditors

6
7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 LAS VEGAS LAND PARTNERS, LLC; LIVE
WORK, LLC and ZOE PROPERTIES, LLC,

10 Plaintiffs,

CASE NO: A-07-551073

11 vs.

DEPT. NO: XXVIII

12 RUSSELL L. NYPE; REVENUE PLUS, LLC;
13 DOES I through III, and ROE CORPORATIONS I
through III, inclusive,

14 Defendants.

DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS

15 RUSSELL L. NYPE; REVENUE PLUS, LLC

16 Judgment Creditors,

DATE: October 14, 2016

TIME: 9:00 a.m.

17 vs.

18 LAS VEGAS LAND PARTNERS, LLC,

19 Judgment Debtor.

20
21 DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION

22 Hearing Date: October 14, 2016

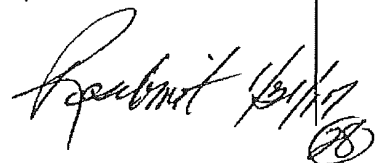
23 Hearing Time: 9:00 a.m.

24 Attorney for Judgment Creditor, Russell L. Nype; Revenue Plus, LLC):

25 JOHN W. MUIJE, ESQ., of the Law Offices of John W. Muije &
26 Associates

27 Attorney for Judgment Debtor (Las Vegas Land Partners, LLC):

28 GARRY HAYES, ESQ., of the Law Offices of Hayes & Welsh.



I.

FINDINGS

On October 14, 2016, a hearing was conducted with respect to Defendants/Judgment Creditors Motion to Compel Discovery & For Sanctions.

Having considered Defendant's Motion to Compel Discovery and For Sanctions, the Plaintiff's Opposition, and the Defendant's Reply In Support of its Motion to Compel, the Discovery Commissioner makes the following Findings with respect to the above-referenced Motion to Compel:

The Court finds that the Judgment Creditor's (hereinafter collectively referred to as "Nype") Motion to Compel consists of three separate components, each of which should be addressed in a slightly different fashion.

IT IS THE FURTHER FINDING of the Court that despite designating the discovery request as a notice of deposition, in essence what Nype has undertaken with regard to his attempt to schedule the deposition of the Person Most Knowledgeable of the Judgment Debtor (hereinafter referred to as LVLP), is an updated post-judgment examination of judgment debtor.

THE COURT FURTHER FINDS that although the Rules of Civil Procedure and a Notice of Deposition promulgated thereunder, arose subsequent to the enactment of Nevada's traditional debtor examination statute, i.e. NRS 21.270, that said statute has never been overruled, and requires that a judgment debtor be examined at the *situs* where they regularly reside.

THE COURT FURTHER FINDS that in the Court's experience, video conferencing arrangements, especially when there are substantial geographic distances involved, when properly coordinated, provide an effective, economical and appropriate alternative to out-of-state travel and live depositions.

THE COURT FURTHER FINDS, based on the second distinct issue raised by Nype in his Motion to Compel, that the attorney-client privilege should not apply to the issue as to the source

....

....

....

1 and amount of payments made by a litigant to various attorneys, based on the case law produced and
2 referenced by Nype.

3 **THE COURT FURTHER FINDS** that the actual cancelled checks, all of which were
4 represented to be located at the New York offices of LVLP, are relevant and important to post-
5 judgment collections, and should be produced and made available as addressed hereinafter for
6 inspection and copying.

7 **THE COURT FURTHER FINDS** that LVLP's earlier objection to production regarding
8 information as to the identity, amounts, and source of funds for paying attorneys who have
9 represented LVLP in these proceedings is not and should not be held to be privileged, and that the
10 general ledger produced on or about September 1, 2016 provides partial information regarding the
11 same.

12 **THE COURT FURTHER FINDS** that the anticipated production of documents sought is
13 likely to be voluminous, and that it is appropriate that Judgment Creditor Nype pay the cost of
14 reproducing the documents he seeks.

15 **THE COURT FURTHER FINDS**, subject to the above provisions, that Nype is clearly
16 entitled to the documentation he has requested, especially with regard to the August, 2016, updates
17 and supplementation requested, and that LVLP can and should produce all of the documentation
18 sought, in accordance with NRCP Rule 34 and the specific requests and items enumerated in Nype's
19 2016 request for production of documents.

20 **THE COURT FURTHER FINDS**, however, that the obligation to produce records means
21 to produce such records in accordance with NRCP Rule 34 as they are normally maintained, at its
22 regular business offices in New York City, likely best done through the use of an independent copy
23 service.

24 **THE COURT FURTHER FINDS** that in addition to the 2016 document request, LVLP can
25 and should complete and supplement its production for the 2015 request, and should produce any
26 non-completed documents for payment of attorneys fees for all periods addressed in the 2015
27 document production requests, as well as interim tax returns, bank statements, accounting
28 statements, etc., not heretofore produced, including but not limited if in LVLP's possession, to all

1 of the following for LVLP's subsidiaries:

- 2 (1) All "TIC" Accounting statements;
- 3 (2) All K-1's issued by said subsidiaries;
- 4 (3) All Bank statements for said subsidiaries.

5 The Court notes that LVLP has agreed to produce such documentation at its offices ^{9 AM}are in
6 New York.

7 **THE COURT FURTHER FINDS** that K-1's related to the various "affiliates", subsidiaries,
8 and entities in which LVLP has a beneficial interest are particularly relevant and can and should be
9 produced.

10 **THE COURT FURTHER FINDS**, given the geographic distance mentioned in the Court's
11 prior findings set forth hereinabove, that the most efficacious mechanism is for Nype to arrange an
12 appropriately qualified litigation document service or copying service to go to the offices of LVLP,
13 in the New York area, and copy and/or scan all of the documentation in place, and transfer those to
14 electronic media, whether in the form of CD-Roms, DVD's, or flash memory sticks, differentiated
15 indexed and cataloged according to the various designations and categories set forth on the files,
16 folders, and document repositories as maintained by LVLP on the one hand, by categories and/or
17 responding to the specific requests made by Nype on the other.

18 **THE COURT FURTHER FINDS** that once reproduction of the documents produced has
19 been completed, and the images converted to electronic media, that said electronic media be
20 provided to counsel for LVLP, i.e. Garry Hayes at his offices located at 199 N. Arroyo Grand Blvd.,
21 Ste 200, Henderson, Nevada 89074, and that Mr. Hayes shall have ten (10) working days (i.e. two
22 weeks) from the date of receipt of the documentation within which to review the same and determine
23 whether or not there may be an issue of privilege as to particular documents.

24 **THE COURT FURTHER FINDS** that to the extent Mr. Hayes in good faith believes the
25 document to be privileged, he will need to prepare a detailed privilege log referencing specifically
26 the document in question, identifying the same, and describing the nature of the redaction.

27 **THE COURT FURTHER FINDS** that once said review and redaction by Attorney Garry
28 Hayes has occurred on behalf of LVLP, that Mr. Hayes shall promptly communicate said information

1 to the litigation document service or copying service employed by Nype, which will substitute
2 redacted pages for the original images on their electronic media, while also making an appropriate
3 copy of any privilege log, and only then provide the images to counsel for Nype, John W. Muje at
4 his offices located at 1840 East Sahara Avenue, Suite 106, Las Vegas, Nevada 89104, i.e. the
5 complete document production, (subject to redactions by Mr. Hayes with Mr. Hayes's privilege log
6 as to any documents withheld or redacted).

7 **THE COURT FURTHER FINDS** that once that documentation has been provided to Mr.
8 Muje, Nype may make arrangements for either a live physical sworn examination to occur in the
9 New York City area, or in the alternative, may make arrangements for a video conferencing sworn
10 examination/deposition, at Nype's option, to occur no sooner than two weeks subsequent to Nype's
11 receipt of the subject documentation, and that said sworn examination should commence and
12 continue until Nype has been afforded a reasonable opportunity to inquire as to the financial affairs
13 of LVLVP, not previously covered in the earlier examination, subject to any limitation under NRCF
14 & EDCR, as well as ask relevant questions regarding the documentation so produced.

15 **THE COURT FURTHER FINDS** that there is no basis for sanctions against LVLVP.

16 **II.**

17 **RECOMMENDATIONS**

18 **IT IS HEREBY ACCORDINGLY RECOMMENDED** that Defendant/Judgment
19 Creditors' Motion be granted in part as to documentation still needing to be produced, which
20 documents shall be produced in New York City as more specifically delineated herein;

21 **IT IS FURTHER RECOMMENDED**, however, that Defendant/Judgment Creditor's
22 Motion be denied in part as to requiring the Judgment Debtor to appear and be deposed in Las
23 Vegas, Nevada, under oath, and that the Court instead order said sworn examination to occur in New
24 York City after completion of the document production process discussed herein.

25 **IT IS FURTHER RECOMMENDED** that the Court order production of all of the
26 documentation sought by Judgment Creditor Nype as detailed in the above and foregoing findings,
27 including specifically the full documentation sought in Plaintiff's 2016 document production request,
28 and the above enumerated supplemental documents as to the 2015 requests.

1 **IT IS FURTHER RECOMMENDED** that the Court notes that LVLP has agreed to produce
2 such documentation at its offices in New York.

3 **IT IS THEREFORE RECOMMENDED** that completion of the documentation production
4 addressed hereinafter, the parties will arrange for a sworn examination of judgment debtor, i.e. the
5 deposition of the Person Most Knowledgeable of LVLP, with the LVLP representative (believed to
6 be a Mr. David Mitchell) required to appear at the offices of LVLP in New York City, New York,
7 or at the offices of a court reporter or video conferencing service located in the same locale, for
8 purposes of sworn testimony under oath.

9 **IT IS FURTHER RECOMMENDED** that Nype shall have the option to take said sworn
10 debtor examination before an appropriately qualified court reporter, live and in person, through either
11 Nevada or New York counsel, and that Nype's counsel may have present, at Nype's option, an
12 appropriate forensic accountant and/or one paralegal to assist in the examination process.

13 **IT IS ALSO FURTHER RECOMMENDED** that Nype, in the alternative, may arrange to
14 undertake such sworn examination through the use of video conferencing facilities, with LVLP's
15 representative to appear at the video conferencing locale in the New York City area, while Nype's
16 counsel and appropriate assistance may attend and participate through video conferencing
17 arrangements from their base of operations in Las Vegas, Nevada.

18 **IT IS FURTHER RECOMMENDED**, based upon the above findings regarding the absence
19 of attorney-client privilege in regard to documentation regarding the payment of attorneys fees, that
20 all documentation requested by Nype but not previously produced, shall be produced, utilizing the
21 logistical constraints recommended hereinafter, in the New York City area, and other related
22 documentation showing the source of funds, the amount of payments, and the mechanisms utilized
23 for and on behalf of LVLP in the payment of LVLP's attorneys fees.

24

25

26

27

28

1 IT IS FURTHER RECOMMENDED that the logistical arrangements discussed in the
2 above and foregoing findings be deemed appropriate, and that Nype be responsible for making
3 said arrangements and paying for the copying and/or litigation document production services.

4 IT IS FURTHER RECOMMENDED that the mechanisms, logistics, and mechanical
5 procedures which set forth in the above findings should be deemed appropriate, and should be
6 implemented for purposes of the document production ordered hereby.

7 CONCLUDING RECOMMENDATIONS

8 Based upon all of the above and foregoing, the undersigned recommends a resolution of
9 Nype's Motion to Compel as follows, partially granting and partially denying said motion.

- 10 1. The Motion to Compel in part, as to the appearance by the Judgment
11 Debtor in Las Vegas, Nevada is denied, and it is instead ordered that
12 said sworn examination under oath shall occur in the New York
13 City area, after production of documents as discussed herein *and*
14 *videoconferencing remains an option as discussed herein.*
15 2. It is further recommended that claims of attorney-client privilege
16 previously asserted by the Judgment Debtor, LVLP, be denied,
17 the undersigned expressly finding and recommending that the items
18 in question are not privileged, and should be produced, including
19 all cancelled checks related to the payment of LVLP's attorneys
20 fees; and ¹
21 3. It is further recommended, pursuant to the Motion to Compel, that said
22 motion be granted in part, as regards the document production,
23 insofar as Nype's requests are well founded, appropriate, and relevant,
24 and the documentation in question shall be produced by the Judgment
25 Debtor in the New York City area, for copying and duplication
26 at the Judgment Creditor's expense, in accordance with the
27 logistical arrangements set forth hereinabove.

28 *1 To the extent that billing records are required*
..... *to be produced, these records may be redacted*
to protect attorney-client privilege where necessary.

LAS VEGAS LAND


NYPE

ASSIC73

10/14/16, Hearing

4. Nype's request for sanctions is denied.

DATED this 20 day of ^{December} November, 2016.


DISCOVERY COMMISSIONER

Submitted by:

JOHN W. MUIJE & ASSOCIATES

By: 

JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
1840 E. Sahara Avenue, Suite 106
Las Vegas, Nevada 89104
Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
Email: jmuje@mujelawoffice.com
Attorneys for Defendants/Judgment Creditors

Approved as to form and content by:

HAYES & WELSH

By: 

GARRY L. HAYES, ESQ.
Nevada Bar No. 1540
199 N. Arroyo Grande Blvd., #200
Henderson, Nevada 89074
Telephone: (702) 434-3444
Facsimile: (702) 434-3739
E-Mail: ghayes@nevlaw.com
Attorneys for Plaintiff/Counter-Defendant, LAS VEGAS LAND PARTNERS, LLC

NOTICE

Pursuant to N.R.C.P. 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

The Commissioner's Report is deemed received three (3) days after mailing to a party or the party's attorney, or three (3) days after the clerk of the court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's Office. E.D.C.R. 2.34(f).

A copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on
the _____ day of _____, 20_____.

_____ Placed in the folder of counsel in the Clerk's Office on the
_____ day of _____, 20_____.

✓ _____ Electronically served counsel on DEC. 21, 20 14
Pursuant to N.E.F.C.R. Rule 9.

By: *Notiki Fekanson*
Commissioner Designee

CASE NAME: Russell L. Nype vs.
Las Vegas Land Partners, LLC
CASE NUMBER: A-07-551073

ORDER

The Court, having reviewed the above report and recommendations prepared by the
Discovery Commissioner and,

- _____ The parties having waived the right to object thereto,
- _____ No timely objection having been received in the office of
the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),
- _____ Having received the objections thereto and the written
arguments in support of said objections, and good cause
appearing,

* * *

AND

IT IS HEREBY ORDERED the Discovery Commissioner's Report
& Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED the Discovery Commissioner's Report
and Recommendations are affirmed and adopted as modified in the
following manner. (Attached hereto)

IT IS HEREBY ORDERED that a hearing on the Discovery
Commissioner's Report and Recommendations is set for

_____, 20____, ____ a.m.

DATED this 1 day of Feb, 2017.


DISTRICT COURT JUDGE



1 **NOE**
2 GARRY L. HAYES, ESQ.
3 Nevada State Bar No. 1540
4 MEGAN K. MAYRY MCHENRY, ESQ.
5 Nevada State Bar No. 9119
6 LAW OFFICE OF HAYES & WELSH
7 199 North Arroyo Grande Blvd., Suite 200
8 Henderson, Nevada 89074
9 Phone: 702-832-5592
10 Fax: 702-434-3739
11 m.mayry@lvlaw.com ; L.finchio@nevlaw.com
12 *Attorneys for Mitchell Defendants*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Case No. A-16-740689-B
Department 15

13 Plaintiffs,

14 v.

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

26 Defendants.

NOTICE OF ENTRY OF ORDER

24 PLEASE TAKE NOTICE that on June 14, 2018, this Court entered an ORDER
25 GRANTING DEFENDANTS' MOTION TO COMPEL AND DENYING PLAINTIFFS'
26 COUNTERMOTION REQUIRING DISCLOSURE OF UNREDACTED EMAILS

27 ///

LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
199 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3739

LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
199 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3739

1 BETWEEN DEFENDANTS AND THEIR ACCOUNTANTS in the above-entitled matter,
2 a copy of which is attached hereto.

3 DATED this 18th day of June, 2018.

4 LAW OFFICE OF HAYES & WELSH

5
6 /s/ Garry L. Hayes, Esq.
7 GARRY L. HAYES, ESQ.
8 Nevada Bar No. 1540
9 199 N. Arroyo Grande Blvd., Ste. 200
10 Henderson, Nevada 89074
11 *Attorneys for Mithchell Defendants*

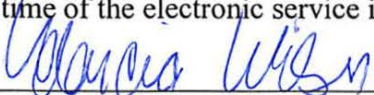
12 **CERTIFICATE OF SERVICE**

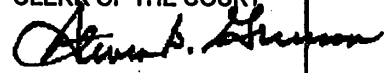
13 Pursuant to NRCP 5(b) and EDCR 8.05, I hereby certify that on the 19th day of
14 June, 2018, I served a true and correct copy of the foregoing NOTICE OF ENTRY OF
15 ORDER through the Court's electronic filing and service system to the persons and addresses
16 listed below:

17 JOHN W. MUIJE, ESQ.
18 John W. Muije & Associates
19 1840 E. Sahara Avenue, Ste. 106
20 Las Vegas, NV 89104
21 jmuije@muijelawoffice.com
22 *Attorneys for Plaintiffs*

23 HARRY PAUL MARQUIS, ESQ.
24 Harry Paul Marquis, Chartered
25 400 South 4th Street, Ste. 300
26 Las Vegas, NV 89101
27 harry@marquislaw.net
28 *Attorneys for Defendants 305 Las Vegas, LLC
and Barnet Liberman*

Pursuant to EDCR 8.05(i), the date and time of the electronic service is in place of the date and place of deposit in the mail.


Employee of the Law Office of Hayes & Welsh



1 **ORDR**

2 GARRY L. HAYES, ESQ.
Nevada State Bar No. 1540
3 MEGAN K. MAYRY MCHENRY, ESQ.
Nevada State Bar No. 9119
4 LAW OFFICE OF HAYES & WELSH
199 North Arroyo Grande Blvd., Suite 200
5 Henderson, Nevada 89074
6 Phone: 702-832-5592
Fax: 702-434-3739
7 m.mayry@lvlaw.com ; L.finchio@nevlaw.com
Attorneys for Mitchell Defendants

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10
11 RUSSELL L. NYPE; REVENUE PLUS, LLC;
DOES I-X; DOE CORPORATIONS I-X; and
12 DOE PARTNERSHIPS I-X,

Case No. A-16-740689-B
Department 15

13 Plaintiffs,

14 v.

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

22 Defendants.

23 **ORDER GRANTING DEFENDANTS' MOTION TO COMPEL AND DENYING**
24 **PLAINTIFFS' COUNTERMOTION REQUIRING DISCLOSURE OF**
25 **UNREDACTED EMAILS BETWEEN DEFENDANTS AND THEIR ACCOUNTANT**

26 Defendants DAVID J. MITCHELL; LAS VEGAS LAND PARTNERS, LLC;
27 MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK
28 ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER,

JUN 13 2018

1 LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN
2 HOLDINGS, LLC; LIVE WORKS TIC SUCCESSOR, LLC; and CASINO COOLIDGE
3 LLC (hereinafter "Mitchell Defendants"), through their attorneys of record, the Law Office
4 of Hayes & Welsh, having filed a *Motion to Compel Complete Responses to Interrogatories*
5 *and Requests for Production of Documents* ("Motion"); and Plaintiffs, RUSSELL L. NYPE
6 and REVENUE PLUS, LLC (hereinafter "Plaintiffs"), through their attorneys of record,
7 John W. Muije & Associates, having filed a *Countermotion Requiring Disclosure of*
8 *Unredacted Emails Between Defendants and Their Accountant* ("Countermotion") the
9 matter having come before this Court for hearing on June 6, 2018, and the Court having
10 reviewed the pleadings filed by all parties and having heard argument by all parties, the
11 Court makes the following findings:

12
13 1. Supplemental responses to the Mitchell Defendants' requests for production and
14 interrogatories be produced by Plaintiffs not later than July 16, 2018. However, based on
15 subsequent discussions of counsel it is agreed that the supplemental responses are due not
16 later than July 31, 2018.

17
18 2. Defendants have requested a sanction of attorney's fees and costs required to
19 bring the Mitchell Defendants' motion. The Court ordered that counsel meet and confer on
20 reasonable fees and costs. Based on the discussions of counsel, it is agreed that \$4,000 in
21 fees and costs be paid to the Law Office of Hayes and Welsh and \$2,000 in fees and costs be
22 paid to the office of Harry Marquis no later than August 31, 2018.

23
24 3. The trial date in this matter be continued to the five week trial stack of May 28,
25 2019.

26
27 4. Counsel have discussed other scheduling dates and counsel have agreed to the
28 following dates:

LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
199 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3739

1 Expert Disclosures - December 3, 2018;
2 Rebuttal Expert Disclosures - January 7, 2019;
3 Discovery Cutoff - March 29, 2019;
4 Motions in limine and dispositive motions to be filed no later than April 17, 2019

5 5. Counsel to appear before this Court on July 16, 2018 at 9:00 a.m. for a Rule 16
6 scheduling conference.

7 6. Counsel also agreed and stipulated that Plaintiffs' RUSSELL L. NYPE and
8 REVENUE PLUS LLC requests for production of documents served on Defendants on May
9 8, 2018 are due no later than July 10, 2018.

10 7. Plaintiffs' responses to the Mitchell Defendants' second set of requests for
11 production of documents served on Plaintiffs on May 29, 2018 will be due no later than
12 July 17, 2018.

13 IT IS THEREFORE ORDERED that the Mitchell Defendants' Motion is
14 GRANTED;

15 IT IS FURTHER ORDERED that Plaintiffs' Countermotion is DENIED WITHOUT
16 PREJUDICE.

17 IT IS SO ORDERED.

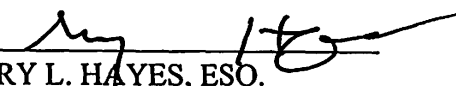
18 Dated this 14th day of June, 2018.

19 
20 DISTRICT COURT JUDGE
21

22 Case No. A-16-740689-B


23 Submitted by:

24 LAW OFFICE OF HAYES & WELSH

25 
26 GARRY L. HAYES, ESQ.
27 Nevada State Bar No. 1540
28 199 North Arroyo Grande Blvd., Suite 200
Henderson, Nevada 89074
Attorneys for Mitchell Defendants

LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
189 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3739

1 APPROVED AS TO FORM AND CONTENT:

2
3  6/11/2018
4 JOHN W. MUIJE, ESQ.
5 Nevada State Bar No. 2419
6 John W. Muije & Associates
7 1840 E. Sahara Avenue, Ste. 106
8 Las Vegas, NV 89104
9 Attorneys for Plaintiffs

10 HARRY PAUL MARQUIS, ESQ.
11 Nevada State Bar No. 1252
12 Harry Paul Marquis, Chartered
13 400 South 4th Street, Ste. 300
14 Las Vegas, NV 89101
15 Attorneys for Defendants 305 Las Vegas, LLC
16 and Barnet Liberman

Order Granting Motion to Compel
Case No. A-16-740689-B

LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
189 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3739

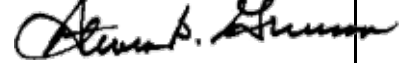
1 APPROVED AS TO FORM AND CONTENT:
2
3

4 JOHN W. MUIJE, ESQ.
5 Nevada State Bar No. 2419
6 John W. Muije & Associates
7 1840 E. Sahara Avenue, Ste. 106
8 Las Vegas, NV 89104
9 *Attorneys for Plaintiffs*

10 HARRY PAUL MARQUIS, ESQ.
11 Nevada State Bar No. 1252
12 Harry Paul Marquis, Chartered
13 400 South 4th Street, Ste. 300
14 Las Vegas, NV 89101
15 *Attorneys for Defendants 305 Las Vegas, LLC*
16 *and Barnet Liberman*

17
18
19
20
21
22
23
24
25
26
27
28

Order Granting Motion to Compel
Case No. A-16-740689-B



1 **NEOJ**
ADAM K. BULT, ESQ., Nevada Bar No. 9332
2 abult@bhfs.com
TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800
3 tchance@bhfs.com
MACKENZIE WARREN, ESQ., Nevada Bar No. 14642
4 mwarren@bhfs.com
BROWNSTEIN HYATT FARBER SCHRECK, LLP
5 100 North City Parkway, Suite 1600
Las Vegas, NV 89106-4614
6 Telephone: 702.382.2101
Facsimile: 702.382.8135

7 *Attorneys for*
8 *SUBPOENAED PARTIES*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

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

14 Plaintiffs,

15 v.

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

23 Defendants.

CASE NO.: A-16-740689-B
DEPT NO.: XV

**NOTICE OF ENTRY OF ORDER
DENYING *EX PARTE* APPLICATION
FOR AN ORDER TO SHOW CAUSE
WHY MULTIPLE RELATED
ENTITIES SHOULD NOT BE HELD
IN CONTEMPT; ORDER
COMPELLING SAID ENTITIES TO
PRODUCE DOCUMENTS
REQUESTED RESPONSIVE TO
SUBPOENA; AND AN AWARD OF
ATTORNEYS' FEES AND COSTS
WITHOUT PREJUDICE AND
DISCHARGING ORDER TO SHOW
CAUSE**

24 PLEASE TAKE NOTICE that Order Denying *Ex Parte* Application For An Order To
25 Show Cause Why Multiple Related Entities Should Not Be Held In Contempt; Order Compelling
26 Said Entities To Produce Documents Requested Responsive To Subpoena; And An Award Of
27 Attorneys' Fees And Costs Without Prejudice And Discharging Order To Show Cause was
28 entered on the 3rd day of July, 2018.

17002735.1

1 A copy of said Order is attached hereto.

2 DATED this 3rd day of July, 2018.

3 BROWNSTEIN HYATT FARBER SCHRECK, LLP

4
5 BY: /s/ Travis F. Chance

6 ADAM K. BULT, ESQ., Nevada Bar No. 9332

abult@bhfs.com

7 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

tchance@bhfs.com

8 MACKENZIE WARREN, ESQ., Nevada Bar No.
14642

mwarren@bhfs.com

9 100 North City Parkway, Suite 1600

10 Las Vegas, NV 89106-4614

11 Telephone: 702.382.2101

12 Facsimile: 702.382.8135

13 *Attorneys for*

14 *SUBPOENAED PARTIES*

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of Brownstein Hyatt Farber Schreck, LLP, and pursuant to NRCP 5(b), EDCR 8.05, Administrative Order 14-2, and NEFCR 9, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** to be submitted electronically for filing and/or service with the Eighth Judicial District Court via the Court's Electronic Filing System on July 3, 2018, to the following:

John W. Muije, Esq.
JOHN W. MUIJE & ASSOCIATES
1840 East Sahara Avenue, #106
Las Vegas, NV 89104
Telephone: 702-386-7002
Facsimile: 702-386-9135
jmuije@muijelawoffice.com

Attorneys for Plaintiffs

Harry Paul Marquis, Esq.
HARRY PAUL MARQUIS, CHTD.
400 South Fourth Street, Suite 300
Las Vegas, NV 89101
Telephone: 702-382-6700
Facsimile: 702-384-0715
harry@marquislaw.net

*Attorneys for Defendants
Barnet Liberman and 305 Las Vegas, LLV*

Garry L. Hayes, Esq.
Megan K. Mayry McHenry, Esq.
HAYES & WELSH
199 Arroyo Grande, #200
Henderson, NV 89074
Telephone: 702-509-9555
Facsimile: 702-434-3739
ghayes@lvlaw.com
mmayry@lvlaw.com

Attorneys for Defendants

/s/ Paula Kay
An employee of Brownstein Hyatt Farber
Schreck, LLP



1 **ORDR**

2 ADAM K. BULT, ESQ., Nevada Bar No. 9332

3 abult@bhfs.com

4 TRAVIS F. CHANCE, ESQ., Nevada Bar No. 13800

5 tchance@bhfs.com

6 MACKENZIE WARREN, ESQ., Nevada Bar No. 14642

7 mwarren@bhfs.com

8 BROWNSTEIN HYATT FARBER SCHRECK, LLP

9 100 North City Parkway, Suite 1600

10 Las Vegas, NV 89106-4614

11 Telephone: 702.382.2101

12 Facsimile: 702.382.8135

13 *Attorneys for Subpoenaed Parties*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 RUSSELL L. NYPE; REVENUE PLUS, LLC,
17 DOES I through X; DOE CORPORATIONS I
18 though X; and DOES PARTNERSHIPS I
19 through X,,
20
21
22
23

24 **Plaintiffs,**

25 **v.**

26 DAVID J. MITCHELL; BARNETT
27 LIBERMAN; LAS VEGAS LAND
28 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, ,
29
30
31
32

33 **Defendants.**

CASE NO.: A-16-740689-B

DEPT NO.: XV

**ORDER DENYING EX PARTE
APPLICATION FOR AN ORDER TO
SHOW CAUSE WHY MULTIPLE
RELATED ENTITIES SHOULD NOT
BE HELD IN CONTEMPT; ORDER
COMPELLING SAID ENTITIES TO
PRODUCE DOCUMENTS
REQUESTED RESPONSIVE TO
SUBPOENA; AND AN AWARD OF
ATTORNEYS' FEES AND COSTS
WITHOUT PREJUDICE AND
DISCHARGING ORDER TO SHOW
CAUSE**

34 This matter having come on for hearing on the 14th day of June, 2018 on Plaintiff's *Ex*
35 *Parte* Application for an Order to Show Cause Why Multiple Related Entities Should Not be
36 Held In Contempt, an Order Compelling Said Entities to Produce Documents Requested
37
38

1 Responsive to Subpoena, and an Award of Attorneys' Fees and Costs (the "Application") and the
2 Order to Show Cause Why Forest City TRS, LLC, Forest City Real Estate Services, LLC, Forest
3 City Commercial Management, LLC, Forest City Commercial Management, Inc., Forest City
4 Properties, LLC, QH Las Vegas, LLC, PQ Ground Lessee, LLC, FC Vegas 20, LLC, PQ Las
5 Vegas, LLC, and FC/LW Vegas, LLC (the "Subpoenaed Parties") Should not be Held in
6 Contempt for failing to comply with said Subpoenas (the "OSC"),

7 Plaintiffs appearing by and through their counsel of record John W. Muije, Esq., of the
8 law firm of John W. Muije & Associates, Defendants David J. Mitchell, Las Vegas Land
9 Partners, LLC, Meyer Property, Ltd., Zoe Property, LLC, Leah Property, LLC, Wink One, LLC,
10 Live Work, LLC, Live Work Manager, LLC, Aquarius Owner, LLC, LVLP Holdings, LLC,
11 Mitchell Holdings, LLC, Lieberman Holdings, LLC, Live Works TIC Successor, LLC, and
12 Casino Coolidge, LLC appearing by and through their counsel of record Garry L. Hayes, of the
13 law firm of Hayes & Welsh, and the Subpoenaed Parties appearing by and through their counsel
14 of record Adam K. Bult, Esq., of the law firm of Brownstein Hyatt Farber Schreck, LLP, with
15 Defendant Barnet Liberman and 305 Las Vegas, LLC not present, the Court having considered
16 the Application, the Subpoenaed Parties' Objection thereto, and the arguments of counsel at the
17 hearing, and good cause appearing, the Court finds as follows:

18 1. March 29, 2018, Plaintiffs served ten subpoenas and subpoenas *duces tecum* (the
19 "Subpoenas") upon the Subpoenaed Parties.

20 2. Those Subpoenas are broad in scope and set forth 15 categories of requested
21 documentation, most of which relates to financial and corporate data of the Subpoenaed Parties.

22 3. In preparing those Subpoenas, Plaintiffs' counsel searched the Nevada Secretary of
23 State's website for entities related to "Forest City," which returned the ten Subpoenaed Parties.

24 4. None of those Subpoenaed Parties are parties to this litigation or to the litigation
25 giving rise to Plaintiff Russell L. Nype's judgment against Defendants.

26 5. Plaintiffs also served five other entities with subpoenas similar in scope and
27 content in February of 2016.
28

1 6. On April 13, 2018, the Subpoenaed Parties submitted a written objection to
2 Plaintiffs pursuant to NRCP 45(a)(c)(2)(B) on the basis that the requests were the same in
3 substance as the 2016 subpoenas and were mere fishing expeditions.

4 7. Instead of pursuing a motion to compel as contemplated by NRCP 45(a)(c)(2)(B),
5 Plaintiffs submitted their Application to this Court, *ex parte*.

6 8. On May 11, 2018, the OSC was issued by this Court and a hearing requiring the
7 Subpoenaed Parties to appear and show cause why they should not be held in contempt was
8 initially set for June 6, 2018.

9 9. The terms of the OSC required that it and a copy of the Application be properly
10 served upon the Subpoenaed Parties no later than five days following entry of the same.

11 10. Plaintiffs e-mailed a copy of the Notice of Entry of the OSC to counsel for the
12 Subpoenaed Parties but Plaintiffs failed to include a copy of the Application.

13 11. Counsel for the Subpoenaed Parties then wrote to counsel for Plaintiffs on May 24,
14 2018, noting that the proper procedures for enforcement of the Subpoenas had been disregarded
15 in light of the objection that was lodged, that the Subpoenaed Parties had not to date been served
16 with a copy of the Application, despite the OSC's clear directive as to service, and demanding
17 withdrawal of the Application itself.

18 12. That same day, Plaintiffs' counsel e-mailed copies of the Application to counsel
19 for the Subpoenaed Parties.

20 13. On May 29, 2018, Plaintiffs' counsel wrote to counsel for the Subpoenaed Parties
21 and refused to withdraw his Application but, given the service issues, agreed to continue the
22 hearing on the OSC to allow the Subpoenaed Parties more time to file any papers in support of
23 their position.

24 14. A Stipulation and Order continuing the hearing on the OSC was subsequently
25 entered on June 5, 2018 and the hearing was continued to June 14, 2018.

26 15. On June 12, 2018, the Subpoenaed Parties filed and served an Objection to the
27 Application, requesting it be denied and that the OSC be discharged.

28 16. NRCP 5(b)(2) permits court papers, including orders, to be served on an attorney

1 via hand delivery, mail, or electronic means upon consent. Moreover, NEFCR 9(b) provides that
2 any electronic service must be accomplished by the e-file and e-serve system, in the absence of
3 consent.

4 17. Neither the Application nor the OSC were properly served within the time set by
5 the OSC because Plaintiffs merely e-mailed the OSC to counsel for the Subpoenaed Parties, who
6 had not appeared in this case and had not consented to electronic service outside of the e-serve
7 system. Moreover, the Application itself was not served at all within the time set by the OSC.

8 18. In addition, NRCP 45(e) provides that “[f]ailure by any person without adequate
9 excuse to obey a subpoena served upon that person may be deemed a contempt of the court from
10 which the subpoena issued.”

11 19. The authority to impose contempt sanctions for failing to respond to a subpoena,
12 however, is limited by NRCP 45(c)(2)(B). Where a proper written objection has been made to a
13 subpoena, “the party serving the subpoena is not entitled to inspect or copy the materials except
14 pursuant to a court order.” *Humana Inc. v. Eighth Jud. Dist. Ct.*, 110 Nev. 121, 123, 867 P.2d
15 1147, 1149 (1994) (emphasis added). By the very terms of NRCP 45(c)(2)(B), that order must be
16 obtained via motion to compel proceedings. *See id.*

17 20. Here, there is no legal basis for imposition of contempt sanctions because the
18 Subpoenaed Parties properly lodged a written objection to Plaintiffs’ Subpoenas. As a result,
19 Plaintiffs’ proper remedy was to pursue a motion to compel, upon notice to the Subpoenaed
20 Parties, with this Court.

21 21. The substance of the Subpoenas here also do not warrant the imposition of any
22 contempt sanctions.

23 22. The Subpoenas were served upon 10 Forest City-related entities at random and
24 contain 15 categories of requests for documents that are wide ranging, from financial data, to
25 operating agreements, to equity and loan transactions. The requests make no attempt to limit
26 themselves in time or to specific alleged transactions or loans.

27 23. As a result, the Subpoenas appear to be nothing more than a mere fishing
28 expedition with a hope of finding relevant documents. Such Subpoenas are improper. *See Greene*

1 v. *State*, 96 Nev. 555, 557, 612 P.2d 686, 687 (1980) (quashing subpoena where attorney was on
2 fishing expedition, only hoping to find relevant information). *See also Laxalt v. McClatchy*, 116
3 F.R.D. 455, 458 (D. Nev. 1986) (noting in dicta that documents that are only minimally relevant
4 fail to meet the threshold relevancy standard for discovery of nonparty documents).

5 BASED UPON THE FOREGOING, IT IS HEREBY ORDERED that the Subpoenaed
6 Parties have shown good cause for not complying with the Subpoenas.

7 IT IS FURTHER ORDERED that the Application is DENIED without prejudice.

8 IT IS FURTHER ORDERED that the OSC is hereby DISCHARGED.

9 IT IS FURTHER ORDERED that, if the Plaintiffs renew their Subpoenas and an
10 objection follows, they must first engage in meet and confer efforts as to the scope and
11 confidentiality of any requested documents.

12 DATED this 28th day of June, 2018

13 
14 HONORABLE JOE HARDY
15 DISTRICT COURT JUDGE

16 Submitted by:

17 
18 BROWNSTEIN HYATT FARBER SCHRECK, LLP

19 By: _____
20 ADAM K. BULT, ESQ., Bar No. 9332
21 TRAVIS F. CHANCE, ESQ., Bar No. 13800
22 MACKENZIE WARREN, ESQ., Bar No. 14642

23 *Attorneys for Subpoenaed Parties*

24 Approved as to form and content by:

25 JOHN W. MUIJE & ASSOCIATES

26 By: 
27 JOHN W. MUIJE, ESQ., Bar No. 2419

28 *Attorneys for Plaintiffs*

...

...

...

...

1 **HAYES & WELSH**

2 By: _____
3 GARRY L. HAYES, ESQ., Bar No. 1540

4 *Attorneys for Defendants David J. Mitchell, Las*
5 *Vegas Land Partners, LLC, Meyer Property, Ltd.,*
6 *Zoe Property, LLC, Leah Property, LLC, Wink One,*
7 *LLC, Live Work, LLC, Live Work Manager, LLC,*
8 *Aquarius Owner, LLC, LVLP Holdings, LLC,*
9 *Mitchell Holdings, LLC, Lieberman Holdings, LLC,*
10 *Live Works TIC Successor, LLC, and Casino*
11 *Coolidge, LLC*

9 **HARRY PAUL MARQUIS, CHTD.**

10 By:  _____
11 HARRY P. MARQUIS, ESQ., Bar No. 1252

12 *Attorneys for Defendants Barnet Lieberman and*
13 *305 Las Vegas, LLC*

1 **HAYES & WELSH**

2 By:  #12517
3 GARRY L. HAYES, ESQ., Bar No. 1540

4 *Attorneys for Defendants David J. Mitchell, Las*
5 *Vegas Land Partners, LLC, Meyer Property, Ltd.,*
6 *Zoe Property, LLC, Leah Property, LLC, Wink One,*
7 *LLC, Live Work, LLC, Live Work Manager, LLC,*
8 *Aquarius Owner, LLC, LVLP Holdings, LLC,*
9 *Mitchell Holdings, LLC, Lieberman Holdings, LLC,*
10 *Live Works TIC Successor, LLC, and Casino*
11 *Coolidge, LLC*

9 **HARRY PAUL MARQUIS, CHTD.**

10 By: _____
11 HARRY P. MARQUIS, ESQ., Bar No. 1252

12 *Attorneys for Defendants Barnet Lieberman and*
13 *305 Las Vegas, LLC*

Steven D. Grierson

**DISTRICT COURT
CLARK COUNTY, NEVADA**

RUSSELL L. NYPE, ET AL,

Plaintiff(s),

vs

DAVID J. MITCHELL, ET AL,

Defendant(s),

Case No. 16 A 740689

Dept. No. XI

Date of Hearing: 07/23/18

Time of Hearing: 9:00a.m.

AMENDED BUSINESS COURT ORDER

This BUSINESS COURT ORDER ("Order") is entered to reduce the costs of litigation, to assist the parties in resolving their disputes if possible and, if not, to reduce the costs and difficulties of discovery and trial. This Order may be amended or modified by the Court upon good cause shown, and is made subject to any Orders that have heretofore been entered herein. This case is deemed "complex" and is automatically exempt from Arbitration.

IT IS HEREBY ORDERED:

I. MANDATORY RULE 16 CONFERENCE

A. A mandatory Rule 16 conference with the Court and counsel/parties in proper person will be held on **July 23, 2018, at 9:00 a.m.**

B. The following persons are required to attend the conference;

(1) trial or lead counsel for all parties; and

(2) parties may attend. If counsel feels that the requirement of attendance of the parties is beneficial, please contact the department to schedule a conference call with the Judge for a determination. The conference call must be scheduled at least two weeks prior to the conference.

C. The purpose of this conference is to streamline discovery, expedite settlement or other appropriate disposition of the case. Counsel/parties in proper person must be prepared to discuss the following:

- 1 (1) status of 16.1 settlement discussions and a review of possible court
2 assistance;
3
4 (2) alternative dispute resolution appropriate to this case;
5 (3) simplification of issues;
6 (4) the nature and timing of all discovery;
7 (5) an estimate of the volume of documents and/or electronic information
8 likely to be the subject of discovery in the case from parties and nonparties and whether there
9 are technological means, including but not limited to production of electronic images rather than
10 paper documents and any associated protocol, that may render document discovery more
11 manageable at an acceptable cost;
12
13 (6) identify any and all document retention/destruction policies including
14 electronic data;
15
16 (7) whether the appointment of a special master or receiver is necessary
17 and/or may aid in the prompt disposition of this action;
18
19 (8) any special case management procedures appropriate to this case;
20 (9) trial setting;
21 (10) other matters as may aid in the prompt disposition of this action; and
22 (11) identify any unusual issues that may impact discovery.

23 D. Parties desiring a settlement conference before another judge shall so notify the
24 court at the setting.

25 E. The Plaintiff is responsible for serving a copy of this Order upon counsel for all
26 parties who have not formally appeared in this case as of the date of the filing of this order.

27 **II. PRETRIAL MOTIONS**

28 A. Any requests for injunctive relief must be made with notice to the opposing party
unless extraordinary circumstances exist. All parties shall advise the Court in writing if there is

1 an agreement to consolidate the trial on the merits with the preliminary injunction hearing
2 pursuant to NRCP 65(a)(2).

3 B. Any motions which should be addressed prior to trial – including motions for
4 summary judgment – shall be served, filed and scheduled for hearing no later than 45 days
5 before trial.

6
7 C. Motions in limine shall be served, filed and scheduled for hearing no later than
8 45 days before trial. Omnibus motions in limine will not be accepted. Except upon a showing
9 of unforeseen extraordinary circumstances, the Court will not shorten time for the briefing of
10 any pretrial motions or orally presented after these deadlines.

11 **III. DISCOVERY**

12 A. All discovery disputes in this matter will be handled by the District Court Judge
13 rather than the Discovery Commissioner.

14 B. A continuance of trial does not extend the deadline for completing discovery. A
15 request for an extension of the discovery deadline, if needed, must be presented in compliance
16 with EDCR 2.35.

17 C. A party objecting to a written discovery request must, in the original objection,
18 specifically detail the reasons that support the objection, and include affidavits or other evidence
19 for any factual assertions upon which an objection is based.

20 D. Documents produced in compliance with NRCP 16.1 or in response to a written
21 discovery request, must be consecutively Bates stamped or numbered and accompanied by an
22 index with a reasonably specific description of the documents.

23
24 E. Any party whether in compliance with NRCP 16.1 or in a response to a written
25 discovery request not producing all documents in its possession, custody or control, shall:

26 (1) identify any documents withheld with sufficient particularity to support a
27 Motion to Compel; and

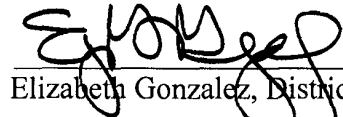
28 (2) state the basis for refusing to produce the documents(s).

1 F. If photographs are produced in compliance with NRCP 16.1 or in a response to a
2 written discovery request, the parties are instructed to include one (1) set of color prints (Color
3 laser copies of sufficient clarity are acceptable), accompanied by a front page index, location
4 depicted in the photograph (with reasonable specificity) and the date the photograph was taken.
5 If color laser copies are deposited, any party wishing to view the original photographs shall
6 make a request to do so with the other party.
7

8 When a case is settled, counsel for the plaintiff and each unrepresented plaintiff of
9 record shall notify the District Court Judge within twenty-four (24) hours of the settlement and
10 shall advise the Court of the identity of the party or parties who will prepare and present the
11 judgment, dismissal, or stipulation of dismissal, which shall be presented within twenty (20)
12 days of the notification of settlement.
13

14 Failure to comply with any provision of this Pretrial Order may result in the imposition
15 of sanctions.
16

DATED this 12th day of July, 2018.

17
18 
19 Elizabeth Gonzalez, District Court Judge

20 **Certificate of Service**

21 I hereby certify that on or about the date filed, this Order was served through Odyssey
22 File & Serve to the parties identified on the e-service list, a copy of this Order was placed in the
23 attorney's folder on the 1st Floor of the RJC or mailed to the proper party as follows:

24 Adam K Bult, Esq. (Brownstein Hyatt, et al)

25 Gary L Hayes, Esq. (Hayes & Welsh)

26 Harry Paul Marquis, Esq. (Harry Paul Marquis, Chtd)

27 John W Muije, Esq. (John W Muije & Assoc)
28


Dan Kutinac

Steven D. Grierson

DISTRICT COURT
CLARK COUNTY, NEVADA

RUSSELL L. NYPE, ET AL,

Plaintiff(s),

vs

DAVID J. MITCHELL, ET AL,

Defendant(s),

Case No. 16 A 740689

Dept. No. XI

Date of Hearing: 07/23/18

Time of Hearing: 9:00a.m.

**2nd AMENDED BUSINESS COURT SCHEDULING ORDER AND
ORDER SETTING CIVIL BENCH TRIAL AND CALENDAR CALL**

This 2nd AMENDED BUSINESS COURT SCHEDULING ORDER AND TRIAL SETTING ORDER is entered following the Mandatory Rule 16 Conference conducted on 07/23/18. Pursuant to NRCp 16.1(f) this case has been deemed complex and all discovery disputes will be resolved by this Court. This Order may be amended or modified by the Court upon good cause shown.

IT IS HEREBY ORDERED that the parties will comply with the following deadlines:

Close of Discovery is

03/01/19

Motions in Limine and Dispositive Motions are to be filed by
(*Omnibus Motions in Limine are not allowed*)

04/05/19

IT IS HEREBY ORDERED THAT:

A. The above entitled case is set to be tried to this Court on a **Five week stack** to begin,

May 28, 2019 at 1:30 p.m.

B. A calendar call will be held on **May 21, 2019 at 9:30 a.m.** Parties must bring to

Calendar Call the following:

- (1) Typed exhibit lists;
- (2) List of depositions;

CLERK OF THE COURT

RECEIVED
JUL 30 2018

- 1 (3) List of equipment needed for trial, including audiovisual equipment;¹ and
2 (4) Courtesy copies of any legal briefs on trial issues.

3 The Final Pretrial Conference will be set at the time of the Calendar Call.

4 C. Parties are to appear on **March 4, 2019 at 9:00 a.m.** for a Status Check on the
5 matter.

6 D. The Pre-Trial Memorandum must be filed no later than **May 17, 2019**, with a
7 courtesy copy delivered to Department XI. All parties, (Attorneys and parties in proper person) **MUST**
8 comply with **All REQUIREMENTS** of E.D.C.R. 2.67, 2.68 and 2.69. Counsel should include the
9 Memorandum an identification of orders on all motions in limine or motions for partial summary
10 judgment previously made, a summary of any anticipated legal issues remaining, a brief summary of
11 the opinions to be offered by any witness to be called to offer opinion testimony as well as any
12 objections to the opinion testimony.
13

14 E. All motions in limine (*Omnibus Motions in Limine are not allowed*), must be in
15 writing and filed no later than **April 5, 2019**. Orders shortening time will not be signed except in
16 **extreme emergencies**.
17

18 F. All original depositions anticipated to be used in any manner during the trial must be
19 delivered to the clerk prior to the final Pre-Trial Conference. If deposition testimony is anticipated to
20 be used in lieu of live testimony, a designation (by page/line citation) of the portions of the testimony to
21 be offered must be filed and served by facsimile or hand, two (2) judicial days prior to the final Pre-
22 Trial Conference. Any objections or counterdesignations (by page/line citation) of testimony must be
23 filed and served by facsimile or hand, one (1) judicial day prior to the final Pre-Trial Conference
24 commencement. Counsel shall advise the clerk prior to publication.
25

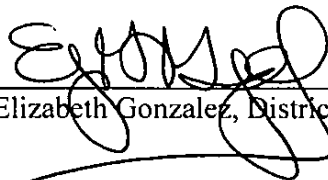
26
27
28 ¹ If counsel anticipate the need for audio visual equipment during the trial, a request must be submitted
to the District Courts AV department following the calendar call. You can reach the AV Dept at 671-
3300 or via E-Mail at CourtHelpDesk@ClarkCountyCourts.us

1 G. In accordance with EDCR 2.67, counsel shall meet, review, and discuss exhibits. All
2 exhibits must comply with EDCR 2.27. Two (2) sets must be three hole punched placed in three ring
3 binders along with the exhibit list. The sets must be delivered to the clerk prior to the final Pre-Trial
4 Conference. Any demonstrative exhibits including exemplars anticipated to be used must be disclosed
5 prior to the calendar call. Pursuant to EDCR 2.68, at the final Pre-Trial Conference, counsel shall be
6 prepared to stipulate or make specific objections to individual proposed exhibits. Unless otherwise
7 agreed to by the parties, demonstrative exhibits are marked for identification but not admitted into
8 evidence.
9

10 **Failure of the designated trial attorney or any party appearing in proper person to appear**
11 **for any court appearances or to comply with this Order shall result in any of the following: (1)**
12 **dismissal of the action (2) default judgment; (3) monetary sanctions; (4) vacation of trial date;**
13 **and/or any other appropriate remedy or sanction.**

14 Counsel is required to advise the Court immediately when the case settles or is otherwise
15 resolved prior to trial. A stipulation which terminates a case by dismissal shall also indicate whether a
16 Scheduling Order has been filed and, if a trial date has been set, the date of that trial. A copy should be
17 given to Chambers.
18

DATED this 27th day of July, 2017.

19
20 
21 Elizabeth Gonzalez, District Court Judge

22
23 **Certificate of Service**

24 I hereby certify that on or about the date filed, this Order was served through Odyssey
25 File & Serve to the parties identified on the e-service list, a copy of this Order was placed in
the attorney's folder on the 1st Floor of the RJC or mailed to the proper party as follows:

26 Gary L Hayes, Esq. (Hayes & Welsh)

27 Harry Paul Marquis, Esq. (Harry Paul Marquis, Chtd)

28 John W Muije, Esq. (John W Muije & Assoc)


Dan Kutinac

**DISTRICT COURT
CLARK COUNTY, NEVADA**

NRS Chapters 78-89

COURT MINUTES

November 07, 2018

A-16-740689-B Russell Nype, Plaintiff(s)
vs.
David Mitchell, Defendant(s)

**November 07, 2018 10:00 AM Telephonic Conference re: Stipulated Protective
Order Re: Subpoenaed "Forest City Entities"**

HEARD BY: Gonzalez, Elizabeth **COURTROOM:** RJC Courtroom 03E

COURT CLERK: April Watkins

RECORDER: Jill Hawkins

PARTIES

PRESENT: Hayes, Garry L. Attorney for Defts'
Marquis, Harry P. Attorney for Deft. 305 Las Vegas, LLC
Muije, John W. Attorney Pltfs'

JOURNAL ENTRIES

- Adam Bult, Esq. and Travis Chance, Esq. present on behalf of Forest City.

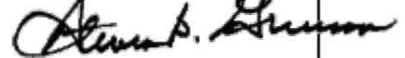
Court stated there is a concern as to paragraph 7 in stipulated protective order as to using confidential information at time of trial, depositions or in motions. Further, the Court inquired why parties want to use this procedure and not follow the Nevada Supreme Court Rule. Mr. Muije stated this proposed stipulation is the same as used in front of Judge Hardy and Mr. Hayes drafted first order. Further, paragraph 7 will assist in facilitating or getting through the documents since parties anticipate a large number of documents being designated confidential. Mr. Hayes stated he does not recall who did original draft and as to paragraph 7, counsel is open to any changes that would make it more consistent with State law. Court stated to the extent that parties plan to use them as exhibits to motions, parties need to comply with the Nevada Supreme Court Rule on sealing and redacting court records. Which means each time counsel files documents and wants to redact something from a pleading counsel quotes from, counsel has to file separate motion to file under seal. Further, Court stated it is unlikely that anything will be sealed or protective from public view. Mr. Muije requested Mr. Hayes re-work paragraph 7 to comply with Supreme Court Rule to comply with sealing records. Further, counsel is not sure how much if any of the materials will actual need or use at trial. Mr.

PRINT DATE: 11/16/2018

Page 1 of 2

Minutes Date: November 07, 2018

Hayes stated he is concerned primarily using documents prior to trial that might leak out that may relate to confidential business transactions. Mr. Bult stated this is a collection effort and does not see these documents being used at a trial and if Supreme Court Rule is complied with the Supreme Court Rule, counsel is satisfied. Upon Court's inquiry, counsel requested the proposed protective order be left side filed in the Court record. Further statement by Mr. Muije. Court stated document will be left side filed.



1 **NTSO**
2 GARRY L. HAYES, ESQ.
3 Nevada State Bar No. 1540
4 MEGAN K. MAYRY MCHENRY, ESQ.
5 Nevada State Bar No. 9119
6 **LAW OFFICE OF HAYES & WELSH**
7 199 North Arroyo Grande Blvd., Suite 200
8 Henderson, Nevada 89074
9 Phone: 702-832-5592
10 Fax: 702-434-3739
11 m.mchenry@lvlaw.com; l.finchio@nevlaw.com

12 Attorneys for Defendants
13 *DAVID J. MITCHELL; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.;*
14 *ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC;*
15 *LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC;*
16 *MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; LIVE WORKS TIC; and*
17 *SUCCESSOR, LLC*

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

20 RUSSELL L. NYPE; REVENUE PLUS, LLC;
21 DOES I-X; DOE CORPORATIONS I-X; and
22 DOE PARTNERSHIPS I-X,

23 Plaintiffs,

24 v.

25 DAVID J. MITCHELL; BARNET LIBERMAN;
26 LAS VEGAS LAND PARTNERS, LLC; MEYER
27 PROPERTY, LTD.; ZOE PROPERTY, LLC;
28 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-III; and
ROE CORPORATIONS I-III, inclusive,

Defendants.

CASE NO. A-16-740689-B
Dept. No. XI (11)

**NOTICE OF ENTRY OF STIPULATION
AND ORDER FOR EXTENSION OF
DISCOVERY AND TO CONTINUE
TRIAL (Second Request)**


PLEASE TAKE NOTICE that on the 15th day of November 2018, the Court entered a
Stipulation and Order for Extension of Discovery and to Continue Trial (Second Request) in

LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
199 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3739

the above-captioned case, a copy of which is attached hereto.

DATED this 20th day of November 2018

LAW OFFICE OF HAYES & WELSH

By: 
GARRY L. HAYES, ESQ.
Nevada State Bar No. 1540
MEGAN K. MAYRY MCHENRY, ESQ.
Nevada State Bar No. 9119
199 N. Arroyo Grande Blvd., Suite 200
Henderson, Nevada 89074
Attorney for Defendants


CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), and EDCR 8.05, I hereby certify that on the 20th day of November 2018, I served a true and correct copy of the foregoing document entitled: ***NOTICE OF ENTRY OF STIPULATION & ORDER TO EXTEND DISCOVERY AND CONTINUE TRIAL (2nd Request) (together with any attachments)*** through the Eighth Judicial District Court's electronic filing and service system to the following parties/counsel:

John W. Muije, Esq.
JOHN W. MUIJE & ASSOCIATES
jmuije@mujelawoffice.com
Attorneys for Plaintiffs

Harry Paul Marquis, Esq.
HARRY PAUL MARQUIS, CHTD.
harry@marquislaw.net
Attorneys for Defendants
305 LAS VEGAS, LLC;
BARNET LIBERMAN; and
CASINO COOLIDGE LLC

Also, SEE COURT'S ELECTRONIC SERVICE LIST

By: 
An employee of the Law Office of Hayes & Welsh

Steven D. Grierson

LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
188 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3739

1 **SAO**
2 **GARRY L. HAYES, ESQ.**
3 **Nevada State Bar No. 1540**
4 **MEGAN K. MAYRY MCHENRY, ESQ.**
5 **Nevada State Bar No. 9119**
6 **LAW OFFICE OF HAYES & WELSH**
7 **199 North Arroyo Grande Blvd., Suite 200**
8 **Henderson, Nevada 89074**
9 **Phone: 702-832-5592**
10 **Fax: 702-434-3739**
11 **m.mayry@lvlaw.com ; l.finchio@mevlaw.com**

12 **Attorneys for Defendants**
13 **DAVID J. MITCHELL; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.; ZOE**
14 **PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE**
15 **WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL**
16 **HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; LIVE WORKS TIC; and SUCCESSOR, LLC**

17 **DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

19 **RUSSELL L. NYPE; REVENUE PLUS, LLC;**
20 **DOES I-X; DOE CORPORATIONS I-X; and**
21 **DOE PARTNERSHIPS I-X,**

22 **Plaintiffs,**

23 **v.**

24 **DAVID J. MITCHELL; BARNET LIBERMAN;**
25 **LAS VEGAS LAND PARTNERS, LLC; MEYER**
26 **PROPERTY, LTD.; ZOE PROPERTY, LLC;**
27 **LEAH PROPERTY, LLC; WINK ONE, LLC;**
28 **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-III; and
ROE CORPORATIONS I-III, inclusive,

Defendants.

Case No. A-16-740689-B
Dept. No. XI

STIPULATION AND ORDER FOR
EXTENSION OF DISCOVERY AND TO
CONTINUE TRIAL (Second Request)

**STIPULATION AND ORDER FOR EXTENSION DISCOVERY
AND TO CONTINUE TRIAL (Second Request)**

Pursuant to EDCR 2.35 and this Court's Amended Business Court Order filed July 17, 2018, the undersigned respective counsel for Plaintiffs and Defendants ("Parties") hereby request that this Court allow an extension of the discovery and trial dates in this matter.

Counsel have been diligently pursuing and answering discovery on behalf of their respective clients. Significant written discovery has been answered and voluminous document production has occurred. Given the quantity of the discovery, the potential need for several experts for each side and the Parties' desire for an opportunity to engage in settlement discussions, the parties are unfortunately unable to complete discovery in the allotted time. The current discovery cutoff is March 1, 2019.

DISCOVERY COMPLETED

The following discovery has taken place:

All Parties served initial disclosures in August, 2017. Since that time, the Parties have been engaged in serving and responding to multiple sets of written discovery requests. Additionally, Plaintiffs have taken the depositions of Defendants, as well as their accountants. Plaintiffs served several subpoenas for documents on third party entities, known as the Forest City Entities. The Parties are currently circulating a Stipulated Protective Order, required by the Forest City Entities prior to their disclosure of documents. The Parties are also engaged in reviewing the thousands of pages of documents produced in the case and retaining expert witnesses to analyze the documents and prepare expert witness reports.

DISCOVERY THAT REMAINS TO BE COMPLETED

Despite diligently pursuing the substantial discovery outlined above, counsel for Plaintiffs and Defendants intend to make expert and rebuttal expert disclosures and take more depositions, including expert depositions and Plaintiffs' depositions. Review of the documents to be produced by the Forest City Entities will be necessary for the expert witnesses to prepare the reports. It may take a significant amount of the time for all Parties to review the additional documents. Additionally, the parties may propound additional sets of

1 written discovery to address issues raised by the depositions, additional documents, and expert
 2 witness reports.

3 **WHY DISCOVERY WAS NOT COMPLETED WITHIN TIME LIMITS**

4 The parties to this litigation commenced discovery in earnest within approximately one
 5 week prior to the Court's Rule 16 Conference, held on August 28, 2017. (See Parties' Notice
 6 of Compliance, filed August 22, 2017.) However, due to the voluminous nature of the
 7 discovery requests, the large number of documents involved, and the Parties' schedules,
 8 discovery is taking longer than anticipated. The parties believe that a short extension of the
 9 discovery deadlines will allow for a full ventilation of the issues and either a negotiated
 10 resolution, or resolution by means of dispositive motion or trial once the issues have been
 11 narrowed.

12 **PROPOSED SCHEDULE FOR COMPLETION OF DISCOVERY**

	<u>Current date</u>	<u>PROPOSED date</u>
13		
14 L/D to amend/serve initial expert disclosures	December 3, 2018	January 31, 2019
15 L/D to serve rebuttal expert disclosures	January 7, 2019	March 4, 2019
16 Discovery Cut-Off	March 1, 2019	May 1, 2019
17 L/D to serve Motions in Limine and Dispositive	April 5, 2019	May 31, 2019
18 Motions		

19
 20 **CONTINUANCE OF TRIAL DATE**

21 Trial in this case is currently set for May 28, 2019 on a five-week stack. The Parties
 22 agree and stipulate to a continuance of the trial date to August, 2019 or thereafter, at the
 23 Court's convenience.

24 ...
 25 ...
 26 ...
 27 ...
 28 ...

CONCLUSION

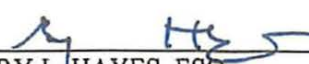
For the foregoing reasons, the parties hereto respectfully request that this Stipulation for Extension of Discovery and to Continue Trial (Second Request) be granted as noted above.


Dated: November 13th, 2018

Dated: November 12th, 2018

LAW OFFICE OF HAYES & WELSH


JOHN W. MUIJE & ASSOCIATES


GARRY L. HAYES, ESQ.
Nevada Bar No. 1540
MEGAN K. MAYRY MCHENRY, ESQ.
Nevada Bar No. 9119
199 North Arroyo Grande Blvd., Suite 200
Henderson, Nevada 89074
Attorneys for Mitchell Defendants


JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
1840 E. Sahara Ave., Ste. 106
Las Vegas, Nevada 89104
Attorneys for Plaintiffs

Dated: November 13th, 2018

HARRY PAUL MARQUIS, CHARTERED


HARRY PAUL MARQUIS, ESQ.
Nevada Bar No. 1252
400 South 4th Street, Ste. 300
Las Vegas, Nevada 89101
*Attorneys for Defendants 305 Las Vegas, LLC,
Casino Coolidge LLC and Barnet Liberman*

ORDER

Upon review of the Stipulation of the parties to extend the discovery dates and trial,
IT IS HEREBY ORDERED that the proposed dates to extend discovery are
approved, and an Amended Business Court Scheduling Order and Order Setting Civil Bench
Trial & Calendar Call shall be issued.

DATED: November 14, 2018



DISTRICT COURT JUDGE
Case No. A-16-740689-B

LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
199 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3739

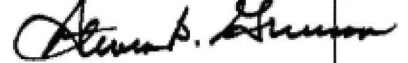
Nype, etc. v. Mitchell, et al.
Case No. A-16-740689-B

Stipulation & Order to Extend Discovery and Continue Trial

Respectfully submitted by:


GARRY L. HAYES, ESQ.
Nevada Bar No. 1540
MEGAN K. MAYRY MCHENRY, ESQ.
Nevada State Bar No. 9119
LAW OFFICE OF HAYES & WELSH
199 N. Arroyo Grande Blvd., Ste. 200
Henderson, NV 89074

Attorneys for Defendants
*DAVID J. MITCHELL; 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; LIVE WORKS TIC; and SUCCESSOR, LLC*



1 **NTSO**
2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No. 2419
5 1840 East Sahara Avenue, #106
6 Las Vegas, Nevada 89104
7 Telephone: 702-386-7002
8 Facsimile: 702- 386-9135
9 E-Mail: jmuije@muijelawoffice.com
10 *Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

CASE NO: A-16-740689-B

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; MITCHELL
19 HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC;
20 305 LAS VEGAS, LLC; LIVE WORKS TIC
21 SUCCESSOR, LLC; CASINO COOLIDGE LLC;
22 DOES I through III, and ROE CORPORATIONS I
23 through III, inclusive,

Entity Defendants.

NOTICE OF ENTRY OF STIPULATION AND ORDER FOR
PARTIAL DISMISSAL WITHOUT PREJUDICE AGAINST
LIBERMAN HOLDINGS, LLC, ONLY

23 TO: ENTITY DEFENDANTS

24 TO: GARRY L. HAYES, ESQ., and MEGAN K. MAYRY McHENRY, ESQ., of the Law Offices of
25 HAYES & WELSH, their Attorneys of Record

26 TO: DEFENDANTS, 305 LAS VEGAS, LLC, CASINO COOLIDGE LLC AND BARNET LIBERMAN

27 TO: HARRY PAUL MARQUIS, ESQ., of HARRY PAUL MARQUIS, CHTD., their Attorneys of
28 Record

....

1
2 PLEASE TAKE NOTICE that the STIPULATION AND ORDER FOR PARTIAL
3 DISMISSAL WITHOUT PREJUDICE AGAINST LIBERMAN HOLDINGS, LLC, ONLY
4 was entered with the Court on the 29th day of November, 2018, a copy of which is attached hereto
5 as Exhibit "1".

6 DATED this 29th day of November, 2018.

7
8 JOHN W. MUIJE & ASSOCIATES

9
10 By: 

11 JOHN W. MUIJE, ESQ.
12 Nevada Bar No. 2419
13 1840 East Sahara Avenue, #106
14 Las Vegas, Nevada 89104
15 Telephone: 702-386-7002
16 Facsimile: 702- 386-9135
17 E-Mail: jmuje@muijelawoffice.com
18 *Attorneys for Plaintiffs*

16

17

18

19

20

21

22

23

24

25

26

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of JOHN W. MUIJE & ASSOCIATES, and that on the 29th day of November, 2018, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF STIPULATION AND ORDER FOR PARTIAL DISMISSAL WITHOUT PREJUDICE AGAINST LIBERMAN HOLDINGS, LLC, ONLY**, 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 e-mailing a copy of the same to the parties listed below; and

Garry L. Hayes, Esq.
Megan K. Mayry McHenry, Esq.
HAYES & WELSH
199 No. Arroyo Grande Blvd., #200
Henderson, Nevada 89074
Telephone: (702) 509-9555
Facsimile: (702) 434-3739
E-Mail: ghayes@lvlaw.com
Attorneys for Entity Defendants

Harry Paul Marquis, Esq.
HARRY PAUL MARQUIS, CHTD.
400 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
Telephone: (702) 382-6700
Facsimile: (702) 384-0715
E-Mail: harry@marquislaw.net
*Attorneys for Defendants 305 Las Vegas, LLC,
Casino Coolidge LLC and Barnet Liberman*


An employee of JOHN W. MUIJE & ASSOCIATES

EXHIBIT “1”

ORIGINAL

Electronically Filed
11/29/2018 10:14 AM
Steven D. Grierson
CLERK OF THE COURT

Steven D. Grierson

1 **SODWOP**

2 **JOHN W. MUIJE & ASSOCIATES**

3 **JOHN W. MUIJE, ESQ.**

4 Nevada Bar No. 2419

5 1840 E. Sahara Avenue, Suite 106

6 Las Vegas, Nevada 89104

Telephone No: (702) 386-7002

Facsimile No: (702) 386-9135

Email: jmuije@muijelawoffice.com

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,

CASE NO: A-16-740689-B

vs.

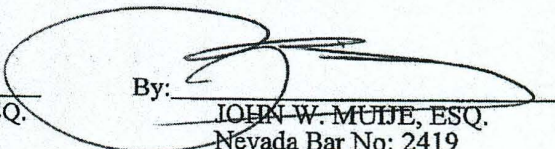

DEPT NO: XI

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,

Entity Defendants.

**STIPULATION AND ORDER FOR PARTIAL DISMISSAL WITHOUT
PREJUDICE AGAINST LIBERMAN HOLDINGS, LLC, ONLY**

IT IS HEREBY STIPULATED by and between JOHN W. MUIJE, ESQ., of the Law Firm
of JOHN W. MUIJE & ASSOCIATES, Attorney for Plaintiffs, and MEGAN K. MAYRY
McHENRY, ESQ., of the Law Firm of HAYES & WELSH, Attorneys for the Mitchell Defendants,
and HARRY PAUL MARQUIS, ESQ., of the Law Offices of HARRY PAUL MARQUIS, CHTD.,
Attorneys for the Liberman Defendants, that **LIBERMAN HOLDINGS, LLC** be dismissed without

1 prejudice, each of the parties to pay its own costs and attorneys' fees herein incurred.
2 Scheduling Orders have been issued and trial is set to commence in August 2019, or at a date
3 convenient to the Court thereafter.
4 DATED this ____ day of November, 2018. DATED this 26th day of November, 2018
5 LAW OFFICES OF HAYES & WELSH JOHN W. MUIJE & ASSOCIATES
6
7 By: _____ By:  _____
8 MEGAN K. MAYRY McHENRY, ESQ. JOHN W. MUIJE, ESQ.
9 Nevada Bar No: 9119 Nevada Bar No: 2419
10 199 N. Arroyo Grande Blvd. #200 1840 E. Sahara Avenue, Suite 106
Henderson, NV 89074 Las Vegas, Nevada 89104
Attorney for Mitchell Defendants Attorney for Plaintiffs
11 DATED this 26th day of November, 2018
12 HARRY PAUL MARQUIS, CHTD
13
14 By:  _____
15 HARRY PAUL MARQUIS, ESQ.
16 Nevada Bar No: 1252
400 South Fourth Street, Suite 300
17 Las Vegas, Nevada 89101
Attorneys for Barnet Liberman, 305
Las Vegas, LLC and Casino Coolidge, LLC
18
19
20
21
22
23
24
25
26
27
28 ...

1 prejudice, each of the parties to pay its own costs and attorneys' fees herein incurred.

2 Scheduling Orders have been issued and trial is set to commence in August 2019, or at a date
3 convenient to the Court thereafter.

4 DATED this 26th day of November, 2018.

DATED this 26th day of November, 2018

5 LAW OFFICES OF HAYES & WELSH

JOHN W. MUIJE & ASSOCIATES

6
7 By: Megan K. Mayry McHenry #3720

MEGAN K. MAYRY McHENRY, ESQ.
Nevada Bar No: 9119
199 N. Arroyo Grande Blvd. #200
Henderson, NV 89074
Attorney for Mitchell Defendants

By: John W. Muje

JOHN W. MUIJE, ESQ.
Nevada Bar No: 2419
1840 E. Sahara Avenue, Suite 106
Las Vegas, Nevada 89104
Attorney for Plaintiffs

11 DATED this ____ day of November, 2018

12 HARRY PAUL MARQUIS, CHTD

13
14 By: _____

HARRY PAUL MARQUIS, ESQ.
Nevada Bar No: 1252
400 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
Attorneys for Barnet Liberman, 305
Las Vegas, LLC and Casino Coolidge, LLC

15
16
17
18
19

20

21

22

23

24

25

26

27

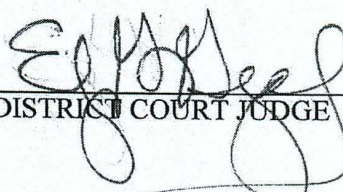
28 ...

ORDER

Pursuant to the above Stipulation for Dismissal without prejudice, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that **LIBERMAN HOLDINGS, LLC, ONLY** be and the same is hereby dismissed without prejudice, each of the parties to pay its own costs and attorneys' fees herein incurred.

DATED this 28 day of November, 2018.

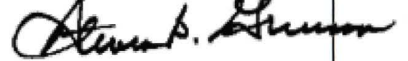

DISTRICT COURT JUDGE

Submitted by:

JOHN W. MUIJE & ASSOCIATES

By: 
JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
1840 E. Sahara Avenue, Suite 106
Las Vegas, Nevada 89104
Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
Email: jmuje@mujelawoffice.com
Attorneys for Plaintiffs

R:\J Files\Nype,J3792H\2016--05 - Alter Ego SUIT\Pleadings\sao.dismiss.liberman holdings.llc.wpd



1 **NEOJ**
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

9 RUSSELL L. NYPE AND REVENUS PLUS,
10 LLC

11 Plaintiffs,

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,

19 Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

DATE: May 15, 2019

TIME: 10:30 a.m.

22 **NOTICE OF ENTRY OF ORDER COMPELLING DISCOVERY, AWARDING**
23 **SANCTIONS, AND BRIEFLY EXTENDING DISCOVERY FOR LIMITED**
24 **PURPOSES AND CONTINUING THE TRIAL DATE**

24 TO: ELLIOT S. BLUT, ESQ., of **BLUT LAW GROUP, P.C.**, Attorneys for Defendants
25 BARNET LIBERMAN AND CASINO COOLIDGE, LLC

26 TO: Brian B. Boschee, Esq., of the Law Offices of **HOLLEY DRIGGS WALCH FINE**
27 **PUZEY STEIN & THOMPSON**, Attorneys for Defendant 305 Las Vegas, LLCTO:

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

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: Jmuije@muijelawoffice.com

1 PLEASE TAKE NOTICE that the ORDER COMPELLING DISCOVERY,
2 AWARDING SANCTIONS, AND BRIEFLY EXTENDING DISCOVERY FOR LIMITED
3 PURPOSES AND CONTINUING THE TRIAL DATE, was entered with the Court on the 30th
4 day of May, 2019, a cop of which is attached hereto as Exhibit "1".

5
6 DATED this 30th day of May, 2019.

7 JOHN W. MUIJE & ASSOCIATES

8
9
10 By: _____

11 JOHN W. MUIJE, ESQ.

12 Nevada Bar No: 2419

13 1840 E. Sahara Ave #106

14 Las Vegas, NV 89104

15 Phone No: (702) 386-7002

16 Fax No: (702) 386-9135

17 Email: Jmuije@muijelawoffice.com

18 *Attorneys for Plaintiffs*

19
20
21
22
23
24
25
26
27
28
JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: Jmuije@muijelawoffice.com

CERTIFICATE OF MAILING

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 30th day of May, 2019, I caused the foregoing document, **NOTICE OF ENTRY OF ORDER COMPELLING DISCOVERY, AWARDING SANCTIONS, AND BRIEFLY EXTENDING DISCOVERY FOR LIMITED PURPOSES AND CONTINUING THE TRIAL DATE**, 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
Telephone: (702) 384-1050
Facsimile: (702) 384-8565
E-Mail: eblut@blutlaw.com
Attorneys for Defendants
Barnet Liberman and Casino Coolidge,
LLC

Brian W. Boschee, Esq.
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
E-Mail: bboschee@nevadafirm.com
Attorneys for Defendant
305 Las Vegas, 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

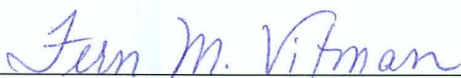

An Employee of John W. Muije & Associates

EXHIBIT “1”



1 **ORDER**

2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No: 2419
5 1840 East Sahara Avenue, Suite 106
6 Las Vegas, NV 89104
7 Telephone No: (702) 386-7002
8 Facsimile No: (702) 386-9135
9 Email: [Jmuije@mujelawoffice.com](mailto:jmuije@mujelawoffice.com)
10 *Attorneys for Plaintiffs*

7 DISTRICT COURT
8 CLARK COUNTY, NEVADA

9 RUSSELL L. NYPE; REVENUE PLUS, LLC,
10 Does I through X; DOES I through X, DOE
11 CORPORATIONS I through X; and DOES
12 PARTNERSHIPS I through X;

CASE NO: A-16-740689-B

DEPT NO: XI

12 vs.

Plaintiffs.

DATE: May 15, 2019

TIME: 10:30- a.m.

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

Mitchell Defendants.

23 **ORDER COMPELLING DISCOVERY, AWARDING SANCTIONS,**

24 **AND**

25 **BRIEFLY EXTENDING DISCOVERY FOR LIMITED**
26 **PURPOSES-**

27 **AND**

28 **CONTINUING THE TRIAL DATE**

This matter came on for hearing on May 15, 2019 at the hour of 10:30 a.m., Plaintiffs represented by John W. Muije, Esq., of the Law Firm of JOHN W. MUIJE & ASSOCIATES, Defendant 305 Las Vegas, LLC represented by Brian W. Boschee, Esq., of the Firm of HOLLEY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON, Defendants Barnet Liberman and Casino Coolidge, LLC represented by Elliot S. Blut, Esq., of BLUT LAW GROUP, P.C., and 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; LIBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE OWRKS TIC SUCCESSOR, LIVE WORK, LLC, appearing by and through their attorney of record, JAMES EDWARDS, ESQ., in association with the Firm of COHEN, JOHNSON, PARKER & EDWARDS, and CPA Michael Rosten appearing in Proper Person, and the Court having reviewed and considered the pleadings papers and documents on file herein, and the arguments and representations of counsel and Mr. Rosten, and good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Court finds that Plaintiffs' Motion to Compel Defendant's Production of Documents on Order Shortening Time as filed on April 22, 2019, was originally convened on May 6, 2019, but was continued for nine (9) days due to the retention of newly appearing counsel for the Mitchell Defendants, James Edwards in association with the firm of Cohen Johnson Parker & Edwards et al.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court finds that there has been no written opposition to Plaintiff's Motion;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court further finds, based upon the representations of counsel for Plaintiff and counsel for 305 Las Vegas,

1 LLC, that 305 Las Vegas, LLC has made a substantial and good faith effort, producing well over
2 10,000 pages of new materials between the date of the filing of the motion and the time and date
3 noted above;

4
5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, however, that there
6 remain unresolved discovery issues as more fully explained in Plaintiff's Motion of April 22,
7 2019, and that all defendants are expressly ordered to make an expeditious and diligent search for
8 all of the additional documentation and information noted and sought by Plaintiffs, insofar as the
9 Court hereby expressly **GRANTS** and approves Plaintiff's Motion to Compel and further awards
10 sanctions, as noted hereinafter;

11
12 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court awards
13 Plaintiffs as against all defendants, jointly and severally, the sum of \$1,500.00 at this time,
14 without prejudice to further application for fees and costs, and that defendants shall pay said sum
15 to the Trust Account of John W. Muje & Associates 30 days from the date of this Order.

16
17 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** in light of the above and
18 foregoing, that the presently scheduled depositions of CPA's Rosten and Taylor be vacated at the
19 present time, subject to resetting at a mutually convenient time and date subsequent to May 30,
20 2019;

21
22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court
23 recognizes that Plaintiff have numerous subpoenas, noticed depositions, and a pending motion to
24 compel against the New Jersey CPA, Sam Spitz, already in progress, and that a brief extension
25 of time would benefit the parties so as to allow those already promulgated and authorized
26 discovery efforts by the Plaintiffs to come to fruition;

27
28 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that in granting
Plaintiff's Motion to Compel, at least a modest amount of time must be afforded to the

1 defendants to adequately search, research, and carefully examine their physical and electronic
2 files to assure that all relevant discoverable information and documentation, including but not
3 limited to the information already requested by the Plaintiffs, may be located, produced, and
4 disclosed, and the Court's hereby expressly authorizes three weeks from the date of the hearing,
5 i.e. through and including Wednesday, June 5, 2019, for all defendants to fully and completely
6 comply with this Order compelling discovery and requiring them to produce the sought after
7 emails and financial data, including full responses to Requests for Production 16, 17, 19 and 23,
8 and the rest of Plaintiff's specific discovery requests to defendants, including all emails and the
9 backup and supporting financial data, accounting back-up, and financial details, schedules and
10 reports sought by Plaintiffs.
11

12 **IT IS FURTHER ORDERD, ADJUDGED AND DECREED** that on or before June 5,
13 2019, David Mitchell, shall submit sworn affidavits to Plaintiff's counsel and file the same with
14 the Court, stating under oath, that they and each defendant entity have fully and completely
15 searched all available files and document repositories, both physical and electronic, and that such
16 sworn affidavits shall further set forth specifically the efforts undertaken and what was done to
17 assure full compliance with said defendant's discovery obligations. The said affidavit shall also
18 state under oath, (after describing the research, investigation and search methods used), that said
19 defendants have fully and completely complied with all of their discovery obligations, and
20 produced all relevant and available documentation. As to any documentation not found or
21 produced, the affidavits shall explain in specific detail why such documentation, (e.g. financial
22 and accounting work papers spanning 2007 through 2012), has not been produced;
23

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that once the defendants
25 have satisfied this Order and their discovery obligations hereunder, on or before June 5, 2019,
26 that Plaintiffs and their designated expert witness, Mark Rich, CPA, shall have three weeks
27
28

1 thereafter, through and including June 26, 2019, within which to supplement Plaintiff's
2 previously disclosed expert witness report, in light of the many thousands of pages of newly
3 discovered and disclosed documentation first available to the Plaintiffs subsequent to the prior
4 depositions of Messrs Liberman and Mitchell, which occurred in October, 2018;

5
6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, if any residual
7 discovery dispute continues to exist after the Defendants' deadline of June 5, 2019 as set forth
8 above, Plaintiffs' June 26th deadline to supplement their expert's report will be tolled while the
9 Court and parties work out the issue;

10
11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, given that the deadline
12 for expert witness reports and rebuttal witness reports has already passed, that Defendants shall
13 not be authorized to supplement their prior expert witness report, rebut Mr. Rich's contemplated
14 supplement or designate any different expert, particularly insofar as the current authorization for
15 Plaintiffs to supplement their expert witness report derives specifically, directly, and proximately
16 from discovery defalcations on the part of the defendants;

17
18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that subsequent to the
19 aforesaid June 26, 2019, deadline for Plaintiffs' expert to supplement his expert witness report,
20 the Court will authorize four weeks (through and including July 24, 2019) for the parties to
21 conduct the depositions of already identified pertinent witnesses, limited to the following:

- 22
23
24
25
26
27
28
1. David Mitchell;
 2. Barnet Liberman;
 3. Russell Nype;
 4. Michael Rosten, CPA;
 5. Scott W. Taylor, CPA;
 6. Mark Rich, CPA
 7. An appropriate 30(b)(6) deposition of Defendant Wink One, LLC, as previously noticed (with no appearance or attendance by the defendant or any Representative of said defendant);
 8. An appropriate 30(b)(6) deposition of Live Work, LLC;
 9. The deposition of Defendants' New Jersey CPA, Sam Spitz

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: jmuje@mujeawoffice.com

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs
2
3 previously served subpoenas and records depositions, currently in progress, including the
4 proceedings incident to Plaintiff's New Jersey Motion to Compel versus CPA Spitz, may be seen
5 through to fruition during this briefly extended discovery period;

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, however, absent
7
8 specific Order of the Court, that no new or additional depositions or discovery efforts shall be
9 undertaken.

10 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court will issue
11 a separate Scheduling Order setting forth the new dispositive motion deadline, estimated to be on
12 or about August 23, 2019, and further setting appropriate trial scheduling dates and procedures, in
13 contemplation of the trial of this matter occurring during the Court's October 14th calendar stack;

14 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** in light of the above and
15
16 foregoing, that the presently scheduled deposition of CPA's Rosten and Taylor be vacated at the
17 present time, subject to resetting at a mutually convenient time and date subsequent to May 30,
18 2019;

19
20 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, in light of the Court's
21 decision and disposition of Plaintiff's Motion to Compel, and the brief limited extension of both
22 discovery and a trial date which result in part therefrom, that the hearing on the Mitchell
23 Defendants Motion to Extend Discovery and Continue Trial presently set for June 17, 2019 be
24 vacated as moot.

25
26 DATED this 30th day of May, 2019.

27
28 
DISTRICT COURT JUDGE

1 Submitted by:

2 JOHN W. MUIJE & ASSOCIATES

3
4 By: _____

5 John W. Muije, Esq.
6 Nevada Bar No: 2419
7 1840 East Sahara Avenue, Suite 106
8 Las Vegas, NV 89104
9 Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
Email: jmuije@muijelawoffice.com
Attorneys for Plaintiff

10 DATED this ____ day of May, 2019

11 APPROVED AS TO FORM AND
12 AND CONTENT

13 **BLUT LAW GROUP, P.C.**

14
15 By: _____

16 /s/ Elliot S. Blut

17 Elliot S. Blut, Esq.
18 Nevada Bar No: 006570
19 300 So. Fourth Street, Ste 701
20 Las Vegas, Nevada 89101
21 E-Mail: eblut@blutlaw.com
Attorneys for Defendants
Barnet Liberman and Casino
Coolidge, LLC

22 DATED this ____ day of May, 2019

DATED this ____ day of May, 2019

APPROVED AS TO FORM AND
CONTENT

**HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON**

By: _____

Brian B. Boschee, Esq.
Nevada Bar No. 007612
400 So. 4th Street, Third Floor
Las Vegas, Nevada 89101
E-Mail: bboschee@nevadafirm.com
Attorneys for Defendant
305 Las Vegas, LLC

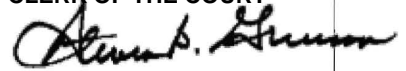
JOHN W. MUJJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: jmuje@mujjelawoffice.com

1 APPROVED AS TO FORM AND
2 CONTENT

3 **COHEN JOHNSON PARKE**
4 **& EDWARDS**

5 By: _____

6 H. Stan Johnson, Esq
7 Nevada Bar No: 000265
8 James L. Edwards, Esq
9 Nevada Bar No. 004256
10 375 E. Warm Springs Rd., #104
11 Las Vegas, Nevada 89119
12 *Attorneys for Mitchell Defendants*
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



1 **MSJ**
2 BRIAN W. BOSCHKEE, ESQ.
3 Nevada Bar No. 7612
4 E-mail: bboschke@nevadafirm.com
5 HOLLEY DRIGGS WALCH
6 FINE PUZEY STEIN & THOMPSON
7 400 South Fourth Street, Third Floor
8 Las Vegas, Nevada 89101
9 Telephone: 702/791-0308
10 Facsimile: 702/791-1912

11 *Attorneys for Defendant 305 Las Vegas, LLC*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

19 Plaintiffs,

20 v.

21 DAVID J. MITCHELL; BARNET LIBERMAN;
22 LAS VEGAS LAND PARTNERS, LLC;
23 MEYER PROPERTY, LTD.; ZOE PROPERTY,
24 LLC; LEAH PROPERTY, LLC; WINK ONE,
25 LLC; LNE WORK, LLC; LNE WORK
26 MANAGER, LLC; AQUARIUS OWNER, LLC;
27 L VLP HOLDINGS, LLC; MITCHELL
28 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,

Entity Defendants.

Case No.: A-16-740689-C
Dept. No.: XI

MOTION FOR SUMMARY JUDGMENT

HEARING REQUESTED

HEARING DATE:
HEARING TIME:


Defendant 305 Las Vegas, LLC. ("305 Las Vegas"), by and through its attorneys, the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson, hereby moves, pursuant to NRCP 56 for summary judgment against Plaintiff. Discovery has closed, and Plaintiff has no evidence supporting an of his claims against 305 Las Vegas, and specifically has no evidence that 305 Las Vegas is the alter ego of any of the other defendants in this case, nor does Plaintiff have any evidence of any fraudulent transfer of any assets from Las Vegas Land Partners to 305 Las Vegas.

///

Defendant's Motion for Summary Judgment (the "Motion") is made and based on the papers and pleadings on file herein, the Declaration of Winthrop Chamberlin attached hereto as Exhibit A, the following Memorandum of Points and Authorities, any additional exhibits attached hereto, and any argument at hearing on this matter.

Dated this 23rd day of August, 2019.

**HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON**


BRIAN W. BOSCH, ESQ.
Nevada Bar No. 7612
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Attorney for Defendant 305 Las Vegas, LLC


NOTICE OF MOTION

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

YOU, AND EACH OF YOU, will please take notice that the undersigned will bring on for hearing **DEFENDANT 305 LAS VEGAS LLC'S MOTION FOR SUMMARY JUDGMENT** on the _____ day of _____, 2019, at _____ a.m. of said day in Department XI of the above-entitled Court.

Dated this 23rd day of August, 2019.

**HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON**


BRIAN W. BOSCH, ESQ.
Nevada Bar No. 7612
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Attorney for Defendant 305 Las Vegas, LLC

MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

This action essentially boils down to the Plaintiff attempting to execute upon his judgment against Las Vegas Land Partners (“LVLP”) by naming any entity and/or individual who has ever had anything to do with LVLP, or any common members, in an alter ego action in an attempt to find assets to satisfy his other judgment. Without passing judgment on Plaintiff’s claims as to the other defendants, Plaintiff simply swung and missed in naming 305 Las Vegas as a defendant in this action. Plaintiff probably has suspicions given that one of the members of 305 Las Vegas is also a member of LVLP, but the discovery has produced no evidence that 305 Las Vegas is controlled or managed by any common member of LVLP, no evidence of any comingling of funds or unity of interest between 305 Las Vegas and LVLP, and no evidence of any type of fraudulent transfer between LVLP and 305 Las Vegas.

Plaintiff hangs his claim on his expert report that details that 305 Las Vegas, an entity that is wholly owned by another entity which has a majority membership interest owned by parties who have nothing to do with this dispute, owes another entity, which somehow may involve Defendant Mitchell, some money and that 305 Las Vegas has failed to collect rent that the Plaintiff somehow believes he has a claim to. As this Court has repeatedly noted in this case, 305 Las Vegas is a sole-purpose entity that owns a parking lot. Plaintiff has no claim to any assets of 305 Las Vegas, nor have any assets that rightfully belong to Plaintiff been transferred to 305 Las Vegas. The transactions by which 305 Las Vegas has proceeded have all been properly documented and, in most instances, involve third-party lenders who have nothing to do with anything in this case.

Simply stated, whatever Plaintiff believes his alter ego claims are as to Mitchell and/or Liberman, there is no justifiable claim against 305 Las Vegas that can proceed any further in this litigation. As such, summary judgment is appropriate as to 305 Las Vegas and Plaintiff’s claims against this entity should be dismissed with prejudice.

II. FACTUAL BACKGROUND

Plaintiff alleges at the outset of the Amended Complaint that, “305 Las Vegas, LLC was originally owned, operated and managed by Liberman, Mitchell and/or LVLP.” See Amended

Complaint, ¶39. Right out of the gate, this allegation is simply false and not supported by the evidence in this case. 305 Las Vegas was created in April of 2007 for the express purpose of purchasing property at or around 300 East Charleston. The sole member of 305 Las Vegas is 305 Second Avenue Associates, a New York limited partnership created to purchase real property in New York City. The general partners of 305 Second Avenue Associates are Defendant Liberman and Winthrop Chamberlin.

Plaintiff argues that Mr. Chamberlin acquired his partnership interest from Defendant Mitchell in 2012, See Amended Complaint, ¶42, but a cursory review of the documentation disclosed in this case, and submitted with Plaintiff's expert declaration and report, shows that Mr. Chamberlain was a general partner of 305 Second Avenue Associates in May of 2007, when 305 Las Vegas purchased the property on East Charleston. See e.g. Deed of Trust Note between 305 Las Vegas and Livework, LLC, attached hereto as Exhibit "B".

Additionally, the operating agreement of 305 Las Vegas is very clear that while Mr. Chamberlain and Mr. Liberman are the general partners of 305 Second Avenue Associates, they are not the only partners. The ownership of 305 Second Avenue Associates also includes numerous limited partners. Thus, the beneficial ownership of 305 Las Vegas consists of Mr. Liberman, Mr. Chamberlin and the limited partners.

305 Las Vegas has operated, since its creation in 2007, for the purpose it was created for. The entity has borrowed money, purchased property, entered into a lease, filed tax returns, etc. 305 Las Vegas has never received any type of payment from LVLP, nor has 305 Las Vegas ever obtained any asset that could have belonged to LVLP. 305 Las Vegas has never shared a bank account with LVLP, nor has it ever comingled funds with LVLP. The ONLY basis for Plaintiff's alter ego claim, which is the only claim in the Amended Complaint pending against 305 Las Vegas, is that Defendant Liberman is a minority, general partner of the entity that is the sole member of 305 Las Vegas. That's it. The claim completely ignores the fact that that 305 Second Avenue Associates has one other general partner and several minority partners.

So, in the absence of any actual evidence that 305 Las Vegas is the alter ego of LVLP, or any of the other Defendants, or that, despite no claim pending against 305 Vegas on these theories,

305 Vegas received a fraudulent transfer or is somehow involved in a civil conspiracy with LVLV to deny Plaintiff judgment rights, 305 Las Vegas must be dismissed from this case at this time.

As to the facts alleged above, see Declaration of Winthrop Chamberlin, attached hereto as Exhibit "A" and incorporated by reference.

III. LEGAL ARGUMENT

a. Legal Standard

A party may move for summary judgment on "all or any part" of any claim, counterclaim, or declaratory relief. *See* NRCP 56(a). Summary judgment is appropriate under NRCP 56 and "shall be rendered forthwith" when the pleadings and other evidence properly before the court demonstrate that no genuine issue as to any material fact exists and the moving party is entitled to judgment as a matter of law. *Wood v. Safeway, Inc.*, 121 P.3d 1026, 1029, 1031 (Nev. 2005) (*quoting* NRCP 56(c)); *Tucker v. Action Equip. & Scaffold Co.*, 113 Nev. 1349, 1353, 951 P.2d 1027, 1029 (1997). In *Wood*, the Nevada Supreme Court abrogated the "slightest doubt" standard and adopted the standard as employed by the United States Supreme Court in *Celotex Corp v. Catrett*, 477 U.S. 317 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986) and *Matsushita Elec. Indus. Co. v. Zenith Radio*, 475 U.S. 574 (1986).

In opposing summary judgment, the non-moving party cannot "simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment in the moving party's favor. *Wood*, 121 P.3d at 1031 (*quoting Matsushita*, 475 U.S. at 586). The non-moving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." *Wood*, 121 P.3d at 1031 (*quoting Bulbman, Inc. v. Nevada Bell*, 109 Nev. 105, 110, 825 P.2d 588, 591 (1992)). The non-moving party is "not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture." *Wood*, 121 P.3d at 1031 (*quoting Collins v. Union Fed. Sav. & Loan*, 99 Nev. 284, 302, 662 P.2d 610, 621 (1983)).

In this case, the only claim in the Amended Complaint actually pending against 305 Las Vegas is alter ego. However, anticipating that Plaintiff is somehow going to try to shoehorn 305 into the fraudulent transfer and civil conspiracy claims, 305 Las Vegas will also address why

summary judgment is appropriate on those claims.

b. Plaintiff has no evidence that 305 Las Vegas is the alter ego of LVLP or any other Defendant

“[T]he essence of the alter ego doctrine is to do justice whenever it appears that the protections provided by the corporate form are being abused.” *LFC Mktg. Grp., Inc. v. Loomis*, 116 Nev. 896, 903, 8 P.3d 841, 845-46 (2000) (internal quotation marks omitted). “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) (citing *McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 282, 317 P.2d 957, 959 (1957)). Although “[t]hese factors may indicate the existence of an alter ego relationship,” they are not conclusive and whether the corporate fiction should be disregarded depends on the circumstances of each case. *Id.* at 601–02, 747 P.2d at 887 (citations omitted).

Here, there can really be no dispute that 305 Las Vegas and LVLP are not alter egos, as alleged in the Amended Complaint. LVLP has no interest in 305 Las Vegas, nor does it have any interest in 305 Second Avenue Associates, the sole member of 305 Las Vegas. The only connection between the two entities is that Defendant Liberman is a general partner of the member of 305 Las Vegas and was (maybe still is) a member of LVLP. However, Plaintiff has no evidence of any influence of 305 by LVLP, any unity of interest or ownership that would make one entity inseparable from the other, or that 305 Las Vegas is some type of corporate fiction. 305 Las Vegas is a single-purpose entity created by a limited partnership to purchase a parcel of land. The limited partnership has more partners than just Liberman. Plaintiff alleges plenty of overlap, but the evidence simply does not support that theory. So, this claim, as alleged in the Amended Complaint, does not meet the elements for alter ego and should be dismissed.

Even if the Court took a VERY liberal read of this claim to say that Defendant Liberman, not LVLP, is the alter ego of 305 Las Vegas, the evidence does not support that theory either.

1 Whatever Liberman's position of influence was or is with LVLP, 305 Las Vegas is a completely
2 different entity and has a completely different makeup. The only member of 305 Las Vegas is a
3 limited partnership, and while one of the general partners of 305 Second Avenue Associates is
4 Liberman, the other is a man who has nothing to do with LVLP, and then there are class B and C
5 limited partners who have no involvement with LVLP. There is no evidence that Liberman has
6 any control over 305 Las Vegas, and there is no evidence that Liberman has ever managed 305
7 Las Vegas. There is no evidence that Liberman co-mingles funds with 305 Las Vegas, no evidence
8 that Liberman shares a "unity of interest" with 305 Las Vegas, nor is there evidence that 305 Las
9 Vegas is simply a corporate fiction. To the contrary, 305 Las Vegas has borrowed money from
10 reputable banks, entered into real property transactions, and operated as a unique company with
11 respect to its sole purpose

12 In order to prevail on this claim, given that LVLP clearly is not an alter ego of 305 Las
13 Vegas, the Plaintiff would have to provide evidence that one of the members of LVLP is the alter
14 ego not of 305 Las Vegas, but of the member of 305 Las Vegas, where he is merely one of many
15 partners. There is no evidence to support that theory, and certainly no evidence showing that
16 Liberman is the alter ego of 305 Las Vegas. Thus, this claim fails on every possible level and must
17 be dismissed.

18 **c. Plaintiff's Fraudulent Conveyance Claim fails for several reasons**

19 Assuming that the Court liberally interprets Plaintiff's Amended Complaint to somehow
20 include 305 Las Vegas into the fraudulent conveyance claim, this claim fails as to 305 Las Vegas
21 for several reasons. First, as was the case with the alter ego claim, Plaintiff has no evidence at all
22 to support any type of fraudulent conveyance claim against 305 Las Vegas. This was an entity
23 created to obtain a piece of real property on East Charleston back in May of 2007. It obtained the
24 property from another entity, Livework, LLC at that time. There is no evidence that 305 Las Vegas
25 ever received anything from LVLP, nor is there evidence of any kind of a transfer of real property
26 or ownership equity interests between LVLP and 305 Las Vegas, as is alleged in the Amended
27 Complaint.

As the Court is well aware, Plaintiff obtained his judgment against LVLP in 2015, a full 8 years after 305 Las Vegas obtained the property that is the sole basis for its existence. There is absolutely no evidence before this Court that 305 Las Vegas did anything in 2007 to effectively render LVLP insolvent, as is alleged by the Plaintiff, nor is there any evidence before this Court that LVLP and 305 Las Vegas engaged in any conduct to allow LVLP to avoid payment of the judgment owed to Plaintiff. To the contrary, all of the evidence before this Court simply shows that 305 Las Vegas has done what it was created to do, own a piece of real property on East Charleston.

As a matter of law, an individual or entity cannot fraudulently transfer property that it does not own. Nevada's Uniform Fraudulent Transfer Act provides an equitable remedy for creditors affected by a fraudulent transfer, but nothing more. *Cadle Co. v. Woods & Erickson, LLP*, 131 Nev. Adv. Op. 15, 345 P.3d 1049 (2015) ("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 to recover the property, or payment for its value, by which they are returned to the pre-transfer position.") (citing NRS §112.210, 220(2)). Further, nothing in those statutes permits actions against non-transferees. Per the Nevada Supreme Court, "it does not make sense to apply an equitable remedy, voiding a transfer of property, against a party who never had possession of the transferred property."

In this case, not only has the Plaintiff never had an interest in the property owned 305 Las Vegas, his judgment debtor has never had an interest in the property either. As the Court may recall, when asked, under oath, if he even knew who 305 Las Vegas was or what it owned, the Plaintiff honestly answered that he did not.¹ So, even if everything that Plaintiff has alleged in the Amended Complaint was true, and even if the Plaintiff had evidence to support those allegations, which he certainly does not as to 305 Las Vegas, any claim for fraudulent conveyance as to 305 Las Vegas would fail as a matter of law.

¹ 305 Las Vegas does not have a transcript of the sanctions' proceedings against Mitchell, but presumably the Court recalls that line of questioning by 305 Las Vegas, which was the only line of questioning of the Plaintiff by 305 Las Vegas, and can take judicial notice of Plaintiff's answer.

1 **d. Plaintiff's Civil Conspiracy Claim also fails as a matter of law**

2 First, Plaintiff cannot maintain a civil conspiracy claim based upon the claim for fraudulent
3 conveyance. As noted above, NRS Chapter 112 provides creditors with claims for equitable
4 remedies, not a claim for legal damages. In fact, the Nevada Supreme Court has stated, "although
5 NRS 112.240 incorporates the traditional rules of law and equity into the statutory fraudulent
6 transfer law, we agree with other states that such savings clauses to not create entirely new causes
7 of action, such as civil conspiracy." *Cadle*, 131 Nev. Adv. Op 15, 345 P.3d at 1054. Since the
8 statutes only provide an equitable remedy, Plaintiff cannot recover damages under a civil
9 conspiracy claim and thus 305 Las Vegas is entitled to summary judgment on this claim.

10 However, even if Plaintiff abandoned his fraudulent transfer claim against 305 Las Vegas
11 in favor of just the civil conspiracy claim, Plaintiff has no evidence to support a civil conspiracy
12 claim between 305 Las Vegas and any of the other Defendants. 305 Las Vegas was created in
13 2007 for the sole purpose of acquiring real property on East Charleston, which it did. That was 8
14 years prior to Plaintiff obtaining a judgment against LVLP. The only thread that Plaintiff holds
15 onto as to 305 Las Vegas on the conspiracy claim is the note by Plaintiff's expert that because 305
16 Las Vegas owed Livework money stemming from the purchase, money that has subsequently been
17 wiped out by other transactions, and because Liberman is a partner of the member of 305 Las
18 Vegas, that must be evidence that somehow 305 Las Vegas is manipulating money that belongs to
19 the Plaintiff. Plaintiff also contends that if 305 Las Vegas had been collecting rent from another
20 third-party, also having nothing to do with LVLP, then it *could* have paid some of the note to
21 Livework while that obligation still existed, which Plaintiff contends *could* have gone to satisfy
22 Plaintiff's judgment against LVLP, an entity notably absent from any of the analysis above.

23 Essentially what Plaintiff is alleging, without evidence, is that 305 Las Vegas is
24 deliberately not taking action to make money for its member, a limited partnership consisting of
25 mostly people not named Liberman, then deliberately choosing not to pay on a note for the sole
26 purpose of avoiding payment to an entity that may or may not have some connection to a judgment
27 debtor to harm the judgment creditor. Plaintiff has no evidence of any connection between
28 Livework and 305 Las Vegas to support such an outlandish theory, nor does Plaintiff have any

evidence that even if there is some nexus between Livework and LVLP, which the evidence also does not support, that somehow 305 Las Vegas would know that and factor it into its process.

The entire Livework/305 transaction involves property that Plaintiff has never had any interest in. There is no evidence that he could ever have any interest in that property, or that he has any right to any assets or liabilities of 305 Las Vegas. Instead, Plaintiff wants this Court to award him damages, which he is legally not entitled to under NRS Chapter 112, for activities relating to a property that has nothing to do with him or LVLP, on the idea that there could be some connection between some other entity and LVLP, even though there is no evidence that LVLP and 305 Las Vegas have any unity of interest.

When Plaintiff's legal theory against 305 Las Vegas is actually laid out on paper, it sounds as ridiculous as it actually is. Does the Plaintiff possibly have some type of claim against the members of LVLP for trying to avoid the judgment? 305 Las Vegas does not know and honestly does not care. What we do know as a matter of certainty is that Plaintiff has no recoverable claim against 305 Las Vegas for civil conspiracy or anything else.

///

///

///

///

///

///

///

///

///

///

///

///

///

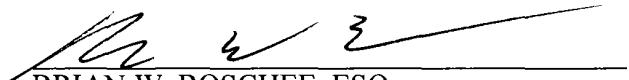
///

IV. CONCLUSION

Plaintiff obtained a judgment against LVLP back in 2015, and it follows that given the amount of the judgment, he would do whatever he could to recover as much of it as possible against anyone who may have attempted to help LVLP avoid payment. However, in the case of 305 Las Vegas, Plaintiff simply cast the net too far. Discovery has shown that Plaintiff's legal theory against 305 Las Vegas has no merit, and Plaintiff has no evidence to support any of the claims alleged against 305 Las Vegas. Discovery is over, and now is the time for Plaintiff to come forward with his evidence against 305 Las Vegas, and the simple fact of the matter is that he has none. Thus, for the reasons set forth above, 305 Las Vegas respectfully requests that the Court grant summary judgment and dismiss Plaintiff's claims against 305 Las Vegas with prejudice.

Dated this 23 day of August, 2019.

**HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON**



BRIAN W. BOSCH, ESQ.
Nevada Bar No. 7612
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

Attorney for Defendant 305 Las Vegas, LLC

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 23rd day of August, 2019, and pursuant to EDCR 8.05 and NRCP 5(b), I caused to be served electronically using the Court's E-Filing E-Service System, a true and correct copy of the foregoing **MOTION FOR SUMMARY JUDGMENT** to all parties in this case registered with the E-Service System and via United States Mail, with first-class postage prepaid, addressed to the below. Pursuant to EDCR 8.05(i), the date and time of the electronic service is in place of the date and place of deposit in the mail.

GARRY L. HAYES, ESQ.
LAW OFFICES OF HAYES & WELSH
199 N. Arroyo Grande Blvd., Suite 200
Henderson, Nevada 89074
Attorney for Defendants
Aquarius Owner LLC, Las Vegas Land
Partners LLC, Leah Property LLC, Liberman
Holdings LLC, Live Work LLC, Live Works
Manager LLC, LVLP Holdings LLC, Meyer
Property Ltd, David J. Mitchell and Mitchell
Holdings LLC

JOHN W. MUIJE, ESQ.
JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Avenue, Suite 106
Las Vegas, Nevada 89104
Attorney for Plaintiffs, Russell L. Nype and
Revenue Plus, LLC


An employee of HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON

Exhibit A

Exhibit A

DECL

BRIAN W. BOSCHKEE, ESQ.
Nevada Bar No. 7612
E-mail: bboschke@nevadafirm.com
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: 702/791-0308
Facsimile: 702/791-1912

Attorneys for Defendant 305 Las Vegas, LLC

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,

Entity Defendants.

Case No.: A-16-740689-C
Dept. No.: XI

**DECLARATION OF WINTHROP
CHAMBERLIN IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT**

I, Winthrop Chamberlin, hereby declare under penalty of perjury and state as follows:

1. I am a general partner of 305 Second Avenue Associates, the sole member of 305 Las Vegas, LLC, a Defendant in this action.

2. I am over the age of eighteen (18) and I have personal knowledge of all matters set forth herein. If called to do so, I would competently and truthfully testify to all matters set forth herein, except for those matters stated to be based upon information and belief.

1 3. I make this declaration in support of 305 Las Vegas' Motion for Summary
2 Judgment.

3 4. 305 Las Vegas was formed for the sole purpose of obtaining real property on East
4 Charleston in Las Vegas, Nevada.

5 5. At the time 305 Las Vegas was formed, I was a general partner of 305 Second
6 Avenue Associates, which is a limited partnership.

7 6. Barnet Liberman was, and is, also a general partner in 305 Second Avenue
8 Associates. The ownership of 305 Second Avenue Associates also includes numerous limited
9 partners. Thus, the beneficial ownership of 305 Las Vegas consists of Mr. Liberman, myself and
10 the limited partners.

11 7. Barnett Liberman has never controlled 305 Second Avenue Associates, nor its
12 subsidiary 305 Las Vegas. 305 Second Avenue Associates and 305 Las Vegas are wholly
13 separate from other entities in which Mr. Liberman has or has had an interest, including Las
14 Vegas Land Partners.

15 8. 305 Las Vegas has never had any transactions with Las Vegas Land Partners or
16 Russell Nype, nor has Las Vegas Land Partners or Mr. Nype ever had any interest in either 305
17 Las Vegas, 305 Second Avenue Associates, any of the real property owned by 305 Las Vegas, or
18 any assets or liabilities of 305 Las Vegas.

19 9. Further, I personally have never had any interest in Las Vegas Land Partners, nor
20 has 305 Las Vegas ever comingled funds or assets with Las Vegas Land Partners

21 10. 305 Las Vegas has never shared a bank account with Las Vegas Land Partners or
22 any other entity in which Mr. Liberman has some interest.

23 11. 305 Las Vegas has never taken any actions, with Livework, tenants or anyone
24 else, for the purpose of helping Las Vegas Land Partners avoid any obligations, including
25 obligations to Mr. Nype pursuant to his judgment.

26 I declare under penalty of perjury under the laws of the United States that the foregoing is
27 true and correct.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated this 23 day of August, 2019.


WINTHROP CHAMBERLIN

Exhibit B

Exhibit B

DEED OF TRUST NOTE

\$5,000,000.00

New York, New York
May 2, 2007

FOR VALUE RECEIVED, **305 LAS VEGAS LLC**, having an address at c/o 305 Second Avenue Associates, 421 Hudson Street, New York, New York 10014 (the "**Maker**"), promises to pay to **LIVEWORK, LLC**, having an address c/o Mitchell Holdings, 41 East 60th Street, New York, New York (the "**Payee**"), or order, at said office, or at such place as may be designated from time to time in writing by the Payee, the principal sum of FIVE MILLIONS and No/100 (\$5,000,000.00) Dollars in lawful money of the United States of America, with interest thereon from and including the date of this Note to, but not including, the date this Note is paid in full calculated in the manner hereinafter set forth, as follows:

- I. equal monthly installments of principal and interest in the amount of \$181,579.58, each commencing on June 2, 2007 and on the first day of each succeeding calendar month thereafter to and including the Maturity Date; and
- II. the entire Principal Balance then remaining unpaid, if any, together with all interest accrued and unpaid thereon calculated in the manner hereinafter set forth and all other sums due under this Note, shall be due and payable on the Maturity Date.

1. The following terms as used in this Note shall have the following meanings:

(i) The term "**Debt**" shall mean all principal, interest, additional interest and other sums of any nature whatsoever which may or shall become due to the Payee in accordance with the provisions of this Note or the Deed of Trust.

(ii) The term "**Loan**" shall mean the purchase money loan in the principal sum of \$5,000,000.00 made by the Payee to the Maker which is evidenced by this Note and secured by the Deed of Trust.

(iii) The term "**Maturity Date**" shall mean May 2, 2010.

(iv) The term "**Deed of Trust**" shall mean a certain Third Deed of Trust with Assignment of Rents, dated the date hereof in the principal sum of \$5,000,000.00 given by the Maker to the Payee covering the fee estate of the Maker in certain premises located in the City of Las Vegas, Clark County, Nevada, as more particularly described therein, and intended to be duly recorded in said County.

(v) The term "**Principal Balance**" shall mean the outstanding principal balance of this Note from time to time.

2. Subject to the provisions of this Note hereinafter set forth, the entire Principal Balance shall bear interest at the rate of fourteen and seven-tenths percent (14.7%) per annum.

3. The Maker shall have the right to prepay the Principal Balance in whole or in part without premium or penalty.

4. Anything in this Note or the Deed of Trust to the contrary notwithstanding, the Maker shall indemnify and hold the Payee harmless and against any loss or liability, cost or expense (including, without limitation, reasonable attorneys' fees and disbursements of the Payee's counsel). The Maker shall also reimburse the Payee for all costs incurred in connection with all claims, actions, procedures and suits arising out of or in connection with any and all lawful action that may be taken by the Payee in connection with the enforcement of the provisions of this Note, the Deed of Trust or any of the other loan documents executed in connection therewith, but only to the extent that the Maker is the prevailing party in such claims, actions, procedures and suits. All sums expended by the Payee on account of any of the foregoing shall be reimbursable on demand, and until reimbursed by the Maker pursuant hereto, shall be deemed additional principal evidenced hereby and shall bear interest at the default interest rate hereinbelow set forth.

5. It is hereby expressly agreed that the entire Debt shall become immediately due and payable at the option of the Payee on the happening of any default or event by which, under the terms of this Note or the Deed of Trust, the Debt may or shall become due and payable, and that all of the terms, covenants and provisions contained in the Deed of Trust which are to be kept and performed by the Maker are hereby made part of this Note to the same extent and with the same force and effect as if they were fully set forth herein.

6. In addition to any late payment charge which may be due under this Note, if the Debt is declared immediately due and payable by the Payee pursuant to the provisions of this Note or the Deed of Trust, or if the Debt is not paid in full on the Maturity Date, the Maker shall thereafter pay interest ("**Default Interest**") on the Principal Balance from the date of such declaration or the Maturity Date, as the case may be, until the date the Principal Balance is paid in full at a rate per annum (calculated for the actual number of days based upon a thirty (30) day month elapsed over a year of 360-days) equal to the maximum interest rate which the Maker may by law pay (the "**Default Rate**").

7. The Maker hereby waives presentment and demand for payment, notice of dishonor, protest and notice of protest of this Note. If any payment under this Note is not made when due, the Maker agrees to pay all costs of collection when incurred, including reasonable attorneys' fees (which costs shall be added to the amount due under this Note and shall be receivable therewith). The Maker agrees to perform and comply with each of the terms, covenants and provisions contained in this Note and the Deed of Trust on the part of the Maker to be observed or performed. No release of any security for the payment of this Note or extension of time for payment of this Note, or any installment hereof, and no alteration, amendment or waiver of any provision of this Note or the Deed of Trust made by agreement between the Payee and any other person or party shall release, discharge, modify, change or affect the liability of the Maker under this Note or the Deed of Trust.

8. This Note is subject to the express condition that at no time shall the Maker be obligated or required to pay interest on the Principal Balance at a rate which could subject the Payee to either civil or criminal liability as a result of being in excess of the maximum rate which the Maker is permitted by law to contract or agree to pay. If by the terms of this Note, the Maker is at any time required or obligated to pay interest on the Principal Balance at a rate in excess of such maximum rate, the rate of interest under this Note shall be deemed to be immediately reduced to such maximum rate and interest payable hereunder shall be computed at such maximum rate and the portion of all prior interest payments in excess of such maximum rate shall be applied and shall be deemed to have been payments in reduction of the Principal Balance.

9. This Note is secured by the Deed of Trust.

10. This Note is and shall be deemed entered into in the State of Nevada and shall be governed by and construed in accordance with the laws of the State of Nevada and no defense given or allowed by the laws of any state or country shall be interposed in any action or proceeding hereon unless such defense is either given or allowed by the laws of the State of Nevada.

11. This Note may only be modified, amended, changed or terminated by an agreement in writing signed by the Payee and the Maker. No waiver of any term, covenant or provision of this Note shall be effective unless given in writing by the Payee and if so given by the Payee shall only be effective in the specific instance in which given.

12. The Maker acknowledges that this Note and the Maker's obligations under this Note are and shall at all times continue to be absolute and unconditional in all respects, and shall at all times be valid and enforceable irrespective of any other agreements or circumstances of any nature whatsoever which might otherwise constitute a defense to this Note and the obligations of the Maker under this Note or the obligations of any other person or party relating to this Note or the obligations of the Maker hereunder or otherwise with respect to the Loan. This Note sets forth the entire agreement and understanding of the Payee and the Maker, and the Maker absolutely, unconditionally and irrevocably waives any and all right to assert any defense, setoff, counterclaim or crossclaim of any nature whatsoever with respect to this Note or the obligations of the Maker under this Note or the obligations of any other person or party relating to this Note or the obligations of the Maker hereunder or otherwise with respect to the Loan in any action or proceeding brought by the Payee to collect the Debt, or any portion thereof, or to enforce, foreclose and realize upon the liens and security interests created by the Deed of Trust. The Maker acknowledges that no oral or other agreements, understandings, representations or warranties exist with respect to this Note or with respect to the obligations of the Maker under this Note, except those specifically set forth in this Note.

13. No delay on the part of the Payee in exercising any right or remedy under this Note or the Deed of Trust or failure to exercise the same shall operate as a waiver in whole or in part of any such right or remedy. No notice to or demand on the Maker shall be deemed to be a

waiver of the obligation of the Maker or of the right of the Payee to take further action without further notice or demand as provided in this Note and the Deed of Trust.

14. The Maker agrees to submit to personal jurisdiction in the State of Nevada in any action or proceeding arising out of this Note and, in furtherance of such agreement, the Maker hereby agrees and consents that without limiting other methods of obtaining jurisdiction, personal jurisdiction over the Maker in any such action or proceeding may be obtained within or without the jurisdiction of any court located in New York and that any process or notice of motion or other application to any such court in connection with any such action or proceeding may be served upon the Maker by registered or certified mail to or by personal service at the last known address of the Maker, whether such address be within or without the jurisdiction of any such court.

15. The Maker (and the undersigned representative of the Maker, if any) represents that the Maker has full power, authority and legal right to execute and deliver this Note and that the debt hereunder constitutes a valid and binding obligation of the Maker.

16. Whenever used, the singular number shall include the plural, the plural the singular, and the words "**Payee**" and "**Maker**" shall include their respective successors and assigns, provided, however, that the Maker shall in no event or under any circumstance have the right without obtaining the prior written consent of the Payee to assign or transfer its obligations under this Note or the Deed of Trust, in whole or in part, to any other person, party or entity.

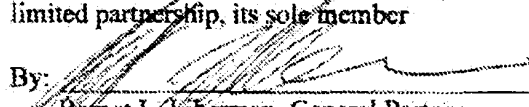
17. **The Maker hereby irrevocably and unconditionally waives, and the Payee by its acceptance of this Note irrevocably and unconditionally waives, any and all right to trial by jury in any action, suit or counterclaim arising in connection with, out of or otherwise relating to the Loan, this Note or the Deed of Trust.**

[The Remainder of this Page is Intentionally Left Blank.]

IN WITNESS WHEREOF, the Maker has duly executed this Note the day and year first above written.

305 LAS VEGAS LLC, a Delaware limited liability company

By: 305 Second Avenue Associates, L.P., a New York limited partnership, its sole member

By: 
Barnet L. Liberman, General Partner

By: 
Winthrop I. Chamberlin, General Partner

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

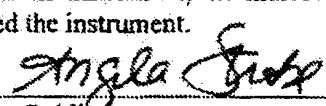
On the 30th day of April in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared BARNET L. LIBERMAN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

ANGELA L. STROSE
Notary Public, State of New York
No. 01ST608923
Qualified in New York County
Commission Expires Sept. 23, 2012

On the 30th day of April in the year 2007, before me, the undersigned, a Notary Public in and for said State, personally appeared WINTHROP I. CHAMBERLIN, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.


Notary Public

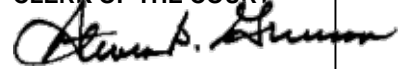
302444-1-W

-5-

ANGELA L. STROSE
Notary Public, State of New York
No. 01ST608923
Qualified in New York County
Commission Expires Sept. 23, 2012

305LV05974

AA 936



1 **COHEN|JOHNSON|PARKER|EDWARDS**

2 H. Stan Johnson, Esq.

3 Nevada Bar No. 265

4 James L. Edwards, Esq.

5 Nevada Bar No. 4256

6 375 E. Warm Springs Rd. Ste. 104

7 Las Vegas, NV 89119

8 *Attorneys for Mitchell Defendants*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

14 Plaintiffs,

15 vs.

16 DAVID J. MITCHELL; BARNET LIBERMAN;
17 LAS VEGAS LAND PARTNERS, LLC; MEYER
18 PROPERTY LTD.; ZOE PROPERTY, LLC; LEAH
19 PROPERTY, LLC; WINK ONE, 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,
25 inclusive; and ROE CORPORATIONS I
26 THROUGH III, inclusive,

27 Defendants.

Case No.: A-16-740689-B

Dept. No.: 11

28 **NOTICE OF BANKRUPTCY FILING**

PLEASE TAKE NOTICE that LAS VEGAS LAND PARTNERS LLC, has filed for
bankruptcy relief pursuant to Title 11 of the United States Code. A copy of the Notice of
Chapter 7 Bankruptcy Case Filing is attached hereto.

1 Dated this 28th day of August, 2019.

2 COHEN JOHNSON PARKER EDWARDS

3 By: /s/ H. Stan Johnson
4 H. STAN JOHNSON, ESQ.
5 Nevada Bar No.: 0265
6 375 E. Warm Springs Road, Suite 104
7 Las Vegas, Nevada 89119
8 *Attorney for Mitchell Defendants*

9 **CERTIFICATE OF SERVICE**

10 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on
11 this day, I caused a true and correct copy of the **NOTICE OF BANKRUPTCY FILING** to be
12 served via the Court's Wiznet E-Filing system on all registered and active parties.

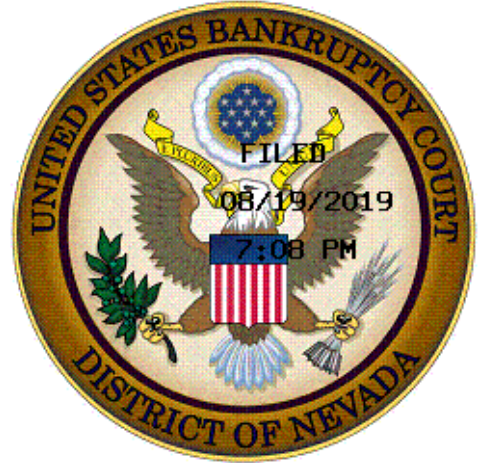
13 Dated: August 28, 2019

14
15 /s/ Sarah Gondek
16 An employee of Cohen|Johnson|Parker|Edwards
17
18
19
20
21
22
23
24
25
26
27
28

United States Bankruptcy Court
District of Nevada

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 7 of the United States Bankruptcy Code, entered on 08/19/2019 at 7:08 PM and filed on 08/19/2019.



LAS VEGAS LAND PARTNERS, LLC
375 E WARM SPRINGS ROAD, SUITE 104
LAS VEGAS, NV 89119
Tax ID / EIN: 20-1506231

The case was filed by the debtor's attorney:

H STAN JOHNSON
COHEN JOHNSON PARKER EDWARDS, LLC
375 E. WARM SPRINGS RD, STE 104
LAS VEGAS, NV 89119
(702) 823-3500

The bankruptcy trustee is:

SHELLEY D KROHN
510 S 8TH STREET
LAS VEGAS, NV 89101
(702) 421-2210

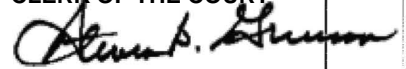
The case was assigned case number 19-15333-mkn to Judge MIKE K. NAKAGAWA.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://www.nvb.uscourts.gov> or at the Clerk's Office, 300 Las Vegas Blvd., South, Las Vegas, NV 89101.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Mary A. Schott
Clerk, U.S. Bankruptcy



1 **NEOJ**
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 AND REVENUS PLUS,
12 LLC

CASE NO: A-16-740689-B

Plaintiffs,

DEPT NO: XI

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,

Date of Hearing: June 24, 2019

Time of Hearing: 9:00 a.m.

Mitchell Defendants.

NOTICE OF ENTRY OF ORDER RE: DISCOVERY SANCTIONS

24 TO: ELLIOT S. BLUT, ESQ., of **BLUT LAW GROUP, P.C.**, Attorneys for Defendants
25 BARNET LIBERMAN AND CASINO COOLIDGE, LLC

26 TO: Brian B. Boschee, Esq., of the Law Offices of **HOLLEY DRIGGS WALCH FINE**
27 **PUZEY STEIN & THOMPSON**, Attorneys for Defendant 305 Las Vegas, LLC

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

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702-386-7002
Email: jmuije@muijelawoffice.com

1 PLEASE TAKE NOTICE that the ORDER RE: DISCOVERY SANCTIONS, was
2 entered with the Court on the 20th day of September, 2019, a copy of which is attached hereto as
3 Exhibit "1".

4
5 DATED this 23rd day of September, 2019.

6 JOHN W. MUIJE & ASSOCIATES

7
8 By: 

9 JOHN W. MUIJE, ESQ.

10 Nevada Bar No: 2419

11 1840 E. Sahara Ave #106

12 Las Vegas, NV 89104

13 Phone No: (702) 386-7002

14 Fax No: (702) 386-9135

15 Email: jmuije@muijelawoffice.com

16 *Attorneys for Plaintiffs*

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF MAILING

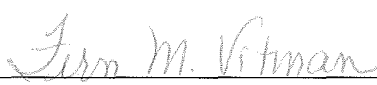
I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the
23rd day of September, 2019, I caused the foregoing document, **NOTICE OF ENTRY OF
ORDER RE: DISCOVERY SANCTIONS**, to be served as follows:

- ☐ 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
Telephone: (702) 384-1050
Facsimile: (702) 384-8565
E-Mail: eblut@blutlaw.com
Attorneys for Defendants
Barnet Liberman and Casino Coolidge,
LLC

Brian W. Boschee, Esq.
HOLLEY DRIGGS WALCH
FINE PUZEY STEIN & THOMPSON
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
Facsimile: (702) 791-1912
E-Mail: bboschee@nevadafirm.com
Attorneys for Defendant
305 Las Vegas, 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



An Employee of John W. Muije & Associates

JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
Las Vegas, Nevada 89104
Telephone: 702.386-7002
Email: jmuije@muijelawoffice.com

EXHIBIT “1”



1 **ORD**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5
6 **RUSSELL L. NYPE; REVENUE PLUS, LLC,**
7 **DOES I through X; DOE CORPORATIONS I**
8 **through X; and DOE PARTNERSHIPS I through X;**

9 **Plaintiffs,**

10 **vs.**

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

22 **Defendants.**

Case No.: A-16-740689-B

Dept. No.: XI

23 **ORDER RE: DISCOVERY SANCTIONS**

24 This matter came on for Plaintiff's Motion for Sanctions Pursuant to NRCP 37(b) on
25 June 24, 2019 and evidentiary hearing on June 27, 2019, July 9, 2019 and September 3,
26 2019 as to Plaintiff's Motion for Sanctions Pursuant to NRCP 37(b), Plaintiffs RUSSELL L.
27 NYPE and REVENUE PLUS, LLC (collectively "Nype"), appearing by and through their
28 attorneys of record, JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE &
ASSOCIATES and LENARD SCHWARTZER, ESQ.; Defendants, DAVID J. MITCHELL,

1 individually, MEYER PROPERTY, LTD., ZOE PROPERTY, LLC, LEAH PROPERTY, LLC,
2 WINK ONE, LLC, LIVE WORK, LLC, LIVE WORK MANAGER, LLC, AQUARIUS
3 OWNER, LLC, LVLP HOLDINGS, LLC, MITCHELL HOLDINGS, LLC, LIVE WORKS TIC
4 SUCCESSOR, LLC (collectively the "Mitchell Defendants"), appearing by and through their
5 attorneys of record, H. STAN JOHNSON, ESQ. and JAMES EDWARDS, ESQ., of the firm of
6 COHEN, JOHNSON PARKER EDWARDS; LAS VEGAS LAND PARTNERS, LLC, also
7 appearing by and through its attorney of record, STAN JOHNSON, ESQ., of the firm of COHEN
8 JOHNSON PARKER EDWARDS, Defendant 305 LAS VEGAS, LLC appearing at some, but
9 not all, of the days by and through its counsel of record BRIAN BOSCHKEE, ESQ. of the law
10 firm of HOLLEY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON; and Defendants
11 BARNET LIBERMAN, CASINO COOLIDGE, LLC not appearing for these motions, the Court
12 having admitted into evidence numerous exhibits relevant to the proceedings, and having heard
13 the testimony of witnesses and the written and oral arguments of counsel, and good cause
14 appearing, the Court makes the following findings of fact and conclusions of law:

15 PROCEDURAL POSTURE

16 1. The Mitchell Defendants' prior counsel filed a motion to withdraw as counsel
17 on or about March 13, 2019.

18 2. The minute order granting this motion was entered on April 12, 2019. The
19 written order granting the motion to withdraw was filed on April 22, 2019, and the notice of
20 entry of the order was filed on April 23, 2019.

21 3. NYPE filed and served a Motion to Compel Defendants' Production of
22 Documents, On Order Shortening Time on or about April 22, 2019, which contained an Order
23 Shortening Time to be heard on May 6, 2019.
24

1 4. At the time of that hearing, all Defendants had newly retained counsel, their
2 prior counsel withdrew during the month of April. The hearing on the Motion to Compel was
3 continued to May 15, 2019 to permit new defense counsel time to prepare.

4 5. No opposition to Plaintiff's Motion to Compel was filed, nor did any of the
5 Mitchell Defendants personally appear at the hearing thereon.

6 6. At the continued hearing of May 15, 2019, the Court considered the merits of
7 Nype's Motion to Compel and made rulings as memorialized in the Order Compelling
8 Discovery, and Awarding Sanctions, entered on May 30, 2019, (the "Order Granting Motion to
9 Compel") and briefly extended discovery for limited purposes.

10 7. Nype filed a Motion for Discovery Sanctions Pursuant to NRCPP 37(b), also on
11 Order Shortening Time, which was heard on June 24, 2019. At that hearing, the Court expressly
12 found, on the record, that sanctions were appropriate, and that as a result, the only unresolved
13 question would be the degree of sanctions and an evaluation of the factors under *Young v.*
14 *Ribiero*, 106 Nev. 88 (1990).

15 8. The Court scheduled an evidentiary hearing to commence on June 27, 2019.

16 9. The Mitchell Defendants filed no opposition to Nype's Motion for Sanctions,
17 nor did any Mitchell Defendant personally appear before the Court at either of the first two days
18 of the evidentiary hearing, i.e., June 27, 2019 and July 9, 2019. The Court continued the hearing
19 one additional time to permit Mitchell the opportunity to appear.

20 10. Las Vegas Land Partners, LLC filed a Notice of Bankruptcy on or about August
21 28, 2019, notifying the Court of an August 19, 2019 bankruptcy filing and submitted an
22

Emergency Motion to Stay on the morning of September 3, 2019.¹

11. At the time of the continued evidentiary hearing of September 3, 2019, Nype noted on the record, that in light of the bankruptcy filing, they were no longer proceeding as of the final hearing date, as regards the discovery issues against Las Vegas Land Partners LLC.

12. This Court recognized at the September 3, 2019 hearing that Nype's fraudulent conveyance claims may belong to the bankruptcy estate and would await communication, if any, from the Trustee.

FINDINGS OF FACT

13. Nype made ongoing efforts to obtain discovery compliance from the Mitchell Defendants, including specifically, soliciting comprehensive and complete supplements to their July 10, 2018 responses to the May 20, 2018 requests for production of documents, as directed to each of the defendants.

14. There has been a clear and knowing violation of the Order Granting the Motion to Compel.

15. The Mitchell Defendants did not comply with the terms of the Order Granting Motion to Compel requiring the production of additional documentation.

16. The Mitchell Defendants were copied on hundreds of emails produced by 305 Las Vegas, LLC during the Spring of 2019. The Mitchell Defendants failed to produce copies of those emails with no reasonable excuse or explanation.

¹ The Court heard Defendants' unfiled emergency motion to stay, marked as Court's Exhibit No. 3, prior to proceeding with the final day of evidentiary hearing. As the Plaintiff elected not to proceed against Las Vegas Land Partners, LLC, the court granted the motion as to Las Vegas Land Partners, LLC and denied the motion as to the other defendants. These Rule 37 proceedings relate to non-compliance and disobedience by non-debtor parties, and implicate the police power and official state action which are not affected by the bankruptcy law and the automatic stay.

1 17. The declaration of David J. Mitchell filed on June 27, 2019, fails to provide the
2 information and certification required by the Order Granting Motion to Compel.

3 18. The Mitchell Defendants have failed to pay their portion of the sanctions
4 awarded in the Order Granting Motion to Compel, i.e. \$1,000.

5 19. The Mitchell Defendants are still significantly out of compliance with their
6 discovery obligations and have not made good faith attempts to search their existing records for
7 documents which were subject to the Order Granting Motion to Compel.
8

9 20. Plaintiffs have documented fees and costs incurred which are fairly attributable
10 to and caused by the Mitchell Defendants discovery abuses including: (a) the Motion to
11 Compel; (b) the Motion for Sanctions; (c) the three (3) evidentiary hearing sessions held by this
12 Court; (d) preparation and service of subpoenas to third-parties seeking documents that the
13 Mitchell Defendants should have produced long ago; (e) review and analysis of said documents,
14 which were produced without indices, to determine whether they contained meaningful new
15 information actually needed from the Mitchell Defendants; (f) review and analysis of last-
16 minute disclosures made by Mitchell Defendants; and (g) preparation of NRCP 30(b)(6)
17 deposition notices and associated cover letters to certain of the Mitchell Defendants in an
18 attempt to force them to produce knowledgeable witnesses who could provide information that
19 was still missing from the Mitchell Defendants' documentary disclosures.
20
21

22 21. The Mitchell Defendants' failures have prejudiced Nype in the completion of
23 expert reports.
24

25 22. The total aggregate sanctions requested by Nype, in the balance, are not
26 excessive given the discovery abuses.
27
28

23. The professional fees and expenses incurred by Nype in conducting this additional discovery necessitated by the discovery abuses is an appropriate sanction.

24. The amount of professional fees related to the discovery abuse is \$160,086.46 as contained in the Accounting filed on September 10, 2019. The precise calculation as to the total amount of discovery related fees and costs related by Nype during the relevant time (April 22, 2019 the date of the filing of the Motion to Compel through the conclusion of the evidentiary proceedings on or about September 3, 2019) involves additional mathematical calculation, to exclude those in the litigation in New Jersey with Mr. Spitz.

CONCLUSIONS OF LAW:

Based on the factors set forth in *Young vs. Ribeiro*, 106 Nev. 88 (1990) as follows:

(a) The degree of willfulness of the Mitchell Defendants was significant.

(b) Any lesser sanction than that awarded by the Court herein would not be warranted.

(c) Nype incurred additional fees, costs and professional fees as a direct consequence of the Mitchell Defendants' discovery failures.

(d) The ongoing discovery abuses by the Mitchell Defendants have not resulted in relevant evidence being irreparably lost.

(e) In evaluating the feasibility and fairness of alternative sanctions, the Court concludes that prior measures, including the modest sanction awarded on May 15, 2019, have not sufficed to either protect Nype or encourage the Mitchell Defendants to comply with their discovery obligations.

1 (f) Nevada's policy favoring adjudication on the merits weighs in favor of
2 affording the Mitchell Defendants an opportunity to comply with their overdue discovery
3 obligations.
4

5 (g) The proposed sanctions do not operate to penalize the parties for the
6 misconduct of their attorneys, as the misconduct on the part of the Mitchell Defendants, as
7 parties, not the actions of their attorneys, have violated this Courts order.
8

9 (h) It important to deter the parties to this litigation, as well as future
10 litigation, from engaging in similar abuses, and finds that the sanctions awarded herein are a fair
11 and appropriate amount to deter future misconduct.

12 (i) The Court further concludes that given the time already passed, and the
13 ongoing prejudice to Plaintiffs, that an additional two weeks from Notice of the date of entry of
14 this Order is an appropriate, fair and reasonable amount of time for the Mitchell Defendants to
15 fully comply with their obligations
16

17 (j) The Mitchell Defendants will comply with their discovery obligations
18 under the rules, as well as their duty to supplement, and must also fully and completely comply
19 with the Court's (Order of May 30, 2019).

20 (k) The Court further concludes that the calculation of fees and expenses
21 from April 22, 2019 through the present filed on September 10, 2109, is reasonable and
22 accounts for the reductions identified by the Court during the hearing and that the total of
23 \$160,086.46 is an appropriate monetary amount to award as a sanction for the willful
24 misconduct of the Mitchell Defendants.
25

26 (l) The Court further concludes, however, having considered all of the
27 factors, that the striking of the Mitchell Defendants' answer and the entering of a default as
28

1 against said defendants is too harsh at this time, but may be considered in the future if
2 appropriate.

3 **ORDER**

4 Based upon the above and foregoing,

5 **IT IS FURTHER ORDERED** that Plaintiff RUSSELL NYPE AND REVENUE
6 PLUS, LLC, be and they are hereby awarded discovery sanctions against Defendants DAVID J.
7 MITCHELL, INDIVIDUALLY, MEYER PROPERTY, LTD., ZOE PROPERTY, LLC, LEAH
8 PROPERTY LLC, WINK ONE, LLC, LIVE WORK, LLC, LIVE WORK MANAGER, LLC,
9 AQUARIUS OWNER, LLC, LVLV HOLDINGS, LLC, MITCHELL HOLDINGS, LLC, AND
10 LIVE WORKS TIC SUCCESSOR, LLC, in the amount of \$160,086.46, said amount to bear
11 interest at the Nevada statutory rate from September 20, 2019 until paid;
12

13 **IT IS FURTHER ORDERED** that the Mitchell Defendants will fully, and completely
14 comply with all of their obligations hereunder as well as the requirements set forth in the Order
15 of May 30, 2019, including their duty to fully and completely supplement their discovery
16 responses and to meticulously certify, in detail their compliance efforts and results as set forth in
17 said Order within two weeks of entry of this order;
18

19 **IT IS FURTHER ORDERED** that Plaintiff shall submit a separate judgment for the
20 amount of the sanction.
21

22 DATED this 18th day of September, 2019.
23

24
25
26
27 
28 Elizabeth Gonzalez, District Court Judge

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Certificate of Service

I hereby certify that on the date filed, this Order was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.


Dan Kutinac