

**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

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Aquarius Owner, LLC, LVLP Holdings,  
LLC, and Live Works Tic Successor, LLC*

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4/25/17	Defendants' Reply to Motion to Strike; Opposition to Counter-Motion for Advisory Jury	I	AA 152-162
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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><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></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 <b>Trial Exhibit 90001</b> [Forest City Agreement] [Sealed]	XXIX	SAA 1715-1807
Undated	Mitchell's <b>Trial Exhibit 90052</b> [Casino Coolidge Title Documents] [Sealed]	XXIX	SAA 1808-1820
Undated	Mitchell's <b>Trial Exhibit 90054</b> [Surrender/Termination Agreement]	XX	AA 3512-3516

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Mitchell's <b>Trial Exhibit 90069</b> [Release of Lease Guaranty]	XX	AA 3517-3521
Undated	Mitchell's <b>Trial Exhibit 90075</b> [FC/LW - Entity Details]	XX	AA 3522-3524
Undated	Mitchell's <b>Trial Exhibit 90079</b> [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] [ <b>Sealed</b> ]	XXII	SAA 73-323
1/27/20	Motion to Alter/Amend Judgment [Casino Coolidge] [Continued][ <b>Sealed</b> ]	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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
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

<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
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 <b>[Sealed]</b>	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><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></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' <b>Trial Exhibit 1</b> [Ownerships Interests]	XV	AA 2457

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

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

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



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

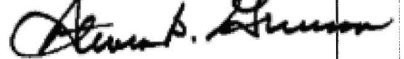
<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 40047</b> [Personal Guaranty - Lease]	XVI	AA 2740-2747
Undated	Plaintiffs' <b>Trial Exhibit 50001</b> [Underlying Complaint: A-07-551073]	XVI	AA 2748-2752
Undated	Plaintiffs' 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

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

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

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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
Undated	Plaintiffs' <b>Trial Exhibit 70079</b> [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	<b>Trial Transcript - Day 1</b> [December 30, 2019]	IX	AA 1533-1697
12/31/19	<b>Trial Transcript - Day 2</b> [December 31, 2019]	X	AA 1698-1785
1/2/20	<b>Trial Transcript - Day 3</b> [January 2, 2020]	XI	AA 1786-1987
1/3/20	<b>Trial Transcript - Day 4</b> [January 3, 2020]	XII	AA 1988-2163
1/6/20	<b>Trial Transcript - Day 5</b> [January 6, 2020]	XIII	AA 2164-2303
1/7/20	<b>Trial Transcript - Day 6</b> [January 7, 2020]	XIV	AA 2304-2421



1 NEFF  
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10 *Attorneys for Plaintiffs*

DISTRICT COURT  
CLARK COUNTY, NEVADA

11 RUSSELL L. NYPE AND REVENUS PLUS,  
12 LLC

CASE NO: A-16-740689-B

13 Plaintiffs,

DEPT NO: XI

14 vs.

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

26 Mitchell Defendants.

27 NOTICE OF ENTRY OF FINDINGS OF FACT,  
28 CONCLUSIONS OF LAW

-AND-

JUDGMENT

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

31 TO: BRIAN B. BOSCHKE, ESQ., of the Law Offices of HOLLEY DRIGGS WALCH  
32 FINE PUZEY STEIN & THOMPSON, Attorneys for Defendant 305 Las Vegas, LLC

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

3 PLEASE TAKE NOTICE that the FINDINGS OF FACT, CONCLUSIONS OF  
4 LAW AND JUDGMENT, was entered with the Court on the 16th day of January, 2020, a copy  
5 of which is attached hereto as Exhibit "1".

6 DATED this 16<sup>th</sup> day of January, 2020

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](mailto:jmuije@muijelawoffice.com)

18 Attorneys for Plaintiffs  
19  
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**CERTIFICATE OF MAILING**

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 16<sup>th</sup> day of January, 2020, I caused the foregoing document, **NOTICE OF ENTRY OF FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**, to be served as follows:

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

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# EXHIBIT “1”

*Steven D. Grierson*

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

Case No.: A-16-740689-C

Dept.: XI

***FINDINGS OF FACT AND CONCLUSIONS OF LAW***

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

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

11 **FINDINGS OF FACT**  
12

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

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

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

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

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

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

1           4.     Plaintiff Revenue Plus, LLC (collectively with Nype, "Plaintiffs") is a Florida  
2 limited liability company.

3           5.     Defendant, David J. Mitchell ("Mitchell"), is an adult resident of New York.

4           6.     Defendant, Barnett Liberman ("Liberman"), is an adult resident of New York.

5           7.     Defendant Mitchell Holdings, LLC ("Mitchell Holdings") is a Delaware limited  
6 liability company.

7           8.     Defendant LVLP Holdings, LLC ("LVLP Holdings") is a Delaware limited  
8 liability company that was formed on or about November 4, 2004 by Mitchell and Liberman.

9           9.     Defendant Las Vegas Land Partners ("LVLP") is a Delaware limited liability  
10 company.

11          10.    Mitchell and Liberman are managers of LVLP.

12          11.    At all relevant times, Mitchell and Liberman were the sole owners (50/50) and  
13 managers of LVLP Holdings.

14          12.    At all relevant times, LVLP was owned (50/50) and managed by Mitchell and  
15 Liberman.

16          13.    Defendant Casino Coolidge LLC is a Nevada limited liability company. ("Casino  
17 Coolidge").

18          14.    Liberman is the managing member of Casino Coolidge.

19          15.    Defendant Aquarius Owner, LLC ("Aquarius") is a Delaware limited liability  
20 company.

21          16.    Defendant Leah Property, LLC ("Leah") is a Delaware limited liability company.

22          17.    Defendant Livework, LLC ("Livework") is a Delaware limited liability company.

23          18.    Defendant Livework Manager, LLC ("Livework Manager"), is a Delaware limited  
24 liability company.

25          19.    Defendant Zoe Property, LLC ("Zoe") is a Delaware limited liability company.

26          20.    Defendant Wink One, LLC ("Wink") is a Delaware limited liability company.  
27  
28

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

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

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

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

9           25. These entities are collectively referred to as the Related Entities.<sup>4</sup>

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

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

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

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

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

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

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

1           32.     On November 2, 2007, LVLP and two other entities<sup>5</sup> sued Nype seeking primarily  
2 a declaratory judgment that they did not owe Nype any fee, Nype counterclaimed seeking  
3 compensation for services rendered.

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

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

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

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

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

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

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

21           40.     The evidence also demonstrates that Mitchell, Liberman and the Related Entities  
22 engaged in conscious, concerted and ongoing efforts to ensure that funds and/or assets that would  
23 otherwise be available to Nype to satisfy his claims (and Judgment) were kept away from Nype.  
24

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

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

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

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

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

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

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

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20 <sup>6</sup>     The report is a part of Exhibit 90079.

21 <sup>7</sup>     That statute provides in pertinent part:  
22

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

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

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



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

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

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

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

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

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

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

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

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

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

26           57. The evidence demonstrates that: (a) Mitchell, Liberman and the Related Entities  
27 commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;  
28

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

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

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

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

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

16  
17 60. In determining that these distributions were made with the actual intent to hinder,  
18 delay or defraud creditors and Nype, the Court notes, among other things, the following:

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

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

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

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

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

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

#### 8 CONCLUSIONS OF LAW

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

15  
16 2. Nevada recognizes application of the alter ego doctrine in reverse, in which a  
17 creditor is permitted to reach "the assets of a corporation to satisfy the debt of a corporate insider  
18 based on a showing that the corporate entity is really the alter ego of the individual." *Loomis*,  
19 116 Nev. at 903, 8 P.3d at 846.

20  
21 3. Application of the alter ego doctrine in reverse "is appropriate where the particular  
22 facts and equities show the existence of an alter ego relationship and require that the corporate  
23 fiction be ignored so that justice may be promoted." *Id.*, at 904, 8 P.3d at 846.

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

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

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

8  
9 6. Justice and equity require that the Court impose alter ego liability on Mitchell,  
10 Liberman and the Related Entities.

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

14  
15 8. Nype has not proven, by a preponderance of the evidence, his claim for alter ego  
16 that Mitchell Holdings is the alter ego of Mitchell.

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

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

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

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

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

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

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

16           16. Nype has proven by a preponderance of the evidence that he suffered special  
17 damages in the form of attorney's fees, costs and expert expenses related to the transfers in the  
18 total amount of \$4,493,176.90.  
19

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

24           18. Independent of NRS Chapter 112, to prove a civil conspiracy, Plaintiff must prove  
25 "a combination of two or more persons who, by some concerted action, intend to accomplish a  
26

---

27 <sup>9</sup> The Court is cognizant of the possibility of duplicative awards given the various claims  
28 for relief.

1 lawful objective for the purpose of harming another, and damage results from the act or acts.”

2 *Hilton Hotels vs. Butch Lewis Productions*, 109 Nev. 1043, 148, 862 P.2d 1207, 1210 (1993).

3 19. The Court concludes that the evidence demonstrates that:

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

7 b. Mitchell and Liberman received distributions from LVLP and the Related  
8 entities;

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

12 d. But for Nype’s pretrial discovery,<sup>10</sup> the fabrication of evidence would not  
13 have been uncovered.

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

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

18 22. Plaintiff has established damages on the civil conspiracy claim in the amount of  
19 \$15,148.339.

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

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

23  
24  
25  
26 <sup>10</sup> The limitations for a civil conspiracy claim is not limited by NRS 112.230(1)(a) but is  
27 instead governed by NRS 11.220 and the discovery rule. *Siragusa v. Brown*, 114 Nev. 1384 at  
28 1391-3 (1998).

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

3           26. Mitchell, Liberman, and the Related Entities' actions and inactions have caused  
4 Nype damages in the total amount of \$19,641,515.90.<sup>11</sup>

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

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

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

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

12           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
13  
14 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer  
15 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,  
16 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC  
17 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the fraudulent  
18 conveyance claim in the amount of \$4,835,111.37.<sup>12</sup>

19           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
20  
21 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell and Liberman on  
22 the civil conspiracy claim in the amount of \$19,641,515.90.

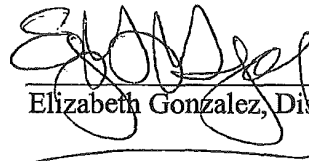
23           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
24

25  
26 <sup>11</sup> This is the total amount of damages which is not duplicated among the various claims for  
27 which the Court has made an award.

28 <sup>12</sup> These damages are duplicated in the civil conspiracy judgment.

1 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer  
2 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,  
3 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC  
4 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the alter ego claim in  
5 the amount of the underlying judgment in A551073.  
6

7 DATED this 16<sup>th</sup> day of January, 2020.

8  
9  
10   
11 Elizabeth Gonzalez, District Court Judge

12 **Certificate of Service**

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

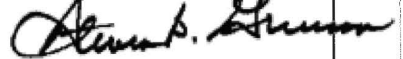
16 *If indicated below, a copy of the foregoing Scheduling Order was also:*

17 ☐ Placed in the Attorney(s) Folder on the 1<sup>st</sup> Floor of the RJC for;

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

20  
21   
22 Dan Kutinac  
23  
24  
25  
26  
27  
28





1 **FFCL**  
2 **JOHN W. MUIJE & ASSOCIATES**  
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10 *Attorneys for Plaintiffs*

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

CASE NO: A-16-740689-B

11 Plaintiffs,

DEPT NO: XI

12 vs.

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

24 Mitchell Defendants.

25 **NOTICE OF ENTRY OF AMENDED FINDINGS OF FACT,**  
26 **CONCLUSIONS OF LAW**

27 -AND-

28 **JUDGMENT**

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

28 **TO: BRIAN B. BOSCHKE, ESQ., of the Law Offices of HOLLEY DRIGGS WALCH**  
**FINE PUZEY STEIN & THOMPSON, Attorneys for Defendant 305 Las Vegas, LLC**

JOHN W. MUIJE & ASSOCIATES  
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1 TO: H. STAN JOHNSON, ESQ., and JAMES L. EDWARDS, ESQ., of the Law Offices of  
2 COHEN, JOHNSON, PARKER & EDWARDS, Attorneys for Mitchell Defendants

3 PLEASE TAKE NOTICE that the AMENDED FINDINGS OF FACT,  
4 CONCLUSIONS OF LAW AND JUDGMENT, was entered with the Court on the 17th day of  
5 January, 2020, a copy of which is attached hereto as Exhibit "1".

6 DATED this 17 day of January, 2020

7 JOHN W. MUIJE & ASSOCIATES

8  
9  
10 By: 

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1 **CERTIFICATE OF MAILING**

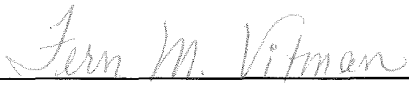
2 I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the  
3 17<sup>th</sup> day of January, 2020, I caused the foregoing document, **NOTICE OF ENTRY OF**  
4 **AMENDED FINDINGS OF FACT, CONCLUSIONS OF LAW AND JUDGMENT**, to be  
5 served as follows:  
6

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

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# EXHIBIT "1"



FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

Case No.: A-16-740689-C

Dept.: XI

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

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

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

### 11 FINDINGS OF FACT

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

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

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

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

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

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

1           4.     Plaintiff Revenue Plus, LLC (collectively with Nype, "Plaintiffs") is a Florida  
2 limited liability company.

3           5.     Defendant, David J. Mitchell ("Mitchell"), is an adult resident of New York.

4           6.     Defendant, Barnett Liberman ("Liberman"), is an adult resident of New York.

5           7.     Defendant Mitchell Holdings, LLC ("Mitchell Holdings") is a Delaware limited  
6 liability company.

7           8.     Defendant LVLP Holdings, LLC ("LVLP Holdings") is a Delaware limited  
8 liability company that was formed on or about November 4, 2004 by Mitchell and Liberman.

9           9.     Defendant Las Vegas Land Partners ("LVLP") is a Delaware limited liability  
10 company.

11          10.    Mitchell and Liberman are managers of LVLP.

12          11.    At all relevant times, Mitchell and Liberman were the sole owners (50/50) and  
13 managers of LVLP Holdings.

14          12.    At all relevant times, LVLP was owned (50/50) and managed by Mitchell and  
15 Liberman.

16          13.    Defendant Casino Coolidge LLC is a Nevada limited liability company. ("Casino  
17 Coolidge").

18          14.    Liberman is the managing member of Casino Coolidge.

19          15.    Defendant Aquarius Owner, LLC ("Aquarius") is a Delaware limited liability  
20 company.

21          16.    Defendant Leah Property, LLC ("Leah") is a Delaware limited liability company.

22          17.    Defendant Livework, LLC ("Livework") is a Delaware limited liability company.

23          18.    Defendant Livework Manager, LLC ("Livework Manager"), is a Delaware limited  
24 liability company.

25          19.    Defendant Zoe Property, LLC ("Zoe") is a Delaware limited liability company.

26          20.    Defendant Wink One, LLC ("Wink") is a Delaware limited liability company.

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

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

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

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

9           25. These entities are collectively referred to as the Related Entities.<sup>4</sup>

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

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

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

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

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

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

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



1           32.    On November 2, 2007, LVLP and two other entities<sup>5</sup> sued Nype seeking primarily  
2 a declaratory judgment that they did not owe Nype any fee, Nype counterclaimed seeking  
3 compensation for services rendered.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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20           <sup>6</sup>     The report is a part of Exhibit 90079.

21           <sup>7</sup>     That statute provides in pertinent part:  
22

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

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

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

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

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

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

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

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

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

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

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

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

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

26          57.     The evidence demonstrates that: (a) Mitchell, Liberman and the Related Entities  
27     commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;  
28

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

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

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

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

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

16  
17 60. In determining that these distributions were made with the actual intent to hinder,  
18 delay or defraud creditors and Nype, the Court notes, among other things, the following:

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

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

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

1 d. Mitchell, Liberman and the Related Entities attempted to conceal the  
2 distributions and their assets, through their discovery misconduct in this matter, which required  
3 enormous and expensive effort on Nype's part to attempt to obtain full and proper disclosure; and  
4

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

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

#### 8 CONCLUSIONS OF LAW

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

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

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

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

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

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

8  
9 6. Justice and equity require that the Court impose alter ego liability on Mitchell,  
10 Liberman and the Related Entities.

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

14  
15 8. Nype has not proven, by a preponderance of the evidence, his claim for alter ego  
16 that Mitchell Holdings is the alter ego of Mitchell.

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

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

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

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

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

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

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

16           16.     Nype has proven by a preponderance of the evidence that he suffered special  
17 damages in the form of attorney's fees, costs and expert expenses related to the transfers in the  
18 total amount of \$4,493,176.90.<sup>10</sup>

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

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22           <sup>9</sup>     The Court is cognizant of the possibility of duplicative awards given the various claims  
23 for relief.

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

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

5           19.     The Court concludes that the evidence demonstrates that:

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

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

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

14                d.     But for Nype's pretrial discovery,<sup>11</sup> the fabrication of evidence would not  
15     have been uncovered.

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

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

20           22.     Plaintiff has established damages on the civil conspiracy claim in the amount of  
21     \$15,148,339.

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

23           <sup>11</sup>     The limitations for a civil conspiracy claim is not limited by NRS 112.230(1)(a) but is  
24     instead governed by NRS 11.220 and the discovery rule. *Siragusa v. Brown*, 114 Nev. 1384 at  
25     1391-3 (1998).



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

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

5           26. Mitchell, Liberman, and the Related Entities' actions and inactions have caused  
6 Nype damages in the total amount of \$19,641,515.90.<sup>12</sup>

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

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

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

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

14           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
15 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer  
16 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,  
17 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC  
18 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the fraudulent  
19 conveyance claim in the amount of \$4,835,111.37.<sup>13</sup>

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

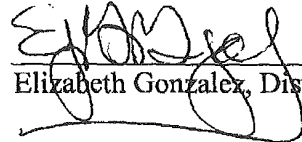
23  
24  
25  
26 <sup>12</sup> This is the total amount of damages which is not duplicated among the various claims for  
27 which the Court has made an award.

28 <sup>13</sup> These damages are duplicated in the civil conspiracy judgment.

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

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

9 DATED this 17<sup>th</sup> day of January, 2020.

10  
11   
12 Elizabeth Gonzalez, District Court Judge  
13

14 **Certificate of Service**

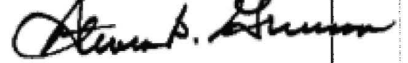
15 I hereby certify that on the date filed, a copy of the foregoing Findings of Fact and Conclusions of  
16 Law was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth  
17 Judicial District Court Electronic Filing Program.

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

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

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

23   
24 Dan Kutinac  
25  
26  
27  
28



1 MAFC  
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](mailto:jmuije@muijelawoffice.com)  
10 *Attorneys for Plaintiff*

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,

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,

Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

**HEARING REQUESTED**

**MOTION FOR AWARD OF ATTORNEYS FEES**

26 COMES NOW, Plaintiffs, RUSSELL L. NYPE AND REVENUE PLUS, LLC (hereinafter  
27 "Nype "), by and through his attorney of record, John W. Muije, Esq., of the law firm of John W.  
28 Muije & Associates, and hereby moves this Honorable Court for an award compensating their

substantial attorneys' fees and costs incurred that were not already proven and awarded at time of trial.

This Motion is made and based upon the Points & Authorities that follow, the exhibits attached hereto, the Declaration of JOHN W. MUIJE attached as Exhibit "5", the pleadings and documents on file herein, and the arguments to be adduced at the hearing hereon.

DATED this 6<sup>th</sup> day of February, 2020

JOHN W. MUIJE & ASSOCIATES

By: 

JOHN W. MUIJE, ESQ.

Nevada Bar No. 2419

1840 E. Sahara Ave., Suite 106

Las Vegas, Nevada 89104

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Email: [jmuje@mujelawoffice.com](mailto:jmuje@mujelawoffice.com)

*Attorneys for Plaintiffs*

## POINTS AND AUTHORITIES

### I.

#### FACTUAL BACKGROUND

The Court is amply familiar with this case, having recently sat through a six-day trial resulting in itemized and detailed Findings of Fact and Conclusions of Law. A true and correct copy of the Amended Findings of Fact and Conclusions of Law is attached hereto as Exhibit "1" and by this reference incorporated herein. Notably, the Court has already awarded the Plaintiffs, Russell L. Nype and Revenue Plus, LLC (hereinafter collectively "Nype") "damages in the form of attorneys fees, costs and expert expenses related to defendants' fraudulent transfers in the total amount of \$4,493,176.90. See Exhibit "1", p. 11, Conclusion of Law No. 16. Numerous

exhibits were admitted into evidence documenting and detailing the amount of fees and costs incurred by Nype, and Nype also provided sworn testimony under oath as to the same.

In addition to Conclusion of Law No. 16, two other Conclusions of Law found on page 13 are also important:

- (1) Paragraph 24 - "Nype is entitled to recover his attorneys fees as special damages as he was successful on his claim for civil conspiracy in the total amount of \$4,493,176.90..."
- (2) Paragraph 27 - "Nype may also file a post-trial motion if appropriate for fees and costs not proven during the trial as special damages."

Attached hereto as Exhibit "2" and by this reference incorporated herein is a summary of multiple itemized billings rendered by John W. Muije & Associates, constituting amounts not admitted into evidence at the time of trial, spanning January 1, 2020 through February 6, 2020. Mr. Muije's summary page shows a total of \$37,041.97 in fees and costs during that time period which have not previously or separately been accounted for.

Attached as Exhibit "3" is the itemized billing spanning the same time period covering the fees and costs Nype has incurred through the Reisman Sorokac law firm. That firm in turn charged \$22,716.00 in fees and costs, as set forth in their itemized redacted billing at Exhibit "3".

Exhibit "4" is a summary of the totals, showing \$59,757.97 in fees and costs that were not provided at time of trial and not considered by the Court at the time the Court rendered its Findings of Fact and Conclusions of Law. Hence, under Paragraph 27, page 13 of those Findings, now is the appropriate time to evaluate such fees and costs.

Let us now consider the relevant law.

...

...

II.

**LEGAL STANDARDS FOR THE COURT'S CONSIDERATION**

First and foremost, under NRCP 54(d)(2)(B), a motion for fees and costs may be filed no later than twenty-one (21) days after written notice of entry of judgment. That is the precise purpose of the present motion and filing.

Secondarily, the Court has already found that both the fraudulent conveyance conduct of the defendants, as well as the civil conspiracy conduct of the principals, Barnet Liberman and David Mitchell, merit an award of Nype's attorneys fees as special damages. Respectfully, the requested fees and costs requested at this time, are directly and proximately caused by the misconduct of the defendants. Indeed, the first several days of Exhibits "2" and "3" occurred while the trial was still in progress, but are accounted for separately hereinafter as the Court noted that as a practical matter there has to be some cutoff date. In fact Nype utilized December 31, 2019, as the cutoff date with regard to the fees and costs submitted at trial.

In addition to special damages however, NRS 18.010 provides a substantial basis for such fees and costs as well, given the numerous Findings of Fact determined by the Court, showing that the conduct of the defendants was undertaken and maintained without reasonable grounds and to harass and damage Nype.

NRS 18.010 provides in pertinent part as follows:

1. The compensation of an attorney and counselor for his or her services is governed by agreement, express or implied, which is not restrained by law.
2. In addition to the cases where an allowance is authorized by specific statute, the court may make an allowance of attorney's fees to a prevailing party:

...

- (a) When the prevailing party has not recovered more than \$20,000; or
- (b) Without regard to the recovery sought, when the court finds that the claim, counterclaim, cross-claim or third-party complaint or defense of the opposing party was brought or maintained without reasonable ground or to harass the prevailing party. The court shall liberally construe the provisions of this paragraph in favor of awarding attorney's fees in all appropriate situations. It is the intent of the Legislature that the court award attorney's fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.

Furthermore, the Court while given broad discretion to award attorneys' fees under applicable circumstances is nonetheless constrained to state the basis for the award of attorneys' fees. *Integrity Insurance Company v. Morton*, 105 Nev. 16, 769 P.2d 69 (1989). In conjunction with stating a basis for an award of attorneys' fees, the Court is also encouraged to evaluate a request for attorneys' fees in light of the factors enumerated in *Brunzell vs. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969).

#### **BRUNZELL FACTORS**

The *Brunzell* factors are considered and further analyzed in the Declaration OF JOHN W. MUIJE (Exhibit "5") submitted in conjunction herewith. Suffice it to say that the Court has ample authority under NRS 18.010(2) to award Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC all of their attorneys' fees, essentially in an effort to make them whole, which was the underlying

....

1  
2 statutory purpose and intent of enacting that statute in the first place. *Smith vs. Crown Financial*  
3 *Services, supra*, 111 Nev. at 286.

4 Just as significantly, however, the Court is respectfully pointed to NRS 18.010(2)(b) which  
5 indicates that when the defense is maintained without reasonable ground or to harass a prevailing  
6 party, the Court should liberally construe the provisions of NRS 18.010 to punish and deter  
7 frivolous or vexatious defenses. The reasons stated in the statute for encouraging the award of  
8 attorneys' fees in all appropriate situations is "because improper delay and defenses overburden  
9 limited judicial resources, hinder the timely resolution of meritorious claims, and increase the costs  
10 of engaging in business and providing professional services to the public."  
11

12 **CONCLUSION**

13  
14 The Court has already awarded Nype substantial attorneys fees and costs as special damages  
15 pursuant to a Findings of Fact and Conclusions of Law. It is only logical and appropriate, particularly  
16 given Conclusion of Law No. 27, that previously unaccounted for fees and costs incurred during the  
17 latter part of the trial and the approximate three weeks since trial also be awarded to Nype and against  
18 defendants, jointly and severally.  
19

20 Exhibits "2", "3" and "4" demonstrate the quantum and total amount of fees and costs  
21 incurred, and accordingly Nype requests an award of \$59,757.97 for such fees and costs not  
22 previously accounted for.

23 Finally, the Brunzell factors are analyzed and applied to this case in the Sworn Declaration  
24 of John W. Muije, attached hereto as Exhibit "5" and by this reference incorporated herein.  
25

26 . . . .

27 . . . .



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**WHEREFORE**, Nype respectfully urges the Court to award him the additional attorneys fees and costs not previously accounted for at trial.

Dated this 6<sup>th</sup> day of February, 2020

JOHN W. MUIJE & ASSOCIATES

By: 

JOHN W. MUIJE, ESQ.  
Nevada Bar No. 2419  
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*Attorneys for Plaintiffs*

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**CERTIFICATE OF SERVICE**

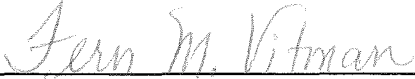
I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 6<sup>th</sup> day of February, 2020, I caused the foregoing document, **MOTION FOR AWARD OF ATTORNEYS FEES**, to be served as follows:

- ☐ 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.  
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*Barnet Liberman and Casino Coolidge,*  
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Brian W. Boschee, Esq.  
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*Attorneys for Mitchell Defendants*

  
An Employee of JOHN W. MUIJE & ASSOCIATES

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***EXHIBIT “1”***

*Steven D. Grierson*

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

Case No.: A-16-740689-C

Dept.: XI

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

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

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

11 **FINDINGS OF FACT**  
12

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

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

21 3. Plaintiff Russell L. Nype ("Nype") is an adult resident of New York.  
22  
23

---

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

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

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

1           4.     Plaintiff Revenue Plus, LLC (collectively with Nype, "Plaintiffs") is a Florida  
2 limited liability company.

3           5.     Defendant, David J. Mitchell ("Mitchell"), is an adult resident of New York.

4           6.     Defendant, Barnett Liberman ("Liberman"), is an adult resident of New York.

5           7.     Defendant Mitchell Holdings, LLC ("Mitchell Holdings") is a Delaware limited  
6 liability company.

7           8.     Defendant LVLP Holdings, LLC ("LVLP Holdings") is a Delaware limited  
8 liability company that was formed on or about November 4, 2004 by Mitchell and Liberman.

9           9.     Defendant Las Vegas Land Partners ("LVLP") is a Delaware limited liability  
10 company.

11          10.    Mitchell and Liberman are managers of LVLP.

12          11.    At all relevant times, Mitchell and Liberman were the sole owners (50/50) and  
13 managers of LVLP Holdings.

14          12.    At all relevant times, LVLP was owned (50/50) and managed by Mitchell and  
15 Liberman.

16          13.    Defendant Casino Coolidge LLC is a Nevada limited liability company. ("Casino  
17 Coolidge").

18          14.    Liberman is the managing member of Casino Coolidge.

19          15.    Defendant Aquarius Owner, LLC ("Aquarius") is a Delaware limited liability  
20 company.

21          16.    Defendant Leah Property, LLC ("Leah") is a Delaware limited liability company.

22          17.    Defendant Livework, LLC ("Livework") is a Delaware limited liability company.

23          18.    Defendant Livework Manager, LLC ("Livework Manager"), is a Delaware limited  
24 liability company.

25          19.    Defendant Zoe Property, LLC ("Zoe") is a Delaware limited liability company.

26          20.    Defendant Wink One, LLC ("Wink") is a Delaware limited liability company.

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

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

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

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

9           25. These entities are collectively referred to as the Related Entities.<sup>4</sup>

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

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

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

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

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

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

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

1           32. On November 2, 2007, LVLP and two other entities<sup>5</sup> sued Nype seeking primarily  
2 a declaratory judgment that they did not owe Nype any fee, Nype counterclaimed seeking  
3 compensation for services rendered.

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

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

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

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

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

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

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

21           40. The evidence also demonstrates that Mitchell, Liberman and the Related Entities  
22 engaged in conscious, concerted and ongoing efforts to ensure that funds and/or assets that would  
23 otherwise be available to Nype to satisfy his claims (and Judgment) were kept away from Nype.  
24

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



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

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

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

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

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

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

20           <sup>6</sup>       The report is a part of Exhibit 90079.

21           <sup>7</sup>       That statute provides in pertinent part:

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

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

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

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

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

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

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

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

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

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

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

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

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

26          57.     The evidence demonstrates that: (a) Mitchell, Liberman and the Related Entities  
27     commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;  
28

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

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

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

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

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

16  
17 60. In determining that these distributions were made with the actual intent to hinder,  
18 delay or defraud creditors and Nype, the Court notes, among other things, the following:

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

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

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

1 d. Mitchell, Liberman and the Related Entities attempted to conceal the  
2 distributions and their assets, through their discovery misconduct in this matter, which required  
3 enormous and expensive effort on Nype's part to attempt to obtain full and proper disclosure; and  
4

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

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

#### 8 CONCLUSIONS OF LAW

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

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

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

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

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

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

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

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

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

17 9. Mitchell, Liberman and each of the Related Entities are jointly and severally liable  
18 on Nype's Judgment and the damages, attorney's fees and costs awarded in this action.  
19

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

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

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

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

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

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

16           16. Nype has proven by a preponderance of the evidence that he suffered special  
17 damages in the form of attorney's fees, costs and expert expenses related to the transfers in the  
18 total amount of \$4,493,176.90.<sup>10</sup>

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

22  
23  
24  
25 <sup>9</sup> The Court is cognizant of the possibility of duplicative awards given the various claims  
for relief.

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

1 18. Independent of NRS Chapter 112, to prove a civil conspiracy, Plaintiff must prove  
2 "a combination of two or more persons who, by some concerted action, intend to accomplish a  
3 lawful objective for the purpose of harming another, and damage results from the act or acts."

4 *Hilton Hotels vs. Butch Lewis Productions*, 109 Nev. 1043, 148, 862 P.2d 1207, 1210 (1993).

5  
6 19. The Court concludes that the evidence demonstrates that:

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

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

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

15  
16 d. But for Nype's pretrial discovery,<sup>11</sup> the fabrication of evidence would not  
17 have been uncovered.

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

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

22 22. Plaintiff has established damages on the civil conspiracy claim in the amount of  
23 \$15,148,339.

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

25  
26 <sup>11</sup> The limitations for a civil conspiracy claim is not limited by NRS 112.230(1)(a) but is  
27 instead governed by NRS 11.220 and the discovery rule. *Siragusa v. Brown*, 114 Nev. 1384 at  
28 1391-3 (1998).

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

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

5           26. Mitchell, Liberman, and the Related Entities' actions and inactions have caused  
6 Nype damages in the total amount of \$19,641,515.90.<sup>12</sup>

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

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

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

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

14           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
15 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer  
16 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,  
17 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC  
18 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the fraudulent  
19 conveyance claim in the amount of \$4,835,111.37.<sup>13</sup>

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

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

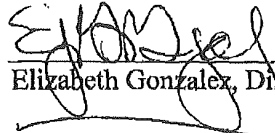
28 <sup>13</sup> These damages are duplicated in the civil conspiracy judgment.



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

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

9 DATED this 17<sup>th</sup> day of January, 2020.

10  
11   
12 Elizabeth Gonzalez, District Court Judge  
13

14 **Certificate of Service**

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

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

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

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

22   
23 Dan Kutinac  
24  
25  
26  
27  
28

## ***EXHIBIT "2"***

**JWM TIME AND COSTS**  
**POST 12-31-2019**

	COSTS	FEES
Jan 1 - 8	-----	\$ 24,682.50
Jan. 9 - 17	\$122.00	\$ 3,802.50
Jan. 18 - 31	\$559.97	\$ 3,915.00
Feb. 1 - 6	-----	\$ 3,960.00
Sub-totals	<b><u>\$681.97</u></b>	<b><u>\$ 36,360.00</u></b>

**JWM TOTALS**

(1-1-2020 - 2-6-2020)	<b><u>\$ 37,041.97</u></b>
-----------------------	----------------------------

**EXHIBIT "2"**

# John W. Muije & Associates

1840 E. Sahara Ave #106

Las Vegas, NV 89104

702-386-7002

J3792H

Nype v. Las Vegas Land H

Invoice submitted to:

Russell Nype

PO Box 805

Kennebunkport, MAINE 04046

January 9, 2020

Invoice # 48870

## Professional Services

			<u>Hrs/Rate</u>	<u>Amount</u>
		<u>LV Land Partners H</u>		
1/1/2020	JWM	Review notes, trial outlines, exhibits, emails regarding fees and 305 deal, etc and prepare for next trial day, including long telephone call with Rob	4.00 \$450.00/hr	\$1,800.00
	JWM	Review and revise final December pre-bill - n/c	0.60	NO CHARGE
1/2/2020	JWM	Review text from Candee and respond	0.10 \$450.00/hr	\$45.00
	JWM	Review texts and updates with Rob Warns	0.30 \$450.00/hr	\$135.00
	JWM	Closely examine 305, LVLP accounting and legal documents, and exhibits necessary for Friday testimony	1.00 \$450.00/hr	\$450.00
	JWM	Review and do morning preparation and organize prior to court	1.50 \$450.00/hr	\$675.00
	JWM	Court appearance - 3rd day of trial	8.50 \$450.00/hr	\$3,825.00
	JWM	Review further texts and emails from Rob, Rod at IT, and Mark Rich	0.30 \$450.00/hr	\$135.00
	JWM	Review and respond to Rusty [REDACTED] regarding fees and costs - n/c	0.50	NO CHARGE

			<u>Hrs/Rate</u>	<u>Amount</u>
1/3/2020	JWM	Review emails and texts from Rusty and Bill Candee and with Rob and Mark after today's trial proceedings	0.30 \$450.00/hr	\$135.00
	JWM	Review documents, exhibits and outline Chamberlin and Mitchell testimony prior to court	1.25 \$450.00/hr	\$562.50
	JWM	Court appearance - 4th day of trial and discussion with Rusty afterwards	8.00 \$450.00/hr	\$3,600.00
1/4/2020	JWM	Dictate email to Rod and Rusty regarding logistics and timing for Sunday work and meeting	0.10 \$450.00/hr	\$45.00
	JWM	Review emails from Jody and respond regarding Exhibit 5042	0.30 \$450.00/hr	\$135.00
	JWM	Review rough closing outline from Rob, forward to Rod and texts and emails coordinating same	0.80 \$450.00/hr	\$360.00
	JWM	Telephone call with Rob twice regarding closing, fees, issues and priorities	1.10 \$450.00/hr	\$495.00
1/5/2020	JWM	Conference with Rob and Rusty to prepare for his testimony	1.25 \$450.00/hr	\$562.50
	JWM	Conference with Rob and Rod, work on closing, match exhibits to Power Point, and revise and further prepare all of the same	4.50 \$450.00/hr	\$2,025.00
	JWM	Review Trial notes and Exhibit list and jot down power point notes	1.50 \$450.00/hr	\$675.00
	JWM	Review revised closing, Power Point and exhibits in order to locate and add arguments (at home Sunday evening)	1.50 \$450.00/hr	\$675.00
	JWM	Conference with Rob and work on attorney fees Exhibits and summaries	2.00 \$450.00/hr	\$900.00
1/6/2020	JWM	Review and morning preparation before court	2.00 \$450.00/hr	\$900.00
	JWM	Court appearance - 5th day of trial	6.50 \$450.00/hr	\$2,925.00
	JWM	Telephone call with Rob after court, review emails, texts and summary material	1.50 \$450.00/hr	\$675.00
1/7/2020	JWM	Telephone call - communicate with Mark, Rusty, etc regarding result of closing and sign case vendor checks	0.30 \$450.00/hr	\$135.00

	Hrs/Rate	Amount
1/7/2020 JWM Review and morning preparation before court	1.50 \$450.00/hr	\$675.00
JWM Court appearance - closing argument	4.25 \$450.00/hr	\$1,912.50
1/8/2020 JWM Review query from clerk regarding exhibits and respond	0.20 \$450.00/hr	\$90.00
JWM Review multiple emails from Rusty, Bill, etc and re-organize trial boxes	0.30 \$450.00/hr	\$135.00
SUBTOTAL:	[ 55.95	\$24,682.50]
For professional services rendered	55.95	\$24,682.50

Additional Charges :

	Qty	Price
<u>LV Land Partners H</u>		
1/2/2020 Mileage and parking	1	\$26.00
1/3/2020 Mileage - December - Johnny's runs	1	\$8.55
Process Service Fee - Legal Wings - service of Subpoena's and service of Complaints in Intervention - served 12/2/19	1	\$1,161.00
1/7/2020 Mileage and parking	1	\$26.00
Rocket Reporters - depo of Russell Nype 12/18/19	1	\$653.00
Esquire Deposition Solutions - Mitchell 12/2/19	1	\$838.20
Esquire Deposition Solutions - Liberman 12/5/19	1	\$974.55
1/8/2020 Copying cost - from 1/1/2020 through 1/8/2020	1	\$94.70
SUBTOTAL:	[	3782.00]
Total additional charges		\$3,782.00
Total amount of this bill		\$28,464.50
Previous balance		\$40,652.42

\* included in  
Memo of Costs

Russell Nype

Page 4

	<u>Amount</u>
Accounts receivable transactions	
1/6/2020 Payment - thank you. Check No. 1572	(\$20,000.00)
1/8/2020 Courtesy Credit discount	<u>(\$2,000.00)</u>
Total payments and adjustments	(\$22,000.00)
Balance due	<u><u>\$47,116.92</u></u>

\*\*\*\* PURSUANT TO YOUR AGREEMENT REGARDING FEES WITH THIS OFFICE, PAYMENT IS  
DUE UPON RECEIPT \*\*\*\*

# John W. Muije & Associates

1840 E. Sahara Ave #106

Las Vegas, NV 89104

702-386-7002

J3792H

Nype v. Las Vegas Land H

Invoice submitted to:

Russell Nype

PO Box 805

Kennebunkport, MAINE 04046

January 20, 2020

Invoice # 48872

## Professional Services

			<u>Hrs/Rate</u>	<u>Amount</u>
	<u>LV Land Partners H</u>			
1/9/2020	JWM	Review multiple emails regarding continuance of 341(a) and trustee, selling RTC interest, check calendar and respond	0.40 \$450.00/hr	\$180.00
1/10/2020	JWM	Review notes from Shelley, Lenny and Rusty and calendar new 341(a)	0.25 \$450.00/hr	\$112.50
1/12/2020	JWM	Review texts from Rusty regarding [REDACTED] and do quick response	0.20 \$450.00/hr	\$90.00
1/13/2020	JWM	Review numerous weekend emails and notes regarding [REDACTED]	0.10 \$450.00/hr	\$45.00
1/16/2020	JWM	Review Judge's Decision from home - carefully and notify team	1.00 \$450.00/hr	\$450.00
	JWM	Draft NOE, Abstract, and order 4 exemplified copies, work on cost memo and numerous emails and phone calls with client and team members including discussion on Judgment and further handing	3.00 \$450.00/hr	\$1,350.00
1/17/2020	JWM	Review emails from Rusty to Lenny, Rob regarding costs, etc and respond, quick note to NJ counsel	0.30 \$450.00/hr	\$135.00
	JWM	Review Amended Findings and note to team regarding significance of same	0.40 \$450.00/hr	\$180.00



	Hrs/Rate	Amount
1/17/2020 JWM Review Lenny's BK research and information as to [REDACTED], and his note to Trustee Krohn	0.40 \$450.00/hr	\$180.00
JWM Telephone call with Rob twice regarding costs and possible issues for Appeal	0.30 \$450.00/hr	\$135.00
JWM Conference with Litigation team and brainstorm Judgment, BK, and further handling	1.40 \$450.00/hr	\$630.00
JWM Review details of Judgment again - very carefully, prior to call	0.30 \$450.00/hr	\$135.00
JWM Review overnight emails, do quick responses and re-schedule conference call	0.40 \$450.00/hr	\$180.00
<b>SUBTOTAL:</b>	[ 8.45	\$3,802.50]
For professional services rendered	8.45	\$3,802.50

Additional Charges :

	Qty	Price
<u>LV Land Partners H</u>		
1/16/2020 County Clerk - 4 exemplified copies of Findings of Fact and Conclusion of Law - Judgment	1	\$36.00
Certify & Record Affidavit in Support of Recordation	1	\$43.00
Certify & Record Judgment/Affidavit	1	\$43.00
1/17/2020 Litigation Services - 12/18/19 through 1/7/2020 ---trial technician services --- see attached	1	\$13,387.50 *
Litigation Services - Trial Exhibits - see attached	1	\$32,710.52 *
<b>SUBTOTAL:</b>		[ 46220.02]
Total additional charges		\$46,220.02
Total amount of this bill		\$50,022.52
Previous balance		\$47,116.92

\* included in  
Cost memo

Russell Nype

Page 3

	<u>Amount</u>
Balance due	<u>\$97,139.44</u>

\*\*\* PURSUANT TO YOUR AGREEMENT REGARDING FEES WITH THIS OFFICE, PAYMENT IS  
DUE UPON RECEIPT \*\*\*

John W. Muije & Associates  
1840 E. Sahara Ave #106  
Las Vegas, NV 89104  
702-386-7002

J3792H

Nype v. Las Vegas Land H

Invoice submitted to:  
Russell Nype  
PO Box 805  
Kennebunkport, MAINE 04046

February 4, 2020

Invoice # 48900

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
<u>LV Land Partners H</u>			
1/19/2020	JWM Review text from Rusty regarding debtor exams and do detailed response	0.25 \$450.00/hr	\$112.50
1/20/2020	JWM Review and finalize affidavit for recording judgment vs. Casino Coolidge and defendant entities	0.20 \$450.00/hr	\$90.00
	JWM Review voicemail and note from Bill; return call and left message	0.10 \$450.00/hr	\$45.00
	JWM Review and left message for Candee again - n/c	0.10	NO CHARGE
1/21/2020	JWM Review source and back up accounting documents, revise Memo of Costs and verify entries	0.75 \$450.00/hr	\$337.50
	JWM Review notice of continued 341(a) and calendar same	0.10 \$450.00/hr	\$45.00
	JWM Dictate letter to team regarding memo of costs just filed	0.10 \$450.00/hr	\$45.00
	JWM Review Lenny's memo regarding BK law <del>at where</del> <del>and on</del>	0.20 \$450.00/hr	\$90.00
	JWM Review emails from Rusty <del>and the Win</del> respond in detail and review responses from Lenny and Mark Rich	0.50 \$450.00/hr	\$225.00

		<u>Hrs/Rate</u>	<u>Amount</u>
1/21/2020	JWM Review note from Rusty regarding [REDACTED] and do quick response - n/c	0.10 \$450.00/hr	\$45.00
	JWM Research Motion to Reconsider	0.80 \$450.00/hr	\$360.00
	JWM Telephone call with Bill Candee regarding issues and extended interpreting FFCL and further handling as to Judgment	0.80 \$450.00/hr	\$360.00
	JWM Review invoices and cost accounting for Memo of Costs; research Stds for costs	0.50 \$450.00/hr	\$225.00
1/22/2020	JWM Review [REDACTED] and emails regarding damage [REDACTED] and download relevant cases	0.40 \$450.00/hr	\$180.00
	JWM Review over night notes - n/c	0.20	NO CHARGE
1/24/2020	JWM Review emails from Shelley and her new BK counsel, download new Mitchell documents and re-calendar continued 341(a)	0.40 \$450.00/hr	\$180.00
	JWM Review further emails from Rusty, Shelley and Lenny and briefly review amended schedules	0.50 \$450.00/hr	\$225.00
	JWM Review texting with Rusty regarding [REDACTED]	0.20 \$450.00/hr	\$90.00
1/25/2020	JWM Review long note from Rusty regarding BK [REDACTED]	0.20 \$450.00/hr	\$90.00
1/27/2020	JWM Review Motion to Retax Costs and Notice of Hearing and do detailed note to team	0.50 \$450.00/hr	\$225.00
	JWM Further review note from Candee regarding [REDACTED] and respond	0.10 \$450.00/hr	\$45.00
	JWM Review notes and dialogue regarding [REDACTED] [REDACTED] - n/c	0.20	NO CHARGE
	JWM Review new notes from Lenny regarding BK delays [REDACTED] - n/c	0.20	NO CHARGE
1/28/2020	JWM Review invoices from Pacer and Rocket Reporters, arrange payment and direct Supplemental Memo of Costs	0.40 \$450.00/hr	\$180.00
1/29/2020	JWM Review multiple emails regarding BK, [REDACTED] Spitz data, [REDACTED] etc and respond	0.50 \$450.00/hr	\$225.00

		<u>Hrs/Rate</u>	<u>Amount</u>
1/29/2020	JWM Review and approve final Supplemental Memo of Costs for late court reporter bill from Rocket and issue check for same	0.10 \$450.00/hr	\$45.00
	JWM Review Casino Coolidge Motion to Alter or Amend Judgment and forward to team with comments	0.70 \$450.00/hr	\$315.00
	JWM Review Nype and Schwartzer dialogue regarding problems in BK system, and need for trustee to move forward <del>to RUC and Wink</del>	0.30 \$450.00/hr	\$135.00
SUBTOTAL:		[ 9.40	\$3,915.00]
For professional services rendered		9.40	\$3,915.00

Additional Charges :

	<u>Qty</u>	<u>Price</u>
<u>LV Land Partners H</u>		
1/21/2020 Paralegal - compile and draft memo of costs	1	\$250.00
1/22/2020 Download documents - Pacer	1	\$13.00
Electronic Filing	1	\$17.50
Certify & Record Affidavit in Support of Recordation --- corporate entities Casino Coolidge, etc	1	\$45.00
1/24/2020 Rocket Reporters - Deposition transcript of Mark Rich 12/13/2019	1	\$962.50 ✖
1/30/2020 Copying cost	1	\$177.60
1/31/2020 FedEx - 12/5 to Reno Carson - Service of process on 305 Las Vegas	1	\$56.87
SUBTOTAL:		[ 1522.47]
Total additional charges		\$1,522.47
Interest on overdue balance		\$10.62
Total amount of this bill		\$5,448.09
Previous balance		\$97,139.44

\* included in Supp. Cost Memo

	<u>Amount</u>
Accounts receivable transactions	
1/27/2020 Payment - thank you. Check No. 103	<u>(\$20,000.00)</u>
Total payments and adjustments	<u>(\$20,000.00)</u>
Balance due	<u><u>\$82,587.53</u></u>

\*\*\*\* PURSUANT TO YOUR AGREEMENT REGARDING FEES WITH THIS OFFICE, PAYMENT IS  
DUE UPON RECEIPT \*\*\*\*

John W. Muije & Associates  
1840 E. Sahara Ave #106  
Las Vegas, NV 89104  
702-386-7002

J3792H

Nype v. Las Vegas Land H

Invoice submitted to:  
Russell Nype  
PO Box 805  
Kennebunkport, MAINE 04046

February 6, 2020

Invoice # 48917

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
<u>LV Land Partners H</u>			
2/3/2020	JWM Review numerous weekend emails, respond to several including note from Trustee's Counsel, dialogue with Jody and Rob regarding timing and logistics and coordinate [REDACTED] and procedures regarding the same; respond regarding Rusty [REDACTED]	1.75 \$450.00/hr	\$787.50
2/4/2020	JWM Review Blut note carefully; call and leave detailed message and do detailed written response regarding Judgment Lien and Stay	0.70 \$450.00/hr	\$315.00
	JWM Review email from Blut and carefully research NRCP 62 and NRS 17.150	0.75 \$450.00/hr	\$337.50
	JWM Review multiple emails from Rob and Jody, respond to the same and address logistics on pending motion and strategy for handling same	0.40 \$450.00/hr	\$180.00
	JWM Review note from Rusty regarding cost issues and do quick response - n/c	0.20	NO CHARGE
2/5/2020	JWM Review multiple additional emails from Rob & Jody regarding logistics and research results	0.30 \$450.00/hr	\$135.00
	JWM Review multiple emails from Rusty, Rob, etc [REDACTED] regarding status and proceeding [REDACTED]	0.30 \$450.00/hr	\$135.00

		<u>Hrs/Rate</u>	<u>Amount</u>
2/5/2020	JWM Telephone call with Blut and agree to brief extension on Motion to Amend	0.30 \$450.00/hr	\$135.00
	JWM Review text and email from Blut and review his Motion to Strike	0.50 \$450.00/hr	\$225.00
	JWM Review emails - multiple and responding with Rob and Jody regarding pending issues and logistics	0.70 \$450.00/hr	\$315.00
	JWM Draft SAO to extend response deadline on Casino Coolidge	0.30 \$450.00/hr	\$135.00
	JWM Telephone call with Boschee regarding procedural status, developments and [REDACTED]	0.30 \$450.00/hr	\$135.00
2/6/2020	JWM Time to compile, brief research and draft Motion for Fees (est'd)	2.50 \$450.00/hr	\$1,125.00
	SUBTOTAL:	[ 9.00	\$3,960.00]
	For professional services rendered	9.00	\$3,960.00
	Interest on overdue balance		\$0.64
	Total amount of this bill		\$3,960.64
	Previous balance		\$82,587.53
	Balance due		<u>\$86,548.17</u>

\*\*\*\* PURSUANT TO YOUR AGREEMENT REGARDING FEES WITH THIS OFFICE, PAYMENT IS  
DUE UPON RECEIPT \*\*\*\*



***EXHIBIT "3"***



8965 S. Eastern Ave., Suite 382  
Las Vegas, Nevada 89123  
United States  
Phone: (702) 727-6258  
www.rsnvlaw.com

## INVOICE

Invoice # 02200001  
Date: 02/05/2020

Russell Nype  
Via email: rnype@revenueplus.tv  
[REDACTED] South Ocean Blvd. [REDACTED]  
Palm Beach, FL 33480

18-0078 : NYPE

### Judgment Enforcement

Date	Attorney	Notes	Hours	Rate	Discount	Total
01/01/2020	RRW	Analyze and draft Direct/Cross-Examination questions for Barnet Liberman. Emails with Mark Rich regarding clarification of supporting evidence. Emails with John Muije, Esq., regarding potential testimony from the firm regarding our fees.	6.10	\$300.00	-	\$1,830.00
01/02/2020	JWH	Review and analyze fees and costs incurred for purposes of proving attorney's fees as special damages. Review Mark Rich's Supplemental Expert Report to determine additional exhibits that need to be admitted into evidence at trial.	2.10	\$270.00	-	\$567.00
01/02/2020	JHR	Analyze strategy for closing argument. Instruct Robert Warns, Esq., regarding same.	0.20	\$375.00	-	\$75.00
01/02/2020	RRW	Continue Trial Preparation including analysis of fees incurred, evidence that must be admitted into the evidentiary record, strategy for closing argument and examination of Mitchell.	4.30	\$300.00	-	\$1,290.00
01/03/2020	JWH	Draft calculation of interest on the underlying judgment through January 15, 2020. Review email from John Muije, Esq. regarding locating correct documents to be used as trial exhibits. Review file to locate same. Draft email to John Muije, Esq. attaching same.	0.60	\$270.00	-	\$162.00
01/03/2020	RRW	Continue Trial Preparation including beginning draft of closing argument. Emails and teleconferences with John Muije, Esq., regarding the same.	2.90	\$300.00	-	\$870.00
01/04/2020	JWH	Review and respond to emails from John Muije, Esq. regarding certain documents for use at trial and/or trial preparation. Locate requested documents for use at trial and/or for trial preparation.	0.50	\$270.00	-	\$135.00
01/04/2020	RRW	Continue Trial Preparation including drafting of Closing Argument.	1.00	\$300.00	-	\$300.00
01/05/2020	JWH	Research regarding [REDACTED]	1.30	\$270.00	-	\$351.00
01/05/2020	RRW	Trial Preparation. Continue drafting Closing Argument. Analyze exhibits and testimony from Rusty Nype. Meet with Mr. Nype [REDACTED]	10.10	\$300.00	-	\$3,030.00
01/06/2020	RRW	Trial Preparation. Continue drafting Closing Argument. Correspond and teleconferences with John Muije, Esq., regarding the same. Teleconference with Mark Rich regarding trial events. Analyze fees incurred.	4.50	\$300.00	-	\$1,350.00
01/06/2020	JWH	Review and analyze certain trial exhibits to determine which party or parties signed on behalf of Charleston Casino Partners. Review exhibits to determine proper Trial Exhibit numbers for use during trial. Review and analyze Defendants' trial exhibit lists to determine if a certain exhibit they wished to introduce was previously disclosed.	0.90	\$270.00	-	\$243.00
01/07/2020	RRW	Attend Closing Argument and provide notes to John Muije, Esq., regarding rebuttal arguments. Teleconference with Rusty Nype regarding Closing Arguments. Analyze the Court's ruling on 305's Motion for Directed Verdict.	2.50	\$300.00	-	\$750.00
01/09/2020	RRW	Continue analyzing potential options with respect to the Court's decision as to	1.20	\$300.00	-	\$360.00

		305 LLC. Teleconference with Bill Candee, Esq., regarding the same. Emails with Rusty Nype regarding the same.					
01/10/2020	RRW	Review Minute Order from the Court extending the chambers hearing regarding the Court's Judgment after trial. Teleconference with Rusty Nype regarding additional time until the Court issues its decision.	0.40	\$300.00	-	\$120.00	
01/16/2020	JHR	Begin reviewing and analyzing Findings of Fact Conclusion of Law and Judgment.	0.30	\$375.00	-	\$112.50	
01/16/2020	JWH	Review and analyze Findings of Fact, Conclusions of Law and Judgment. Recalculate pre-judgment interest pursuant to NRS 17.130.	1.10	\$270.00	-	\$297.00	
01/16/2020	RRW	Review and analyze the Court's Findings of Fact, Conclusions of Law and Judgment. Analyze strategy for supplementing fees and costs. Analyze amounts awarded and current values thereof. Analyze and calculate prejudgment interest. Analyze preparation of Memorandum of Costs. Teleconference with John Muije, Esq., and Rusty Nype regarding the Court's decision.	2.30	\$300.00	-	\$690.00	
01/17/2020	JHR	Telephone conference with Rusty Nype, John Muije, Esq., William Candee, Esq., and Leonard Schwartz, Esq., regarding [REDACTED] [REDACTED] Continue reviewing and analyzing Findings of Fact Conclusions of Law and Judgment.	1.70	\$375.00	-	\$637.50	
01/17/2020	JWH	Review and analyze documents to assist John Muije, Esq. with drafting the Memorandum of Costs. Begin research regarding [REDACTED] Begin research regarding [REDACTED]	1.60	\$270.00	-	\$432.00	
01/17/2020	RRW	Continue analyzing [REDACTED] Analyze potential post-trial motions [REDACTED] Instruct Jody Hagins, Esq., regarding research related to the same. Review Amended Findings of Fact, Conclusions of Law and Judgment. Review and analyze amount of costs to seek post-judgment.	3.00	\$300.00	-	\$900.00	
01/21/2020	JWH	Continue research regarding [REDACTED]	2.50	\$270.00	-	\$675.00	
01/22/2020	JHR	Begin reviewing emails from William Candee, Esq., regarding [REDACTED]	0.10	\$375.00	-	\$37.50	
01/22/2020	JWH	Additional research regarding [REDACTED] Research regarding [REDACTED]	1.90	\$270.00	-	\$513.00	
01/22/2020	RRW	Emails with Rusty Nype regarding collection. Analyze [REDACTED] Analyze strategy [REDACTED] Instruct Jody Hagins, Esq., regarding researching potential post-trial motion.	0.60	\$300.00	-	\$180.00	
01/23/2020	JHR	Continue reviewing and analyzing [REDACTED] Judgment. Continue analyzing [REDACTED] Review and analyze William Candee, Esq.'s emails regarding same.	1.90	\$375.00	-	\$712.50	
01/23/2020	JWH	Additional research regarding [REDACTED] (Valued-Client Discount: 2.00 hours)	4.30	\$270.00	-\$540.00	\$621.00	
01/23/2020	RRW	Review and analyze research regarding [REDACTED] Instruct Jody Hagins, Esq., regarding further research regarding [REDACTED]	0.80	\$300.00	-	\$240.00	
01/24/2020	JWH	Additional research [REDACTED] Begin research regarding [REDACTED] Begin research regarding [REDACTED] Additional research regarding [REDACTED] Research regarding [REDACTED] (Valued-Client Discount: 2.00 hours)	2.10	\$270.00	-\$567.00	\$0.00	
01/27/2020	JWH	Additional research regarding [REDACTED] (Valued-Client Discount: 1.00 hour)	1.00	\$270.00	-\$270.00	\$0.00	
01/27/2020	RRW	Review and analyze Motion to Retax. Instruct Jody Hagins, Esq., regarding researching the same.	0.30	\$300.00	-	\$90.00	
01/29/2020	RRW	Begin reviewing Motion to Alter or Amend.	0.20	\$300.00	-	\$60.00	
01/30/2020	JHR	Continue analyzing [REDACTED]	0.20	\$375.00	-	\$75.00	

01/30/2020	JWH	Draft memorandum regarding due dates for potential post-trial motions and appeals. Research regarding the deadline [REDACTED]. Review and analyze Motion to Alter or Amend Judgment to assist John Muije, Esq. with drafting the Opposition to same. Begin research regarding recovery of costs for litigation support services to assist John Muije, Esq. with the Opposition to the Motion to Retax Costs.	1.90	\$270.00	-	\$513.00
01/30/2020	RRW	Analyze all upcoming post-trial deadlines and instruct Jody Hagins, Esq., regarding researching the same under all amended rules. Correspond with Rusty Nype.	0.80	\$300.00	-	\$240.00
01/31/2020	JWH	Additional research regarding [REDACTED]. Additional research regarding [REDACTED]. Begin drafting Opposition to Motion to Alter or Amend Judgment.	3.20	\$270.00	-	\$864.00
01/31/2020	RRW	Analyze Motion for Attorneys Fees and Opposition to Motion to Alter or Amend Judgment. Instruct Jody Hagins, Esq., regarding the same. Review and revise emails to John Muije, Esq., regarding same. Instruct Jody Hagins, Esq., regarding research for Opposition to Motion to Retax Costs.	0.50	\$300.00	-	\$150.00
02/01/2020	JWH	Continue research regarding recovery of costs for litigation support services to assist John Muije, Esq. with the Opposition to the Motion to Retax Costs.	0.90	\$270.00	-	\$243.00
02/01/2020	RRW	Instruct Jody Hagins, Esq., regarding Opposition to Motion to Retax.	0.10	\$300.00	-	\$30.00
02/03/2020	JWH	Draft email to John Muije, Esq. regarding Opposition to Motion to Alter or Amend Judgment. Review response from John Muije, Esq. to same. Draft email to John Muije, Esq. regarding Motion for Attorney Fees. Review response from John Muije, Esq. to same. Continue drafting Opposition to Motion to Alter or Amend Judgment.	3.30	\$270.00	-	\$891.00
02/03/2020	RRW	Review emails from John Muije, Esq., regarding Motion for Attorneys Fees, Opposition to Motion to Alter or Amend Judgment and Opposition to Motion to Retax and Settle Costs.	0.20	\$300.00	-	\$60.00
02/04/2020	JWH	Draft Ex Parte Application to Extend Time to File Opposition to Motion to Alter or Amend Judgment. Continue drafting Opposition to Motion to Alter or Amend Judgment. Teleconference with John Muije, Esq. and Rob Warns, Esq. to discuss same.	5.70	\$270.00	-	\$1,539.00
02/04/2020	RRW	Continue analyzing Opposition to Motion to Alter or Amend Judgment. Instruct Jody Hagins, Esq., regarding drafting of Opposition. Emails and teleconference with John Muije, Esq., regarding the same. Instruct Jody Hagins, Esq., regarding drafting of Ex Parte Application for Order Extending Time. Review email to Elliot Blum, Esq., regarding deadline to oppose Motion to Alter or Amend Judgment.	1.60	\$300.00	-	\$480.00
Line Item Discount Subtotal						-\$1,377.00

Time Keeper	Position	Hours	Rate	Discount	Total
Jody Hagins	Attorney	34.9	\$270.00	-\$1,377.00	\$8,046.00
Joshua Reisman	Attorney	4.4	\$375.00	-	\$1,650.00
Robert Warns	Attorney	43.4	\$300.00	-	\$13,020.00
Subtotal					\$22,716.00
Total					\$22,716.00

## Detailed Statement of Account

### Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
12190046	01/30/2020	\$62,880.94		

### Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
02200001	02/05/2020	\$22,716.00	\$0.00	\$22,716.00
				<b>Outstanding Balance</b>
				<b>Total Amount Outstanding</b>

Account	Balance
Sorokac Law Office PLLC Trust Balance	
Total Account Balance	

**Payment Due Upon Receipt**

**PAYMENT OPTIONS:**

- Check: Please make payable to Sorokac Law Office, PLLC
- Major Credit Card: Click Pay Online Now link in email or call our office for assistance
- Wire Transfer: Please call our office for wiring instructions (bank fee may be assessed)

*Please note: Payments not received within 30 days will be subject to a carrying charge of 1.5% per month on the unpaid balance of the invoice from the invoice's due date.*

## ***EXHIBIT “4”***

REISMAN TOTAL	\$ 22,716.00
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MULJE TOTAL	\$ 37,041.97
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	<u>\$ 59,757.97</u>
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**EXHIBIT "4"**

***EXHIBIT “5”***



**AFFT**  
**JOHN W. MUIJE & ASSOCIATES**  
**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: [jmuije@muijelawoffice.com](mailto:jmuije@muijelawoffice.com)  
*Attorneys for Plaintiff*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

**AFFIDAVIT OF JOHN W. MUIJE IN SUPPORT OF**  
**MOTION FOR AWARD OF ATTORNEYS FEES**

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

1. I am an attorney, licensed to practice law before the Courts in the State of Nevada

1 since 1980, and offer the following statements in support of Motion for Award of Attorney Fees  
2 brought by Plaintiffs, RUSSELL L. NYPE AND REVENUE PLUS, LLC (collectively "NYPE"),  
3 Case No. A-16-740689-B in Department XI of the Eighth Judicial District Court.  
4

5 2. I am fully familiar with the facts of this case and the attorney fees and costs incurred  
6 by Plaintiffs that were charged by JOHN W. MUIJE & ASSOCIATES (hereinafter "MUIJE").  
7

8 3. I have reviewed the itemization and documentation of the fees claimed by MUIJE,  
9 attached to the above Motion as Exhibit "2", and I can attest that the fees, costs and interest, which  
10 amount to \$37,041.97, were actually and necessarily incurred and reasonable under the  
11 circumstances of this lawsuit and pursuing Plaintiffs' claims.  
12

13 4. Reisman Sorokac was the law firm that represented Plaintiffs prior to the original  
14 judgment rendered by Judge Israel, and during the appeal thereof by the defendants, and its lawyers  
15 were intimately familiar with the background, history and facts of the case.  
16

17 5. I was brought in approximately May, 2015, given my long-standing expertise and  
18 specialization in post-judgment remedies and collection law.  
19

20 6. During the initial phases of my retention, and the early stages of this new lawsuit,  
21 I was able to handle the demands of the case and the necessary work utilizing the resources of my  
22 office.  
23

24 7. As it became readily apparent that masses of undisclosed discovery remained  
25 outstanding and needed to be pried out of the hands of the defendants, and as the case involved  
26 numerous related defendant entities, the complexity increased, and Plaintiffs and I determined that  
27 I would need the assistance of both clerical and qualified law professionals to keep up with the  
28 demands of the current litigation.  
....

1  
2 8. We thereupon made the decision to engage Reisman Sorokac, primarily Attorney  
3 Robert Warns, to assist in significant components of document review, research, drafting of  
4 pleadings, etc.

5 9. I personally supervised and worked with Robert Warns and his associate, Jody  
6 Hagins, and their staff, and oversaw their work.

7  
8 10. Their work was diligent, thorough, and exemplary, more than justifying the hourly  
9 rates which they charged, and which are shown in Exhibit "3" to the above motion.

10 11. I am also familiar with the specifics of their work, as we communicated on virtually  
11 a daily basis, in dividing up necessary tasks and each of us focusing on the areas that we determined  
12 would be most beneficial to the further prosecution of the case and to obtain better results for the  
13 Plaintiffs.

14  
15 12. I adopt and incorporate by reference herein, the points and authorities contained in  
16 the Motion For Award of Attorney Fees as if fully stated herein.

17 13. I can further attest that the instant action required that it be handled by experienced  
18 and competent counsel, including counsel with a background in collections, contracts, and  
19 commercial litigation. Both I and the Reisman Sorokac firm are experienced Nevada litigators and  
20 have the quality, experience, professional standing and skill necessary to provide this kind of  
21 representation.

22  
23 14. I have over thirty-nine (39) years experience in the areas of law mentioned above.

24 15. The instant motion deals with previously unaccounted for fees and costs incurred by  
25 Plaintiffs.

26  
27 ....

28 ....

1  
2 16. The facts and circumstances of this case required significant time and skill on the part  
3 of Muije and the Reisman Sorokac firm. The legal issues involved in this case were intricate,  
4 complex and difficult, requiring counsel to expend considerable time to the aforementioned issues.

5 17. My customary hourly rate is presently \$450.00 per hour, and increased to that  
6 amount from \$350.00 per hour on or about July 1, 2007, more than a decade ago.

7  
8 18. The rates for the attorneys at the Reisman Sorokac firm are shown in Exhibit "3".

9 19. Both my prior hourly rate and my current hourly rate have been submitted in  
10 numerous applications and pleadings to both State and Federal Courts, which have routinely  
11 approved fees predicated upon the same.

12 20. The standard for an award of attorneys' fees are set forth in *Brunzell vs. Golden*  
13 *Gate National Bank*, 85 Nev. 345, 349-350, 455 P.2d. 31 (1969). Based upon an analysis of the  
14 *Brunzell* factors, your affiant respectfully submits as follows:

- 15  
16 1. **Qualities of the advocate:** Based upon counsel for Plaintiffs' ability,  
17 training, education, experience, and professional standing, this factor  
18 should be highly rated in this particular matter.
- 19 2. **Charter of the work done.** Including its difficulty, intricacy,  
20 importance, time, and skill required, responsibility imposed, and  
21 prominence in character of the parties, this matter also rates highly,  
22 given the magnitude of the file, and the relative prominence of the  
23 parties, as well as some of the numerous collateral issues.
- 24 3. **The work actually performed by the lawyer - skill, time, and**  
25 **attention given to the work.** The quantum of work performed by  
26 your affiant to date is significant as shown by the itemized billings,  
27 more than justifying an award commensurate with the agreed fees and  
28 costs charged to Plaintiff.
4. **The result.** This factor should be evaluated as positive, given  
obviously that the matter has been courteously and professionally  
handled, in an appropriate fashion, and Plaintiff wholly prevailed.

*Brunzell vs. Golden Gate National Bank*, supra, 85 Nev. 345, 349-350, 455 P.2d. 31 (1969).

21. I have personally drafted this Affidavit In Support of the Motion for Award of Fees, as well as the motion itself, and am familiar with its contents.

22. The motion and its exhibits set forth the previously unaccounted for fees and costs which were not reasonably available during trial, and which the Court noted in Conclusion of Law No. 27 could be submitted post-trial and would be considered by the Court at the appropriate future time.

23. Based upon all of the above and foregoing, Plaintiffs respectfully urge this Honorable Court to review the subject motion and exhibits, and award Plaintiffs the additional previously unaccounted for fees and costs as sought herein.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

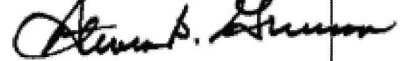
DATED this 6<sup>th</sup> day of February, 2020

JOHN W. MUJE, ESQ.

SUBSCRIBED AND SWORN to before  
me this 6<sup>TH</sup> day of February, 2020



NOTARY PUBLIC in and for said  
County and State



1 MOT  
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, Nevada 89104  
7 Telephone No: (702) 386-7002  
8 Facsimile No: (702) 386-9135  
9 Email: [Jmuije@muijelawoffice.com](mailto: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,

24 Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: February 24, 2020

Time of Hearing: 9:00 a.m.

22 **PLAINTIFFS' MOTION OF FINDINGS OF FACT AND**  
23 **CONCLUSIONS OF LAW AND JUDGMENT TO CORRECT**  
24 **MINOR ERRORS AND INCORPORATE PRE-JUDGMENT INTEREST**

25 COME NOW, Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC (hereinafter  
26 collectively referred to as "Nype") and move this Honorable Court pursuant to NRCP 59(e) and  
27 NRCP 60(a) for minor amendments to the Amended Findings of Fact and Conclusions of Law as  
28 entered on January 17, 2020.

1 This Motion is made and based upon the Points and Authorities and the exhibits attached  
2 hereto, the pleadings and documents on file herein, and the arguments to be adduced at the  
3 hearing hereon.

4 DATED this 13<sup>th</sup> day of February, 2020

6 JOHN W. MUIJE & ASSOCIATES

8 By: 

9 JOHN W. MUIJE, ESQ.  
10 Nevada Bar No: 2419  
11 1840 East Sahara Avenue, Suite106  
12 Las Vegas, Nevada 89104  
13 Telephone No: (702) 386-7002  
14 Facsimile No: (702) 386-9135  
15 Email: [Jmuije@mujelawoffice.com](mailto:Jmuije@mujelawoffice.com)  
16 *Attorneys for Plaintiffs*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 NRCP 59(e) provides that a motion to alter or amend the judgment must be filed within  
19 twenty-eight (28) days after service of written notice of entry of judgment. NRCP 60(a) contains  
20 no time limitation for the same and authorizes correction of clerical mistakes, oversights, or  
21 omissions as to the judgment.

22 As to amending the Findings of Fact and Conclusions of Law, attached hereto as Exhibit  
23 "1" and by this reference incorporated herein, the Court is referred to the second page (in  
24 reference to Findings of Fact No. 3) and to page No. 12 (in reference to Conclusion of Law No.  
25 22). As is set forth in the Declaration of John W. Muije attached hereto as Exhibit "2" and by  
26 this reference incorporated herein, although Russell Nype was in fact a long-time resident of New  
27 York, he physically relocated and established permanent residence in Florida during the early  
28 phases of this case. Accordingly, Nype respectfully requests that Finding of Fact No. 3 be  
amended to reflect his correct permanent residence, i.e., the State of Florida.

1 The correction sought as to page 12, paragraph 22 in the Conclusions of Law is  
2 ministerial and clerical in nature. Specifically, the Court awarded \$15,148,339. However,  
3 through an apparent typographical error, there is a period between the 148 and the 339, whereas  
4 the accurate numerical representation of the damages awarded should include a comma instead.

5  
6 Finally, as the Court is aware, NRS 17.130(2) provides that when no rate of interest is  
7 provided by contract or otherwise by law, the judgment draws interest from the time of service of  
8 the summons and complaint until satisfied at the Nevada floating statutory rate. All defendants  
9 herein were served on February 23 and/or February 24, 2017, and Affidavits of Service are on file  
10 with the Court. The proper rate for calculation of pre-judgment interest is the rate in effect on the  
11 date that the judgment is entered. *Schiff vs. Winchell*, 126 Nev. 327, 237 P.3d 99 (2010); *Lee vs.*  
12 *Ball*, 121 Nev. 391, 116 P.3d 64 (2005). Attached to Exhibit "2", the Sworn Declaration of  
13 Nype's counsel, at Sub-Exhibit "C" and "D" are calculations of the total accrued pre-judgment  
14 interest on the two component claims calculated in accordance with Nevada statutes and the  
15 statutory rate in effect on January 17, 2020, i.e. 6.75%.

### 16 CONCLUSION

17  
18 In order to correct an erroneous statement of fact, and a typographical error, I respectfully  
19 request that the Court correct paragraph 3 of the Findings of Fact and paragraph 22, the  
20 Conclusions of Law as requested above. Additionally, since NRS 17.130 provides for the accrual  
21 of pre-judgment interest, I also request that at such time as an anticipated amended and final  
22 judgment is entered (understanding that motions regarding fees and costs remain pending), the  
23 amounts of \$945,131.80 as to fraudulent conveyance damages, and \$2,961,085.24 as to civil  
24 conspiracy damages be specifically added to the amended and final judgment constituting  
25  
26  
27  
28



1 accrued pre-judgment interest through and including January 16, 2020, along with any post-  
2 judgment award of costs and fees, once these sums have been determined by the Court.

3 DATED this 13<sup>th</sup> day of February, 2020.

4  
5 JOHN W. MUIJE & ASSOCIATES

6  
7 By: 

8 JOHN W. MUIJE, ESQ.

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15 Attorneys for Plaintiffs

**CERTIFICATE OF SERVICE**


I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 13<sup>th</sup> day of February, 2020, I caused the foregoing document, **PLAINTIFFS' MOTION OF FINDINGS OF FACT AND CONCLUSIONS OF LAW AND JUDGMENT TO CORRECT MINOR ERRORS AND INCORPORATE PRE-JUDGMENT INTEREST**, 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:

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***EXHIBIT “1”***

*Steven D. Grierson*

FFCL

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

v.

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

Defendants.

Case No.: A-16-740689-C

Dept.: XI

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

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

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JAN 17 2020

CLERK OF THE COURT

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

11 **FINDINGS OF FACT**  
12

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

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

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

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

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

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

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

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

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

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

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

9           25. These entities are collectively referred to as the Related Entities.<sup>4</sup>

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

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

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

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

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

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

24  
25  
26 <sup>4</sup> For purposes of the term "Related Entity" the following are included: Las Vegas Land  
27 Partners, LLC, Meyer Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC,  
28 LiveWork LLC, LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC,  
LiveWorks TIC Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC.



1           32.    On November 2, 2007, LVLP and two other entities<sup>5</sup> sued Nype seeking primarily  
2 a declaratory judgment that they did not owe Nype any fee, Nype counterclaimed seeking  
3 compensation for services rendered.

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

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

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

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

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

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

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

21           40.    The evidence also demonstrates that Mitchell, Liberman and the Related Entities  
22 engaged in conscious, concerted and ongoing efforts to ensure that funds and/or assets that would  
23 otherwise be available to Nype to satisfy his claims (and Judgment) were kept away from Nype.  
24

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



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

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

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

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

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

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

20           <sup>6</sup>       The report is a part of Exhibit 90079.

21           <sup>7</sup>       That statute provides in pertinent part:  
22

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

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

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

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

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

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

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

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

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

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

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

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

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

26          57.     The evidence demonstrates that: (a) Mitchell, Liberman and the Related Entities  
27     commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;  
28

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

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

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

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

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

16  
17 60. In determining that these distributions were made with the actual intent to hinder,  
18 delay or defraud creditors and Nype, the Court notes, among other things, the following:

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

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

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

1 d. Mitchell, Liberman and the Related Entities attempted to conceal the  
2 distributions and their assets, through their discovery misconduct in this matter, which required  
3 enormous and expensive effort on Nype's part to attempt to obtain full and proper disclosure; and  
4

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

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

### 8 CONCLUSIONS OF LAW

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

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

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

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

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

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

8  
9 6. Justice and equity require that the Court impose alter ego liability on Mitchell,  
10 Liberman and the Related Entities.

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

14  
15 8. Nype has not proven, by a preponderance of the evidence, his claim for alter ego  
16 that Mitchell Holdings is the alter ego of Mitchell.

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

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

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

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

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

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

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

17           16. Nype has proven by a preponderance of the evidence that he suffered special  
18 damages in the form of attorney's fees, costs and expert expenses related to the transfers in the  
19 total amount of \$4,493,176.90.<sup>10</sup>

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

24  
25 <sup>9</sup> The Court is cognizant of the possibility of duplicative awards given the various claims  
for relief.

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

1 18. Independent of NRS Chapter 112, to prove a civil conspiracy, Plaintiff must prove  
2 "a combination of two or more persons who, by some concerted action, intend to accomplish a  
3 lawful objective for the purpose of harming another, and damage results from the act or acts."

4 *Hilton Hotels vs. Butch Lewis Productions*, 109 Nev. 1043, 148, 862 P.2d 1207, 1210 (1993).  
5

6 19. The Court concludes that the evidence demonstrates that:

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

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

12 c. Mitchell, fabricated and backdated evidence to facilitate the destruction  
13 and/or concealment of material financial evidence by his agent that would have greatly assisted  
14 Nype's case.  
15

16 d. But for Nype's pretrial discovery,<sup>11</sup> the fabrication of evidence would not  
17 have been uncovered.

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

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

23 22. Plaintiff has established damages on the civil conspiracy claim in the amount of  
24 \$15,148.339.

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

26 <sup>11</sup> The limitations for a civil conspiracy claim is not limited by NRS 112.230(1)(a) but is  
27 instead governed by NRS 11.220 and the discovery rule. *Siragusa v. Brown*, 114 Nev. 1384 at  
28 1391-3 (1998).

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

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

5           26. Mitchell, Liberman, and the Related Entities' actions and inactions have caused  
6 Nype damages in the total amount of \$19,641,515.90.<sup>12</sup>

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

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

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

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

14           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
15 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer  
16 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,  
17 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC  
18 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the fraudulent  
19 conveyance claim in the amount of \$4,835,111.37.<sup>13</sup>

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

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

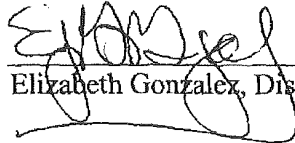
28 <sup>13</sup> These damages are duplicated in the civil conspiracy judgment.



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

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

9 DATED this 17<sup>th</sup> day of January, 2020.

10  
11   
12 Elizabeth Gonzalez, District Court Judge  
13

14 **Certificate of Service**

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

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

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

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

22   
23 Dan Kutinac  
24  
25  
26  
27  
28

***EXHIBIT “2”***

JOHN W. MUIJE & ASSOCIATES  
1840 E. Sahara Ave., #106  
Las Vegas, Nevada 89104  
Telephone: 702-386-7002  
Email: Jmuije@muijelawoffice.com

1 **DECL**  
2 JOHN W. MUIJE & ASSOCIATES  
3 JOHN W. MUIJE, ESQ.  
4 Nevada Bar No: 2419  
5 1840 East Sahara Avenue, Suite106  
6 Las Vegas, Nevada 89104  
7 Telephone No: (702) 386-7002  
8 Facsimile No: (702) 386-9135  
9 Email: [Jmuije@muijelawoffice.com](mailto: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; LVLV HOLDINGS, LLC;  
19 MITCHELL HOLDINGS, LLC; LIBERMAN  
20 HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE  
21 WORKS TIC SUCCESSOR, LLC; CASINO  
22 COOLIDGE LLC; DOES I through III, and ROE  
23 CORPORATIONS I through III, inclusive,

24 Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: February 24, 2020

Time of Hearing: 9:00 a.m.

22 **SWORN DECLARATON OF JOHN W. MUIJE IN SUPPORT**  
23 **OF PLAINTIFFS' MOTION TO AMEND AND CORRECT JUDGMENT**

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

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

1           1.       My name is John W. Muije and I have represented Plaintiffs Russell Nype and  
2 Revenue Plus, LLC (hereinafter collectively "Nype") since the inception of this litigation on or  
3 about July 26, 2016.

4  
5           2.       I make this Sworn Declaration based on p my personal knowledge, except as to  
6 items stated on information and belief, which I reasonably believe to be true, and if called as a  
7 witness, I could and would competently testify hereto.

8           3.       At the time this litigation commenced, Russell Nype was a resident of New York  
9 and Revenue Plus, LLC was a New York Limited Liability Company.

10           4.       Relatively shortly thereafter, upon information and belief, some time during 2017,  
11 Mr. Nype determined that for business purposes, as well as with regard to his father's failing  
12 health (his father was approximately 92 at the time) it made sense to move from Florida, and in  
13 fact Mr. Nype acquired a permanent residence in Florida at that time.

14  
15           5.       Mr. Nype and his father, based upon my personal communications and discussions  
16 with him, did spend a portion of their summers in Kennebunkport Maine, where the family had  
17 long maintained a summer home.

18  
19           6.       I personally discussed the matter with Mr. Nype's accountants and transactional  
20 lawyers at the time of his decision to permanently change his residence, and on information and  
21 belief I am advised that all steps necessary to do so were undertaken and complete, I believe, by  
22 the end of 2017 at the latest.

23  
24           7.       Although most of my billings entered into evidence showed the Kennenbunkport  
25 Maine address (given that was an address utilized by Mr. Nype when he first hired us), we in fact  
26 sent most of our itemized billings to Mr. Nype by email, usually at times that he was present and  
27 residing in Florida.  
28

1 8. Indeed, further corroborating the permanent relocation are two additional factors:

- 2 (a) The Reisman firm invoices are addressed to Mr. Nype's  
3 Florida address, as per Exhibit "A", a portion of trial  
4 Exhibit 70,065, the first two pages of which are attached  
5 hereto as Exhibit "A" and by this reference incorporated  
6 herein.
- 7 (b) The Court will recall Mr. Nype's correcting the  
8 misconception of the defense counsel during their  
9 questioning of him when the suggestion was  
10 made that Revenue Plus, LLC was a New York LLC, and  
11 Mr. Nype affirmatively corrected them and indicated that it  
12 was a Florida LLC. Although to the best of the undersigned's  
13 recollection, no one specifically asked Mr. Nype at trial  
14 as to his permanent residence, I do recall specific testimony  
15 from Mr. Nype that he had sold his New York residence,  
16 and used a portion of those proceeds to help finance legal  
17 fees.

18 9. Attached hereto as Exhibit "B" and by this reference incorporated herein is a  
19 printout from the Nevada Financial Institution's Division showing that the floating prime interest  
20 rate as of January 1, 2020 was 4.75%, to which is added 2% to determine the statutory interest  
21 rate applicable under NRS 99.040 and NRS 17.130.

22 10. Attached hereto as Exhibits "C" and "D" respectively, are tables wherein I  
23 personally calculated the accrual of statutory interest as to the two components of the judgment,  
24 i.e. the fraudulent conveyance component of \$4,835,111.37, which damage award was awarded  
25 against all the defendants (except 305 Las Vegas, LLC), as well as the additional \$15,148,339  
26 awarded against individual defendants Barnet Liberman and David J. Mitchell with regard to  
27 Nype's civil conspiracy claim.

28 11. Arguably, the interest amounts could be added to an appropriate Writ whether or  
not specifically addressed or mentioned in the judgment, but having practiced primarily in the  
field of collection law and post-judgment remedies for 40 years, I have learned that a specific  
award of pre-judgment interest (entered in a box which exists on standard writ of execution

1 forms), facilitates prompt and appropriate issuance of writs of execution from the Clerk's Office,  
2 and avoids delays, aggravation, and issues regarding the propriety and amount of interest in  
3 question.

4  
5 12. Based upon all of the above and foregoing, I respectfully request that the Court, at  
6 the time it enters an amended final judgment (presumably after deciding the pending fee and cost  
7 motions), also include the amounts of calculated pre-judgment interest set forth in Exhibits "C"  
8 and "D", as components of the amended final judgment.

9  
10 13. I make the above and foregoing Declaration under penalty of perjury.

11 FURTHER YOUR AFFIANT SAYETH NAUGHT.

12 DATED this 13<sup>th</sup> day of February, 2020.

13  
14  
15   
16 JOHN W. MUIJE, ESQ.

***EXHIBIT "A"***



8965 S. Eastern Ave., Suite 382  
Las Vegas, Nevada 89123  
United States  
Phone: (702) 727-6258  
www.rsnvlaw.com

## INVOICE

Invoice # 01190064  
Date: 03/19/2019

Russell Nype  
Via email: rnype@revenueplus.tv  
400 South Ocean Blvd. #423  
Palm Beach, FL 33480

18-0078 : NYPE

### Judgment Enforcement

#### Services

Date	Attorney	Notes	Hours	Rate	Total
01/02/2019	RRW	Review and revise Motion to Maintain Redactions and Permit Filing Under Seal.	0.50	\$300.00	\$150.00
01/08/2019	RRW	Continue revising Motion to Maintain Redactions and Permit Filing Under Seal. Analyze procedure for submitting documents under seal/redacted to the Court. Instruct Jody Hagins, Esq., regarding drafting of Memo to John Muije, Esq., outlining the procedures. Revise Memo regarding sealing of documents. Draft email to John Muije, Esq., regarding draft Motion to Maintain Redactions and Permit Filing Under Seal and Memo regarding sealing procedures.	1.90	\$300.00	\$570.00
01/08/2019	JWH	Call court clerk regarding filing certain exhibits under seal. Review local court rules regarding the use of Appendices for exhibits to motions. Draft Memo regarding procedure for filing a redacted motion with certain exhibits that need to be sealed.	1.70	\$270.00	\$459.00
01/28/2019	RRW	Review Discovery Dispute Letter from John Muije, Esq., to Forest City's counsel. Analyze potential revisions to Motion to Compel Forest City.	0.30	\$300.00	\$90.00
Services Subtotal					\$1,269.00

#### Expenses

Notes	Total
Document Reproduction/Electronic Document Filing	\$3.90
Expenses Subtotal	\$3.90

Time Keeper	Position	Hours	Rate	Total
Jody Hagins	Attorney	1.7	\$270.00	\$459.00
Robert Warns	Attorney	2.7	\$300.00	\$810.00
Subtotal				\$1,272.90
Total				\$1,272.90
Payment (05/13/2019)				-\$1,272.90
Balance Owing				\$0.00



## Detailed Statement of Account

### Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
11190047	01/03/2020	\$15,232.55	\$6,114.85	\$9,117.70

### Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
01190064	03/19/2019	\$1,272.90	\$1,272.90	\$0.00
Outstanding Balance				\$9,117.70
Total Amount Outstanding				\$9,117.70

Account	Balance
Sorokac Law Office PLLC Trust Balance	\$0.00
Total Account Balance	\$0.00

### Payment Due Upon Receipt

#### PAYMENT OPTIONS:

- Check: Please make payable to Sorokac Law Office, PLLC
- Major Credit Card: Click Pay Online Now link in email or call our office for assistance
- Wire Transfer: Please call our office for wiring instructions (bank fee may be assessed)

*Please note: Payments not received within 30 days will be subject to a carrying charge of 1.5% per month on the unpaid balance of the invoice from the invoice's due date.*

***EXHIBIT “B”***

# PRIME INTEREST RATE

**NRS 99.040(1)** requires:

*"When there is no express contract in writing fixing a different rate of interest, interest must be allowed at a rate equal to the prime rate at the largest bank in Nevada, as ascertained by the Commissioner of Financial Institutions, on January 1, or July 1, as the case may be, immediately preceding the date of the transaction, plus 2 percent, upon all money from the time it becomes due, . . ."*

Following is the prime rate as ascertained by the Commissioner of Financial Institutions:

January 1, 2020	4.75%	July 1, 2020	
January 1, 2019	5.50%	July 1, 2019	5.50%
January 1, 2018	4.50%	July 1, 2018	5.00%
January 1, 2017	3.75%	July 1, 2017	4.25%
January 1, 2016	3.50%	July 1, 2016	3.50%
January 1, 2015	3.25%	July 1, 2015	3.25%
January 1, 2014	3.25%	July 1, 2014	3.25%
January 1, 2013	3.25%	July 1, 2013	3.25%
January 1, 2012	3.25%	July 1, 2012	3.25%
January 1, 2011	3.25%	July 1, 2011	3.25%
January 1, 2010	3.25%	July 1, 2010	3.25%
January 1, 2009	3.25%	July 1, 2009	3.25%
January 1, 2008	7.25%	July 1, 2008	5.00%
January 1, 2007	8.25%	July 1, 2007	8.25%
January 1, 2006	7.25%	July 1, 2006	8.25%
January 1, 2005	5.25%	July 1, 2005	6.25%
January 1, 2004	4.00%	July 1, 2004	4.25%
January 1, 2003	4.25%	July 1, 2003	4.00%
January 1, 2002	4.75%	July 1, 2002	4.75%
January 1, 2001	9.50%	July 1, 2001	6.75%
January 1, 2000	8.25%	July 1, 2000	9.50%
January 1, 1999	7.75%	July 1, 1999	7.75%
January 1, 1998	8.50%	July 1, 1998	8.50%
January 1, 1997	8.25%	July 1, 1997	8.50%
January 1, 1996	8.50%	July 1, 1996	8.25%
January 1, 1995	8.50%	July 1, 1995	9.00%
January 1, 1994	6.00%	July 1, 1994	7.25%
January 1, 1993	6.00%	July 1, 1993	6.00%
January 1, 1992	6.50%	July 1, 1992	6.50%
January 1, 1991	10.00%	July 1, 1991	8.50%
January 1, 1990	10.50%	July 1, 1990	10.00%
January 1, 1989	10.50%	July 1, 1989	11.00%
January 1, 1988	8.75%	July 1, 1988	9.00%
January 1, 1987	Not Available	July 1, 1987	8.25%

**\* Attorney General Opinion No. 98-20:**

*If clearly authorized by the creditor, a collection agency may collect whatever interest on a debt its creditor would be authorized to impose. A collection agency may not impose interest on any account or debt where the creditor has agreed not to impose interest or has otherwise indicated an intent not to collect interest. Simple interest may be imposed at the rate established in NRS 99.040 from the date the debt becomes due on any debt where there is no written contract fixing a*

*different rate of interest, unless the account is an open or store accounts as discussed herein. In the case of open or store accounts, interest may be imposed or awarded only by a court of competent jurisdiction in an action over the debt.*

***EXHIBIT “C”***

**Fraudulent Conveyance Award Against all Defendants**

**\$4,835,111.37**

**(Interest rate 6.75%)**

**February 24, 2017 (All Defendants Served)**

**January 16, 2020 (date of Judgment) =**

**1057 days**

**Daily Interest = \$894.16/day**

**ACCRUED INTEREST AS OF 01/16/2020 = \$945,131.80**

***EXHIBIT "D"***

**Civil Conspiracy Award**

**Against David J. Mitchell**

**and**

**Barnet Liberman**

**(15,148,339.00)**

**(Interest rate - 6.75%)**

**February 24, 2017— (Defendants Served)**

**January 16, 2020---Date of Judgment =**

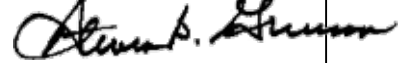
**1057 days**

**(Daily Interest = \$ 2,801.41/day)**

**ACCRUED INTEREST  
AS OF 01/16/2020**

**\$ 2,961,085.24**





ELLIOT S. BLUT, ESQ.  
Nevada State Bar No. 6570  
BLUT LAW GROUP, PC  
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*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No. A-16-740689-B  
Dept. No. 11

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

**HEARING REQUESTED**

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

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

4  
5 DATED this 14th day of February, 2020

6 BLUT LAW GROUP, PC

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

12  
13 **MEMORANDUM OF POINTS AND AUTHORITIES**

14 **I. INTRODUCTION**

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

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

21  
22 **II. FINDINGS AT ISSUE**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ///



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

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

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

10          Conclusion of Law #10 identifies the date of discovery of the basis of discovery of  
11 “limited” transfers. This is a misstatement of the evidence admitted at trial and other findings in  
12 the Amended Findings of Fact and Conclusions of Law. The true facts are that the evidence  
13 showed that Plaintiff Nype was on notice from August 20, 2011, not September 2015.<sup>2</sup> This  
14 means that some of the distributions cannot be set aside because claims based upon those  
15 distributions are time-barred. In addition the transfers were not “limited” but rather exceeded  
16 \$15,000,000. These transfers are all beyond the statute of limitations and cannot form the basis  
17 for this Court’s award.

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

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28 <sup>2</sup> Exhibit 90079 was an expert disclosure in the underlying action confirms knowledge in August,  
2011 of the conveyances.

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**V. CONCLUSION**

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

DATED this 14th day of February, 2020

BLUT LAW GROUP, PC

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

## **EXHIBIT “1”**

1 **FFCL**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

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

8 Plaintiffs,

9 v.

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

17 Defendants.

**Case No.:** A-16-740689-C

**Dept.:** XI

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

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

14

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

#### 11 FINDINGS OF FACT

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

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

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

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

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

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

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

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

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

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

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

9           25. These entities are collectively referred to as the Related Entities.<sup>4</sup>

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

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

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

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

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

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

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

1           32.     On November 2, 2007, LVLP and two other entities<sup>5</sup> sued Nype seeking primarily  
2 a declaratory judgment that they did not owe Nype any fee, Nype counterclaimed seeking  
3 compensation for services rendered.

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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20           <sup>6</sup>       The report is a part of Exhibit 90079.

21           <sup>7</sup>       That statute provides in pertinent part:

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

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

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

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

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

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

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

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

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

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

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

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

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

26          57.     The evidence demonstrates that: (a) Mitchell, Liberman and the Related Entities  
27     commingled funds, transactions and assets; (b) the Related Entities were and are undercapitalized;  
28

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

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

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

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

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

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

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

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

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

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

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

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

## 8 CONCLUSIONS OF LAW

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

15  
16 2. Nevada recognizes application of the alter ego doctrine in reverse, in which a  
17 creditor is permitted to reach "the assets of a corporation to satisfy the debt of a corporate insider  
18 based on a showing that the corporate entity is really the alter ego of the individual." *Loomis*,  
19 116 Nev. at 903, 8 P.3d at 846.

20  
21 3. Application of the alter ego doctrine in reverse "is appropriate where the particular  
22 facts and equities show the existence of an alter ego relationship and require that the corporate  
23 fiction be ignored so that justice may be promoted." *Id.*, at 904, 8 P.3d at 846.

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

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

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

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

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

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

17 9. Mitchell, Liberman and each of the Related Entities are jointly and severally liable  
18 on Nype's Judgment and the damages, attorney's fees and costs awarded in this action.  
19

20 10. Prior to September of 2015, Nype had reason to know that the limited transfers  
21 were transfers made by debtors under the UFTA, that the transfers rendered debtors insolvent (or  
22 contributed thereto) or the facts and circumstances upon which this Court utilized in determining  
23 that the transfers were made with the actual intent to hinder, delay or defraud creditors (including  
24 Nype).  
25  
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1           11.     Nype has proven, by a preponderance of the evidence his claims for fraudulent  
2 transfer, including that certain of the distributions constitute fraudulent transfers within the  
3 meaning of NRS 112.180(1)(a).<sup>9</sup>

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

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

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

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

17          16.     Nype has proven by a preponderance of the evidence that he suffered special  
18 damages in the form of attorney's fees, costs and expert expenses related to the transfers in the  
19 total amount of \$4,493,176.90.<sup>10</sup>  
20

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

---

25 <sup>9</sup>     The Court is cognizant of the possibility of duplicative awards given the various claims  
26 for relief.

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

1           18.     Independent of NRS Chapter 112, to prove a civil conspiracy, Plaintiff must prove  
2     “a combination of two or more persons who, by some concerted action, intend to accomplish a  
3     lawful objective for the purpose of harming another, and damage results from the act or acts.”

4     *Hilton Hotels vs. Butch Lewis Productions*, 109 Nev. 1043, 148, 862 P.2d 1207, 1210 (1993).

5           19.     The Court concludes that the evidence demonstrates that:

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

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

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

14                d.     But for Nype’s pretrial discovery,<sup>11</sup> the fabrication of evidence would not  
15     have been uncovered.

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

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

20           22.     Plaintiff has established damages on the civil conspiracy claim in the amount of  
21     \$15,148.339.

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

23     

---

  
24     <sup>11</sup>     The limitations for a civil conspiracy claim is not limited by NRS 112.230(1)(a) but is  
25     instead governed by NRS 11.220 and the discovery rule. *Siragusa v. Brown*, 114 Nev. 1384 at  
26     1391-3 (1998).

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

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

5           26.     Mitchell, Liberman, and the Related Entities' actions and inactions have caused  
6 Nype damages in the total amount of \$19,641,515.90.<sup>12</sup>

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

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

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

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

14           **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that JUDGMENT is  
15 hereby entered in favor of Plaintiffs and jointly and severally against Mitchell, Liberman, Meyer  
16 Property Ltd., Zoe Property LLC, Leah Property LLC, Wink One LLC, LiveWork LLC,  
17 LiveWork Manager LLC, Aquarius Owner LLC, LVLP Holdings LLC, LiveWorks TIC  
18 Successor LLC, FC/LiveWork Vegas LLC and Casino Coolidge LLC on the fraudulent  
19 conveyance claim in the amount of \$4,835,111.37.<sup>13</sup>

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

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

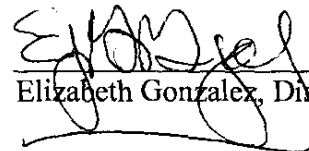
28 <sup>13</sup>     These damages are duplicated in the civil conspiracy judgment.



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

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

9 DATED this 17<sup>th</sup> day of January, 2020.

10  
11   
12 Elizabeth Gonzalez, District Court Judge  
13

14 **Certificate of Service**

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

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

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

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

23   
24 Dan Kutinac  
25  
26  
27  
28

## **EXHIBIT “2”**

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

CONFIDENTIAL INFORMATION

1

SPZ000437

RICH00124

MSJOPP000136

50028-0124

Case No.: A-16-740689-B

AA 1351

**CERTIFICATE OF SERVICE**

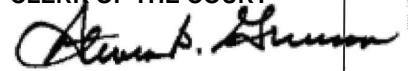
Pursuant to NRCP 5(b), I certify that I am an employee of BLUT LAW GROUP, PC, and that on **February 14, 2020**, I caused a correct copy of the foregoing document entitled **DEFENDANTS CASINO COOLIDGE, LLC AND BARNET LIBERMAN'S MOTION TO ALTER OR AMEND AMENDED JUDGMENT AND FINDINGS OF FACT AND CONCLUSIONS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

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which First Class postage was prepaid: and/or
- ☐ pursuant to NRCP (5)(b)(2)(D) to be served via facsimile; and/or
- ☐ pursuant to EDCR 7.26, to be sent via email; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered,

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

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

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



1 **OPPM**  
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@muijelawoffice.com](mailto:jmuije@muijelawoffice.com)  
10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

17 **Plaintiffs.**

18 **vs.**

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

**Defendants.**

**CASE NO: A-16-740689-B**

**DEPT NO: XI**

**PLAINTIFFS' OPPOSITION TO**  
**DEFENDANT CASINO**  
**COOLIDGE, LLC'S MOTION TO**  
**ALTER OR AMEND JUDGMENT**  
**AND FINDINGS OF FACT AND**  
**CONCLUSIONS OF LAW**  
**PURSUANT TO NRCP 52 AND**  
**NRCP 59**

**Hearing Date: February 24, 2020**

**Hearing Time: 9:00 a.m.**

COME NOW Plaintiffs, RUSSELL L. NYPE ("Nype") and REVENUE PLUS, LLC  
("RP") (Nype and RP, collectively, "Plaintiffs"), by and through their attorney of record, JOHN W.  
MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE & ASSOCIATES, and hereby submit their  
Opposition (the "Opposition") to Defendant Casino Coolidge, LLC's Motion to Alter or Amend

1 Judgment and Findings of Fact and Conclusions of Law Pursuant to NRCP 52 and NRCP 59 (the  
2 "Motion to Amend" or the "Motion").

3 This Opposition is made and based upon the points and authorities that follow, the  
4 pleadings and documents on file herein, and the arguments to be adduced at the hearing hereon.  
5

6 DATED this 14<sup>th</sup> day of February, 2020.

7 JOHN W. MUIJE & ASSOCIATES

8 By: /s/ John W. Muije, Esq.

9 JOHN W. MUIJE, ESQ.  
10 Nevada Bar No. 2419  
11 1840 E. Sahara Avenue, Suite 106  
12 Las Vegas, Nevada 89104  
13 *Attorneys for Plaintiffs*

## 14 MEMORANDUM OF POINTS AND AUTHORITIES

### 15 I.

#### 16 INTRODUCTION

17 This Court presided over a six-day trial in this matter, wherein the Court carefully noted  
18 and considered all of the evidence presented by all of the parties—including the expert testimony  
19 of Mark Rich, CPA, CFA ("Mr. Rich")—which was unrebutted by competing-expert testimony.  
20 This Court provided Casino Coolidge, LLC ("Casino Coolidge") with ample time and opportunity  
21 to present all evidence in support of its case. After considering the evidence, this Court concluded  
22 that Casino Coolidge (along with most—but not all—of the other defendants) is the alter ego of  
23 Defendants David Mitchell ("Mitchell"), Barnet Liberman ("Liberman") and Las Vegas Land  
24 Partners, LLC ("LVLP") and was, thus, jointly and severally liable with them on the "underlying  
25 judgment in [case number] A551073." (See FFCL at 14.) The Court further concluded that  
26 Casino Coolidge was liable "on the fraudulent conveyance claim in the amount of \$4,835,111.37."  
27 *Id.* at 13. The Court supported its decision through a 14 page Amended Findings of Fact and  
28

1 Conclusions of Law (the "FFCL" or the "Judgement") containing 61 factual findings and 29  
2 conclusions of law.

3 Casino Coolidge alleges no errors by this Court with regard to the admission of evidence at  
4 trial. Nor does it allege any unfairness or bias by this Court. Instead, Casino Coolidge attempts to  
5 retry its case by motion raising numerous issues with the Court's findings of facts and conclusions  
6 of law that it asserts are unsupported by the evidence admitted at trial. Casino Coolidge's Motion  
7 to Amend presents nothing new; it simply rehashes the same arguments it raised at trial, at closing  
8 argument and in its trial brief that: (1) it is not the alter ego of Mitchell, Liberman, or any other  
9 defendant; and (2) the evidence does not support that Casino Coolidge engaged in a fraudulent  
10 conveyance. This Court has already considered and rejected these arguments, and it should do so  
11 again in adjudicating this Motion.

12 As demonstrated below, each of the Court's findings disputed by Casino Coolidge is  
13 supported by substantial evidence admitted at trial. Casino Coolidge has failed to meet its heavy  
14 burden of demonstrating otherwise. In making its arguments, Casino Coolidge cherry picks the  
15 limited evidence that purportedly support its arguments while ignoring the substantial evidence  
16 supporting this Court's Judgment in Nype's favor. As a result, Casino Coolidge has failed to  
17 provide this Court with any basis for altering or amending the FFCL as the presence of competing  
18 evidence is irrelevant.

19 Indeed, this Court permitted (if not required) all parties to submit their own proposed  
20 findings of fact and conclusions of law prior to issuing the Judgement. After having personally  
21 observed the entire trial and considered all of the evidence admitted, the Court carefully drafted its  
22 FFCL, appearing to have reviewed and incorporated proposed findings of fact and conclusions of  
23 law submitted by the various parties. This Court's Judgment is solidly based in the evidence  
24 presented at trial and should not be altered or amended.

II.

ARGUMENT

A. The Standard: "Substantial Evidence" Is Merely Evidence Adequate To Support The Conclusion Of A Reasonable Mind.

Courts analyze motions under NRCP 52(b) and NRCP 59(e) the same way. See Diebitz v. Arreola, 834 F. Supp. 298, 302-03 (E.D. Wis. 1993) (interpreting the federal analogs to these Nevada rules).<sup>1</sup> "Among the 'basic grounds' for a Rule 59(e) motion are 'correct[ing] manifest errors of law or fact,' 'newly discovered or previously unavailable evidence,' the need 'to prevent manifest injustice,' or a 'change in controlling law.'" AA Primo Builders, LLC v. Washington, 126 Nev. Adv. Op. 53, 245 P.3d 1190, 1193 (2010) (alteration in the original). On a Rule 59(e) motion to alter or amend a judgment, "the moving party bears the burden of establishing 'extraordinary circumstances' warranting relief from a final judgment." Schoenman v. F.B.I., 857 F. Supp. 2d 76, 80 (D.D.C. 2012) (noting that "[m]otions under Rule 59(e) are 'disfavored'"); see also Fed. Deposit Ins. Corp. v. Meyer, 781 F.2d 1260, 1268 (7th Cir. 1986) (finding that the movant's burden is to "clearly establish" a basis for relief).

Rule 59(e) motions "may not be used to relitigate old matters, or to raise arguments or present evidence that could have been raised prior to the entry of judgment." Exxon Shipping Co. v. Baker, 554 U.S. 471, 486, n.5 (2008) (quoting 11 C. Wright & A. Miller, Federal Practice and Procedure § 2810.1, pp. 127–128 (2d ed. 1995) (footnotes omitted)). "Motions pursuant to Rule 59(e) should only be granted in rare circumstances." Susinka v. United States, 19 F. Supp. 3d 829, 834 (N.D. Ill. 2014) (emphasis added) (citing Bank of Waunakee v. Rochester Cheese Sales, Inc., 906 F.2d 1185, 1191 (7th Cir. 1990)).

<sup>1</sup> "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" Executive Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting Las Vegas Novelty v. Fernandez, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).



1 "While '[c]ourts have generally not defined what constitutes 'clear error'<sup>2</sup> under Rule 59(e),'  
2 . . . 'clear error' should conform to a 'very exacting standard[.]' Lightfoot v. D.C., 355 F. Supp. 2d  
3 414, 422 (D.D.C. 2005) (alteration in the original) (quoting Piper v. U.S. Dep't of Justice, 312 F.  
4 Supp. 2d 17, 21 (D.D.C. 2004), as amended (May 13, 2004)). "[A] final judgment must be 'dead  
5 wrong' to constitute clear error." Id. (citing Parts & Elec. Motors, Inc. v. Sterling Elec., Inc., 866  
6 F.2d 228, 233 (7th Cir. 1988)). To meet this standard, "'a decision must strike [a court] as more  
7 than just maybe or probably wrong; it must . . . strike [the court] as wrong with the force of a five-  
8 week-old, unrefrigerated dead fish." Parts & Elec. Motors, 866 F.2d at 233)). Hence, "mere  
9 disagreement does not support a Rule 59(e) motion." Hutchinson v. Staton, 994 F.2d 1076, 1082  
10 (4th Cir. 1993); see also Oto v. Metro. Life Ins. Co., 224 F.3d 601, 606 (7th Cir. 2000) ("A  
11 'manifest error' is not demonstrated by the disappointment of the losing party.")

12  
13  
14 Casino Coolidge seeks to meet this standard by challenging the evidentiary support of the  
15 Court's findings and conclusions. The Nevada Supreme Court "reviews the district court's findings  
16 of fact for an abuse of discretion, and . . . will not set aside those findings 'unless they are clearly  
17 erroneous or not supported by substantial evidence.'" NOLM, LLC v. County of Clark, 120 Nev.  
18 736, 739, 100 P.3d 658, 660–61 (2004) (quoting Sandy Valley Assocs. v. Sky Ranch Estate, 117  
19 Nev. 948, 954, 35 P.3d 964, 968 (2001)) (overruled on other grounds by Horgan v. Felton, 123  
20 Nev. 577, 170 P.3d 982 (2007)); see also Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev.  
21 481, 486, 117 P.3d 219, 223 (2005) (applying the same standard to conclusions of law).  
22 "Substantial evidence is that which 'a reasonable mind might accept as adequate to support a  
23 conclusion.'" Radaker v. Scott, 109 Nev. 653, 657, 855 P.2d 1037, 1040 (1993) (quoting State  
24 Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)). "A finding is  
25 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire  
26  
27  
28

<sup>2</sup> The federal cases use "clear error of law or fact" and "manifest errors of law or fact" interchangeably.

1 evidence is left with the definite and firm conviction that a mistake has been committed." United  
2 States v. United States Gypsum Co., 333 U.S. 364, 395, 68 S. Ct. 525, 542 (1948).

3  
4 Notably, the Nevada Supreme Court has found that the credible testimony of a single  
5 witness can provide sufficient evidence to support a court's findings of fact. See Romy Hammes,  
6 Inc. v. McNeil Const. Co., 91 Nev. 130, 132, 532 P.2d 263, 264 (1975) (rejecting a claim of  
7 insufficient evidence to support a jury verdict and stating that "the testimony of the president of  
8 McNeil Construction Company . . . alone provides requisite support for the jury's apparent  
9 conclusion that the services were performed at the special instance and request of Romy Hammes,  
10 Inc."). "Where the trial court, sitting without a jury, makes a determination predicated upon  
11 conflicting evidence, that determination will not be disturbed on appeal where supported by  
12 substantial evidence." Trident Const. Corp. v. W. Elec., Inc., 105 Nev. 423, 427, 776 P.2d 1239,  
13 1242 (1989) (emphasis added); accord Edwards Indus. v. DTE/BTE, Inc., 112 Nev. 1025, 1031,  
14 923 P.2d 569, 573 (1996).

15  
16  
17 **B. Substantial Evidence Supports the Court's Finding and Conclusion that Casino**  
18 **Coolidge is the Alter Ego of Liberman, who is the alter ego of Mitchell, Leah and**  
19 **LVLP.**

20 The foundation of Casino Coolidge's arguments regarding alter ego is its assertion that this  
21 Court mistakenly included Casino Coolidge in its definition of "Related Entities". (See Mot. at 2.)  
22 According to Casino Coolidge, the "the actual facts established that the [sic] Casino Coolidge was  
23 not similarly situated to the other 'related entities'", Mot. at 8:23-25, and that "the Findings that led  
24 the Court concluding to impose alter ego liability on Mitchell, Liberman and the Related Entities  
25 assumes that the [FFCL] as to the related entities applies equally to Casino Coolidge." Id. at 8:10-  
26 12 (internal citation omitted). Casino Coolidge has thus "been smeared with the same broad brush  
27 the court applied to other defendant entities." Id. at 2:26 – 3:1. Casino Coolidge's implication is  
28 that this Court got confused by the number of entities involved and accidentally determined that an  
appropriate basis existed to impose alter ego liability.

1 This Court's decision was no mistake, however, as there was substantial evidence admitted  
2 at trial for the Court to properly conclude that Casino Coolidge is—at a minimum—the alter ego of  
3 Liberman, who this Court determined to be the alter ego of, among others, LVLP.<sup>3</sup>

4 "[T]he alter ego doctrine applies to LLCs." Gardner v. Eighth Judicial Dist. Court of State,  
5 405 P.3d 651, 656 (Nev. 2017). The elements for alter ego are:

6 (1) the corporation must be influenced and governed by the person asserted to be  
7 the alter ego; (2) there must be such unity of interest and ownership that one is  
8 inseparable from the other; and (3) the facts must be such that adherence to the  
9 corporate fiction of a separate entity would, under the circumstances, sanction [a]  
fraud or promote injustice.

10 LFC Mktg. Grp., Inc. v. Loomis, 116 Nev. 896, 904, 8 P.3d 841, 846-47 (2000). "[T]he following  
11 factors, though not conclusive, may indicate the existence of an alter ego relationship:  
12 (1) commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4)  
13 treatment of corporate assets as the individual's own; and (5) failure to observe corporate  
14 formalities." Id. at 904, 8 P.3d at 847. These factors are not exclusive, however, Lorenz v. Beltio,  
15 Ltd., 114 Nev. 795, 808, 963 P.2d 488, 497 (1988), and the Nevada Supreme Court has  
16 emphasized that "there is no litmus test for determining when the corporate fiction should be  
17 disregarded; the result depends on the circumstances of each case." Polaris Indus. Corp. v. Kaplan,  
18 103 Nev. 598, 602, 747 P.2d 884, 887 (1987)). "It is not necessary that the plaintiff prove actual  
19 fraud. It is enough if the recognition of the two entities as separate would result in an injustice."  
20 Id., 103 Nev. at 601, 747 P.2d at 886. "The essence of the alter ego doctrine is to do justice." Id.,  
21 103 Nev. at 603, 747 P.2d at 888.

22 Complete ownership of an entity is not required in order to find an alter ego relationship.  
23 Loomis, 116 Nev. at 905, 8 P.3d at 847. Indeed, the doctrine does not even require an individual  
24 or entity to have any ownership interest at all. See id. (finding a corporation to be the alter ego of  
25  
26  
27  
28

<sup>3</sup> Importantly, Casino Coolidge does not challenge the Court's findings and conclusions that Liberman and

1 an individual who "d[id] not own a single share of" the corporation); see also id. ("Although  
2 ownership of corporate shares is a strong factor favoring unity of ownership and interest, the  
3 absence of corporate ownership is not automatically a controlling event. Instead, the  
4 'circumstances of each case' and the interests of justice should control."); accord State v. Easton,  
5 169 Misc. 2d 282, 647 N.Y.S.2d 904, 909 (App. Div. 1995) (allowing a corporation's assets to be  
6 reached through reverse piercing where the debtor did not own a single share of the corporation's  
7 stock). Nevada recognizes application of the alter ego doctrine in reverse, in which a creditor is  
8 permitted to reach "the assets of a corporation to satisfy the debt of a corporate insider based on a  
9 showing that the corporate entity is really the alter ego of the individual." Loomis, 116 Nev. at  
10 903, 8 P.3d at 846.

13 Here, this Court properly determined that the evidence demonstrated that Casino Coolidge  
14 was the alter ego of Liberman and LVLP through multiple findings of fact and conclusions of law  
15 that, among other things: (1) the Related Entities (including both Casino Coolidge and Leah  
16 Property, LLC ("Leah")) "distributed funds to Mitchell and Liberman as individuals without regard  
17 to parent entities"; (2) "Mitchell, Liberman and the Related Entities treated assets of the other  
18 entities as their own"; (3) "the Related Entities each failed to observe corporate or LLC  
19 formalities"; (4) Casino Coolidge, Leah and LVLP "are and were influenced and governed by  
20 Mitchell and Liberman"; (5) "there is such a unity of interest and/or ownership that Mitchell,  
21 Liberman and the Related Entities are inseparable from the other"; and (6) "the facts are such that  
22 adherence to the fiction of separate entities would, under the circumstances, sanction a fraud or  
23 promote injustice." (FFCL at 7-8, ¶ 57(c), (d), & (e) and at 8, ¶ 58.)

25 The Court further found that

26 In December 2014, Leah sold certain real property to Casino Coolidge for  
27 \$1,000,000. Mitchell and Liberman caused Leah to distribute sales proceeds  
28 [from that sale] in the amount of \$341,934.47 directly to themselves, rather than  
Leah's parent company, LVLP.

---

LVLP are each others' alter ego.

1 Id. at 5, ¶ 33 (in relevant part).

2 In this regard, the Court specifically found that this distribution occurred "to avoid  
3 satisfying Nype's claims and Judgment[.]" id. at 8, ¶ 59, and helped "ensure that funds and/or  
4 assets that would otherwise be available to Nype to satisfy his claim (and Judgment) were kept  
5 away from Nype", thus contributing to Nype's inability to collect on his claim and Judgment. See  
6 id. at 5, ¶ 40. Accordingly, this Court concluded that "[j]ustice and equity require that the Court  
7 impose alter ego on [Casino Coolidge]." Id. at 10, ¶ 6.

8 The Court's findings and conclusions are supported by, among other proof, the following  
9 substantial evidence: the expert testimony of Mr. Rich; the testimony of Messrs. Nype, Liberman  
10 and Mitchell; and trial Exhibits 2, 3, 4, 5, 6, 7, 27, through 32, 37, 45, 30099, 30100, 40001, 40040  
11 through 40042, 40049, 50001, 50002, 50006 through 50008, 50011, 50012, 50014, 50017, 50028,  
12 50036, 50037, 50042, 60002, 60006 through 60011, 60053, 60060, 60061 and 80004.

13 The facts (largely, if not entirely undisputed) surrounding (1) Casino Coolidge and Leah's  
14 corporate ownership and control, and (2) Casino Coolidge's purchase of real property from Leah  
15 easily provided this Court reasonable grounds to conclude that all elements of the alter ego test are  
16 met.  
17

18 It is undisputed that Casino Coolidge was "formed in October 2014 for the sole purpose of  
19 purchasing the [Leah] property." (Mot. at 7:2-3 (internal citation omitted)). It is also undisputed  
20 that Liberman is an owner and the managing member of Casino Coolidge and thus influences and  
21 governs it. Relatedly, it is further undisputed that Liberman and Mitchell (through other entities)  
22 solely owned and managed Leah. Importantly, Casino Coolidge does not challenge this Court's  
23 findings that Liberman, Mitchell, LVLP and Leah are each the alter ego of LVLP and each other.  
24 Accordingly, there can be no doubt that the Court properly found that the first alter ego element  
25 was met vis-à-vis Casino Coolidge and Liberman.

26 It is also undisputed that Liberman, acting on both sides of the transaction, worked in active  
27 concert with Mitchell to structure Leah's sale of real property to Casino Coolidge such that  
28 \$350,000 in sales proceeds were improperly diverted from Leah and its parent, LVLP, and instead

1 distributed directly to Mitchell and Liberman. Nor is there any dispute that this improper  
2 distribution contributed to Leah and LVLP's insolvency and Nype's inability to collect on his  
3 claims and Judgment.

4 Casino Coolidge only real argument is that these facts "relate[] to the actions taken on the  
5 seller's side of the transaction, not the Casino Coolidge side." Id. at 7:13-14. This argument  
6 elevates form over substance and the reality of how Liberman, himself, views and treats his  
7 numerous entities (i.e., his entities are mere extensions of LVLP and himself):

8 Q. Given that they all appear to run through one ledger and one checkbook, how  
9 are you able to allocate income and expenses between those entities?

10 A. I don't know why we would.

11 ...

12 A. Why would we? It all was part of – they were all derivative of one entity, and  
13 all the money came in and all of the money went out. Did it matter that I took a  
14 cab from one piece of property to another piece of property? No. I don't see why  
15 it mattered. That's an account's question. I don't know.

16 See Exhibit 70043 at pp 258-260 (excerpts of Liberman's testimony).

17 Casino Coolidge also ignores that Liberman—acting on both sides of the transaction—used  
18 his influence and control over both the seller and the buyer to structure the transaction to benefit  
19 himself and Mitchell, personally, at the expense of both Nype and Mitchell and Liberman's  
20 purportedly separate and distinct entities. In so doing, Liberman and Mitchell used Casino  
21 Coolidge and Leah to act in concert with each other to further their conspiracy to hide, divert and  
22 conceal funds from Nype. That Liberman and Casino Coolidge were active participants cannot  
23 genuinely be questioned given that the direct distributions to Liberman and Mitchell could not  
24 have occurred had Liberman and Casino Coolidge not signed the settlement statement directing the  
25 sales proceeds to Liberman and Mitchell. These facts reflect unauthorized diversion of funds,  
26 treating corporate assets as the individuals', failures to treat the entities as separate and distinct  
27 legal entities and failures to follow corporate formalities. Liberman's influence and control over  
28 Casino Coolidge was such that they are inseparable from each other.

Finally, adherence to the fiction of separate corporate entities would, under the  
circumstances, sanction a fraud or promote injustice. Liberman used his influence and control

1 over Casino Coolidge and Leah to divert nearly \$350,000 from LVLP, thus contributing to Nype's  
2 inability to collect on his claims and Judgment. See LFC Mktg. Group, Inc., 116 Nev. at 905-06, 8  
3 P.3d at 847 (finding that "adherence to the corporate fiction would sanction a fraud or promote  
4 injustice" where the alter-ego's conduct in manipulating the "carefully designed business  
5 arrangements between the LFC entities, William, and NLRC contributed to the Loomises' inability  
6 to collect their judgment"); Polaris Indus. Corp., 103 Nev. at 603, 747 P.2d at 888 (finding fraud or  
7 injustice where "CRI's officers treated corporate funds as their own by making ad hoc withdrawals  
8 at the bank in the form of advances to themselves at a time when the corporation's debt to Polaris  
9 was not being paid, and that Polaris was damaged because these actions left the corporation  
10 without funds to repay the debt."); Flynt Distrib. Co. v. Harvey, 734 F.2d 1389, 1393-94 (9th Cir.  
11 1984) (concluding that the defendants' conversion and transfer of corporate assets, which left the  
12 corporations undercapitalized, constituted a "prima facie showing that it would be unjust to shield  
13 the [defendants] behind the corporate veil").

14  
15 It is irrelevant that Casino Coolidge had a separate bank account, was not as commingled  
16 with LVLP as the other entities were or that Liberman appears to have caused Casino Coolidge to  
17 operate somewhat more properly than his other entities. "[T]here is no litmus test for determining  
18 when the corporate fiction should be disregarded; the result depends on the circumstances of each  
19 case." Loomis, 116 Nev. 904, 8 P.3d at 846-47 (quoting Polaris Indus. Corp. v. Kaplan, 103 Nev.  
20 598, 602, 747 P.2d 884, 887 (1987)). "The essence of the alter ego doctrine is to do justice[.]" id.  
21 103 Nev. at 603, 747 P.2d at 888, and here, justice requires that Casino Coolidge be deemed  
22 Liberman's alter ego.

23 Based on the foregoing, substantial evidence supports the Court's conclusion that Casino  
24 Coolidge is the alter ego of Liberman, who is the alter ego of Leah, Mitchell and LVLP.

25 **C. Substantial Evidence Supports the Court's Finding and Conclusion that Casino**  
26 **Coolidge Engaged in a Fraudulent Conveyance.**

27 Casino Coolidge argues that "the facts that the Court relied upon in making a finding of  
28 fraudulent transfer do not apply to Casino Coolidge . . . ." (Mot. at 5:21-22.) Once, again, Casino  
Coolidge is mistaken.

1 Nevada's Uniform Fraudulent Transfer Act (the "UFTA") "is designed to prevent a debtor  
2 from defrauding creditors by placing the subject property beyond the creditors' reach." Herup v.  
3 First Bos. Fin., Ltd. Liab. Co., 123 Nev. 228, 232, 162 P.3d 870, 872 (2007).

4 Under NRS 112.180(1), "[a] transfer made or obligation incurred by a debtor is fraudulent  
5 as to a creditor, **whether the creditor's claim arose before or after the transfer was made or the**  
6 **obligation was incurred**, if the debtor made the transfer or incurred the obligation: (a) With actual  
7 intent to hinder, delay or defraud any creditor of the debtor[.]" (Emphasis added). "[A] creditor  
8 may recover judgment for the value of the asset transferred" against a "first transferee of the asset  
9 **or the person for whose benefit the transfer was made.**" NRS 112.220(2)(a) (emphasis added)

11 The Nevada Supreme Court has concluded that the alter ego of a "debtor" is "a 'debtor'"  
12 under UFTA" and "transfers to or between alter egos can be 'transfers' under UFTA." Magliarditi v.  
13 TransFirst Grp., Inc., No. 73889, 2019 Nev. Unpub. LEXIS 1156, at \*17 (Oct. 21, 2019)  
14 (unpublished disposition).<sup>4</sup>

16 NRS 112.180(2) sets forth certain factors, often referred to as "badges of fraud," that may be  
17 considered in determining whether transfers were made with the actual intent to hinder, delay or  
18 defraud creditors. These factors, include, whether:

- 20 (a) The transfer or obligation was to an insider;
- 21 (b) The debtor retained possession or control of the property transferred  
after the transfer;
- 22 (c) The transfer or obligation was disclosed or concealed;
- 23 (d) Before the transfer was made or obligation was incurred, the debtor had  
been sued or threatened with suit;
- 24 (e) The transfer was of substantially all the debtor's assets;
- 25 (f) The debtor absconded;
- 26 (g) The debtor removed or concealed assets;
- 27 (h) The value of the consideration received by the debtor was reasonably  
equivalent to the value of the asset transferred or the amount of the  
obligation incurred;

28 <sup>4</sup> This unpublished disposition is cited for its persuasive value, pursuant to NRAP 36(c)(3). Although this  
disposition has not been designated for publication, it has been published in "table format" in the Pacific  
Reporter at 450 P.3d 911.



- (i) The debtor was insolvent or became insolvent shortly after the transfer was made or the obligation was incurred;
- (j) The transfer occurred shortly before or shortly after a substantial debt was incurred; and
- (k) The debtor transferred the essential assets of the business to a lienor who transferred the assets to an insider of the debtor.

NRS 112.180(2).

"Courts construing UFTA have found that when several badges of fraud are established, a presumption of fraud exists. When one or more of these badges is present, fraudulent intent can be inferred." McCain Foods USA, Inc. v. Cent. Processors, Inc., 275 Kan. 1, 14, 61 P.3d 68, 77 (2002) (emphasis added) (interpreting Kansas' version of the UFTA) (citing In re Taylor, 133 F.3d 1336, 1338-39 (10th Cir. 1998)). Indeed, Courts have found that "the confluence of several [badges of fraud] in one transaction generally provides conclusive evidence of an actual intent to defraud." Gilchinsky v. Nat'l Westminster Bank N.J., 159 N.J. 463, 477, 732 A.2d 482, 490 (1999) (emphasis added) (citing Max Sugarman Funeral Home, Inc. v. A.D.B. Investors, 926 F.2d 1248, 1254-55 (1st Cir. 1991)).

Here, this Court found that Mitchell, Liberman, Casino Coolidge and Leah made distributions intended to avoid satisfying Nype's claims and Judgment, including, "[w]hen Leah Property sold certain real property to Casino Coolidge on or about December 17, 2014, and did not transfer the funds to LVLP." (FFCL at 8, ¶ 59(a)). The factual predicate upon which these findings were based is undisputed. Casino Coolidge asserts, however, that this finding "does not implicate a fraudulent conveyance by Casino Coolidge" because "the finding in #59 relates to the actions taken on the seller's side of the transaction, not the Casino Coolidge side." (Mot. at 7:12-14.) Casino Coolidge is again arguing hyper-technical form over substance in a way that ignores the reality of what occurred.<sup>5</sup> Casino Coolidge is not some innocent, good faith purchaser that has

<sup>5</sup> This argument further ignores the fact that this Court's findings regarding Liberman and Mitchell's civil conspiracy to harm Nype stand unchallenged by Casino Coolidge.

1 no connection with Liberman. On the contrary, acting on both sides of the transaction, Liberman  
2 used his influence and control over his newly formed entity, Casino Coolidge, and Leah to  
3 facilitate his and Mitchell's civil conspiracy to hide, divert and conceal substantial funds from  
4 Nype. Under the circumstances, Casino Coolidge and Leah Property are both the transferors of the  
5 \$350,000 and it is evident that the transfers were made both for Mitchell's and Liberman's benefit  
6 and also Casino Coolidge's.

8 In determining that this distribution was made with the actual intent to hinder, delay or  
9 defraud creditors and Nype, this Court found, among other things, that:

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

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

14 c. The distributions rendered or contributed to LVLP's and/or the  
15 Related Entities' insolvency, and left LVLP and/or the Related Entities unable to  
pay their debts as they became due;

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

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

20 (FFCL at 8-9, ¶ 60 (emphasis in the original).)

21 As demonstrated above, these findings do not solely relate to actions taken exclusively on  
22 the seller side of the transaction but were instead effectuated through and with Casino Coolidge's  
23 sign-off and assistance. Thus, there can be no question that this Court properly determined that at  
24 least 5 of the 11 of the badges fraud existed, the confluence of which "provide[d] conclusive  
25 evidence of an actual intent to defraud." Gilchinsky, 159 N.J. at 477, 732 A.2d at 490  
26 (emphasis added). Liberman was an "insider" of Casino Coolidge, Leah Property and LVLP. The  
27 sale of the property and improper distributions of the sales proceeds to Mitchell and Liberman took  
28 place well after Nype sued for unjust enrichment and breach of contract. Indeed, the improper

1 distribution occurred during the trial in the underlying 07 case. Liberman, Mitchell and their  
2 entities played numerous games in discovery attempting to conceal and confuse their improper  
3 transactions and distributions. And Liberman caused Casino Coolidge to work in active concert  
4 with him, Mitchell, Leah and LVLP to effectuate their conspiracy to hide, divert and conceal assets  
5 from Nype by improperly distributing the sales proceeds directly to Liberman and Mitchell (which  
6 contributed to the various entities' insolvency and Nype's inability to collect on his Judgment).

7  
8 Accordingly, judgement was properly entered against Casino Coolidge under NRS  
9 112.220(2) as the Court reasonably concluded that the transfers were made for the benefit of,  
10 among others, Casino Coolidge. See NRS 112.220(2). Moreover, the Nevada Supreme Court  
11 recently held that transfers—made for the purpose of hindering, delaying or defrauding creditors—  
12 between alter egos or between the judgment debtor and an alter ego are fraudulent transfers under  
13 NRS 112. See Magliarditi, at \*1-2. This Court's findings that Liberman, Leah, Mitchell and  
14 LVLP are all the alter egos of each other stand unchallenged.

15  
16 Based on the foregoing, substantial evidence supports the Court's conclusion holding  
17 Casino Coolidge liable "on the fraudulent conveyance claim in the amount of \$4,835,111.37." Id.  
18 at 13.

### 19 20 III.

### 21 CONCLUSION

22 Based on the foregoing, the Motion to Amend should be denied. Substantial evidence  
23 supports this Court's findings and conclusions that Casino Coolidge: (1) is the alter ego of  
24 Liberman and LVLP; and (2) is properly liable on the fraudulent conveyance claim. While Casino  
25 Coolidge disagrees with the Court, that is far from meeting the heavy burden Rules 52 and 59

26 / / / /

27 / / / /

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1 require to alter or amend a judgment. Certainly, Casino Coolidge has failed to provide any  
2 argument to suggest to this Court that it's Judgment is "wrong with the force of a five-week-old,  
3 unrefrigerated dead fish." Parts & Elec. Motors, 866 F.2d at 233).

4 DATED this 14<sup>th</sup> day of February, 2020.

5 JOHN W. MUIJE & ASSOCIATES

6  
7  
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**CERTIFICATE OF SERVICE**

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 14<sup>th</sup> day of February, 2020, I caused the foregoing document, **PLAINTIFFS' OPPOSITION TO DEFENDANT CASINO COOLIDGE, LLC'S MOTION TO ALTER OR AMEND JUDGMENT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO NRCP 52 AND NRCP 59** 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
- X by electronically filing and serving with the Clerk of the Court via the Odyssey E-File and Serve System; and/or
- 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
- Via E-Mail at the addresses listed below; and/or
- pursuant to EDCR 7.26, by causing a copy to be sent via facsimile at the number(s) listed below; and/or
- by hand-delivering a copy to the party or parties as listed below:

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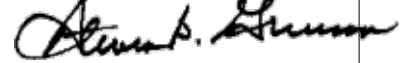
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**EIGHTH JUDICIAL DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

DAVID J. MITCHELL; BARNET  
LIBERMAN; LAS VEGAS LAND  
PARTNERS, LLC; MEYER PROPERTY  
LTD.; ZOE PROPERTY, LLC; LEAH  
PROPERTY, LLC; WINK ONE, LLC;  
AQUARIUS OWNER, LLC; 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, inclusive; and  
ROE CORPORATIONS I THROUGH III,  
inclusive,

Defendants

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

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

**HEARING REQUESTED**

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

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

8 DATED this 14<sup>th</sup> day of February 2020.

9 **COHEN JOHNSON PARKER EDWARDS**

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25  
26  
27  
28



**MEMORANDUM OF POINTS AND AUTHORITIES****I.****INTRODUCTION**

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

**II.****STATEMENT OF RELEVANT FACTS**

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

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

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

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

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

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

#### 20 **IV.**

#### 21 **LEGAL ARGUMENT**

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

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

1 (1965).

2 Here, Mitchell and Liberman's actions did not damage Nype in the amount of \$15 million.  
3 In the underlying case of A551073, Nype ultimately obtained a judgment in the principal amount  
4 of \$2,608,797.50. These transfers, which occurred as many as eight years before Nype had a  
5 judgment, is not the proper measure of damage in a civil conspiracy action. Even assuming that  
6 they did thwart Nype's collection attempts, they only kept him from collecting his \$2.6 million  
7 dollar judgment and associated interest. Accordingly, as civil conspiracy damages must be tied to  
8 the underlying overt acts, if Nype is to recover anything at all, he should only be allowed to recover  
9 an amount equivalent to that which he was prevented from recovering. Therefore, damages in this  
10 case should be limited to the amount of the underlying case's judgment plus interest.  
11

12 However, this Court has awarded judgment based on the amount of the total distributions  
13 to Mitchell and Liberman. (Which distributions are time barred as a cause of action; see argument  
14 herein below). This is not supported by the case law cited above and this approach could cause  
15 substantial practical concerns. Following this line of reasoning, if \$1 billion dollars had been  
16 distributed to Mitchell and Liberman, then Nype would be awarded \$1 billion dollars for his  
17 inability to collect \$2.6 million dollars. Conversely, if the distributions had been only \$10,000.00  
18 dollars, the conceivably Nype would have been awarded only \$10,000.00. Tying the judgment  
19 award to the amount of the distributions, instead of Nype's actual damages, is a manifest error of  
20 law and fact.  
21

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

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

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

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

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

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

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

14            *See Conclusions of Law at 19.*

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

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

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

3 The Court has found that Mitchell and Liberman distributed millions of dollars to  
4 themselves. The Court has found that they conspired to do so. *See Conclusions at 19(b)*. These  
5 distributions mainly took place and are memorialized in tax returns from 2007-2009, the disclosure  
6 of which, the Court found put Nype on notice of the transfers. The first disclosure of these  
7 documents was in 2011. Accordingly, the four-year statute of limitations based upon NRS 11.220,  
8 began running in 2011, when Nype discovered, or should have discovered these transfers. At this  
9 point in time, Nype knew or should have known that the transfers had been made between LVLP,  
10 Mitchell, and Liberman, which are necessary facts for the Court's finding of a civil conspiracy.  
11

12 Further, logically, the statute of limitations cannot run for the fraudulent transfer cause of  
13 action and not the civil conspiracy. The Court found that "Certain of those distributions were made  
14 outside of the statute of limitations period under NRS 112.180(1)(a)." *See Conclusions at 12*. The  
15 Court also found that "The earlier transfers are barred by the limitations period for purposes of the  
16 fraudulent transfer claim, only." However, the essence of a civil conspiracy is the underlying torts,  
17 so if one cannot lie due to the statute of limitations, the other must be barred as well. If there were  
18 no actionable fraudulent transfers, there can be no actionable civil conspiracy.  
19

20 Plaintiffs' claim for civil conspiracy should be barred due to the statute of limitations,  
21 and the judgment awarded should be stricken. In the alterative, the award should be reduced to  
22 the amount of the only allowed fraudulent transfer distribution of \$341,934.47.  
23

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

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

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

8  
9 Thus, the Court’s conclusion that:

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

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

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

23 The Plaintiff states in paragraph 138:

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

2           The second prong of this test necessitates a consideration of the following factors, (1)  
3 commingling of funds, (2) undercapitalization, (3) unauthorized diversion of funds, (4) treatment  
4 of corporate assets as the individual's own, and (5) failure to observe corporate formalities. *Lorenz*  
5 *v. Beltio, Ltd.*, 114 Nev. 795, 808, 963 P.2d 488, 497 (1998). However, no single factor alone can  
6 be determinative when applying the doctrine of alter ego. *Id.* While there is no litmus test for alter  
7 ego, the courts have provided guidance in evaluating these factors.  
8

9           When looking for commingling of funds, the courts have found that a parent company or  
10 individual controlling the finances of a subsidiary does not equate the comingling of funds. *JSA,*  
11 *LLC v. Golden Gaming, Inc.*, 2013 Nev. Unpub. LEXIS 1449, \*13-19, 2013 WL 5437333. Nevada  
12 Courts have specifically found that a subsidiary who lacks an “independent checking account,”  
13 has no “independent review or control over its income and expenses,” whose parent makes “all  
14 financial decisions,” pays the bills, and handles the money generally does not equate commingling  
15 funds. *Id.* This is because Courts nationwide have generally declined to find alter ego liability  
16 based on a parent corporation's use of a specific cash management or financial system. *Fletcher v.*  
17 *Atex, Inc.*, 68 F.3d 1451, 1459 (2d Cir. 1995) (citing *In re Acushnet River & New Bedford Harbor*  
18 *Proceedings*, 675 F. Supp. 22, 34 (D. Mass. 1987); *United States v. Bliss*, 108 F.R.D. 127, 132  
19 (E.D. Mo. 1985); *Japan Petroleum Co. (Nigeria) v. Ashland Oil, Inc.*, 456 F. Supp. 831, 846 (D.  
20 Del. 1978)).  
21  
22

23           Here, the Court made findings that:

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

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

1 entity.

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

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

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

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

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

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

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

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

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

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

18       First and foremost, this finding is not accurate. While some entities were opened with an initial  
19 capitalization of \$10, there was ample testimony that these entities were single purpose entities,  
20 created for various real estate projects, often at the specific request of the lender involved in the  
21 project. This is a common practice that was even acknowledged by Nype’s expert witness.  
22 Accordingly, while an entity may have been formed on paper with an \$10 initial capitalization,  
23 they consistently and almost immediately held development properties and projects worth millions  
24 of dollars. Accordingly, the entities in question were not undercapitalized at all given their  
25 purpose.  
26  
27  
28

Further, while some entities eventually became insolvent due to larger market forces, this does not equate to undercapitalization for the purposes of the alter ego analysis. Not only is this conclusion supported by the Nevada Case law cited above, but it is supported by practical considerations as well. The entities in this case were formed to facilitate land development. That they later became insolvent has no bearing on Mitchell and Liberman's intentions when they formed them and does not speak to a "unity of interest or ownership." This is why it is the entities purpose and capitalization at the time each was formed that matter when analyzing undercapitalization and not eight years later when Nype got his judgment. As these entities were not undercapitalized for their specific purposes, this factor should weigh against finding a unity of interest or ownership.

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

Regarding this element, the court found that:

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

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

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

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

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

24  
25  
26  
27 <sup>1</sup> These exhibits constitute the bulk of Nype’s exhibits 1-55, these documents were also reproduced and  
28 included elsewhere in the record.

1 legal requirements of limited liability companies. Accordingly, this factor weighs against a finding  
2 of any unity of interest or ownership.

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

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

16 This factor weighs firmly against a finding of alter ego. Various courts have made it clear  
17 that Nype’s situation, that of a creditor not being paid, is not “sufficient injustice” to warrant a  
18 finding of alter ego. Nype has not suffered any injustice at the hands of Mitchell, Liberman, or the  
19 related entities. Nype received a judgment against Las Vegas Land Partners, which he was unable,  
20 after limited attempts, to collect. Nype decided to only sue Las Vegas Land Partners. It was his  
21 decision. Moreover, as Nype’s judgment was based on unjust enrichment, he decided to supply  
22 those services to LVLP. He assumed the risk of non-payment when he supplied the services with  
23 no written contract and to that particular entity. This is not the type of case as in a tort case when  
24 someone is injured, and they have no choice who they sue; Nype chose to provide services to  
25  
26  
27  
28

1 LVLP. This does not rise to the level required to support a finding fraud or injustice. Accordingly,  
2 this factor has not been met and there can be no finding of alter ego. Based on these findings and  
3 this case law, the Court erred in finding alter ego between the defendants. Nype failed completely  
4 to produce sufficient evidence at trial to support the required findings explained above.  
5 Accordingly, the Court's order should be altered or amended, and the finding of alter ego reversed.  
6

7 **E. PLAINTIFF CANNOT BE GRANTED HIS ATTORNEY'S FEES AS SPECIAL DAMAGES.<sup>2</sup>**

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

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

---

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

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

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

20 The facts in this case and in *Pardee* are substantially similar. Both cases deal with real  
21 estate issues and “aggrieved part[ies]” seeking redress of their wrongs in Court. Here, as in *Pardee*,  
22 Nype has not brought any claims which warrant the award of fees as the “reasonably foreseeable  
23 consequence” of Defendants’ actions. In the underlying case, Nype prevailed on a claim of unjust  
24 enrichment. In this matter, Nype has prevailed under theories of alter ego, fraudulent transfer, and  
25  
26  
27  
28



1 civil conspiracy. None of these claims are materially different then the breach of contract claim in  
2 *Pardee*. None of them, by themselves, absolutely necessitated the expenditure of legal fees to  
3 resolve Nype's issues. Awarding attorney fees as special damages for these claims would radically  
4 expand the scope of these special damages just as in *Pardee*. Accordingly, the award of attorney's  
5 fees as special damages in this matter should be set aside.

6  
7 There are other concerns with this award. Nype failed completely to plead his request for  
8 attorney fees as special damages. While there are references to attorney fees incurred under each  
9 claim, this wrote repetition does not meet the requirements of NRCP 9(g). Moreover, Nype's  
10 Amended Complaint does not contain a prayer for relief requesting these fees as special damages.  
11 While the rules allow for amendment of pleadings to conform to the evidence, it cannot overcome  
12 a complete failure to plead a prayer for relief at all. Doing so would render NRCP 9(g) and Nevada  
13 caselaw meaningless.

14  
15 Moreover, even if some form of the Court's award survives, the amount of the award  
16 should be amended. The Court's awarded of \$4,835,111.37 as special damages for attorney fees  
17 appears to correspond to the amount incurred by Nype for case 07A551073 and this matter, A-16-  
18 740689-B. Awarding the fees relating to case 07A551073 is not permissible pursuant to the *Pardee*  
19 case discussed above. Both cases were contractual issues and special damages are inappropriate.  
20 Moreover, the act of going backwards to award fees from a previous matter where they had not  
21 been requested is entirely inappropriate. Not only is the required analysis under NRCP 9(g)  
22 impossible, but there is no legal mechanism or case law that supports the award of fees from a  
23 prior case nearly five years after that case has been closed. In short, if any fees are awarded as  
24 special damages, and they should not be, then they must be limited to this matter only.

25  
26 Finally, although the Court did add a footnote addressing the *Brunzell* factors, it did not  
27 evaluate the totality of the fees it awarded. The Court merely stated that "The Court has previously  
28

1 evaluated the *Brunzell* factors in connection with the sanctions order which has now been satisfied.  
2 See 12/26/19 filing. That evaluation is incorporated by reference.” The Court did not evaluate  
3 these factors for all of the fees it awarded as Nype did not request \$4,835,111.37 at that hearing.  
4 Accordingly, the Court has failed to evaluate the *Brunzell* factors and so its award of fees should  
5 be amended.  
6

7 ///

8 ///

9 ///

10 ///

11 ///

12 ///

13 **IV.**

14 **CONCLUSION**

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

18 DATED this 14th day of February 2020.

19 **COHEN JOHNSON PARKER EDWARDS**

20  
21 /s/ H. Stan Johnson

22 H. STAN JOHNSON, ESQ.

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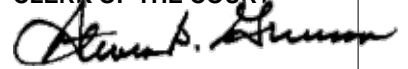
*Attorneys for Mitchell Defendants*

**CERTIFICATE OF SERVICE**

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

*/s/ Sarah Gondek*

An employee of Cohen|Johnson|Parker|Edwards



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

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No. A-16-740689-B  
Dept. No. 11

**BARNET LIBERMAN and CASINO  
COOLIDGE LLC DEFENDANTS  
JOINDER IN SUPPORT OF THE  
MITCHELL DEFENDANTS'  
MOTION TO ALTER OR AMEND  
JUDGMENT PURSUANT TO  
NRCP 52 AND NRCP 59 (e)**

**Date of Hearing: February 24, 2020**  
**Time of Hearing: 9:00 a.m.**

**AND ALL RELATED CLAIMS.**

Defendants, Barnet Liberman and Casino Coolidge LLC, by and through their counsel of  
record, Elliot S. Blut, Esq. of the law firm of Blut Law Group, files this Joinder in support of

1 the Mitchell Defendants' Motion to Alter or Amend Judgment Pursuant to NRCP 52 and NRCP  
2 59 (e) filed February 14, 2020 in all respects.

3 Defendants Barnet Liberman and Casino Coolidge LLC incorporate by reference all  
4 arguments and exhibits set forth by the Mitchell Defendants, or which may be produced at the  
5 hearing of this matter.

6 Defendants Barnet Liberman and Casino Coolidge LLC also reserve the right to appear  
7 and present argument at any hearing in this matter. Defendants Barnet Liberman and Casino  
8 Coolidge LLC request that this Court Amend the Judgment as set forth in the Motion.

9 Dated this 19<sup>th</sup> day of February 2020.

10  
11  
12 BLUT LAW GROUP, PC

13 By: /s/ Elliot S. Blut

14 Elliot S. Blut, Esq.  
15 Nevada Bar No. 6570  
16 300 South Fourth Street, Suite 701  
17 Las Vegas, NV 89101  
18 *Attorney for Defendants Barnet*  
19 *Liberman and Casino Coolidge LLC*  
20  
21  
22  
23  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of BLUT LAW GROUP, PC, and that on **February 20, 2020**, I caused a correct copy of the foregoing document entitled **BARNET LIBERMAN and CASINO COOLIDGE LLC DEFENDANTS JOINDER IN SUPPORT OF MITCHELL DEFENDANTS MOTION TO ALTER OR AMEND JUDGMENT PURSUANT TO NRCP AND NRCP 59 (E)**

☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which First Class postage was prepaid: and/or

☐ pursuant to NRCP (5)(b)(2)(D) to be served via facsimile; and/or

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

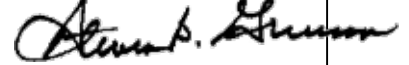
☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or

☐ to be hand-delivered,

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

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

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



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

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No. A-16-740689-B  
Dept. No. 11

**DEFENDANT CASINO COOLIDGE,  
LLC'S REPLY TO PLAINTIFFS  
OPPOSITION MOTION TO ALTER  
OR AMEND AMENDED JUDGMENT  
AND FINDINGS OF FACT AND  
CONCLUSIONS OF LAW PURSUANT  
TO NRCP 52 AND NRCP 59**

**Date of Hearing: February 24, 2020  
Time of Hearing: 9:00 a.m.**

**COMES NOW**, Defendant *CASINO COOLIDGE LLC*, by and through its attorney of  
record, ELLIOT S. BLUT, ESQ. of BLUT LAW GROUP, PC, and hereby submits its Reply to the  
Plaintiffs' Opposition to the Motion for relief and to alter or amend the Amended Judgment,  
Findings of Fact and Conclusions of Law filed on January 17, 2020.

1                                   **MEMORANDUM OF POINTS AND AUTHORITIES**

2   **ARGUMENT**

3                   **A. AS WITH 305 LAS VEGAS, LLC, CASINO COOLIDGE, LLC DID NOT CAUSE**  
4                                   **ANY DAMAGE TO PLAINTIFFS**

5                   The Facts regarding the actions of Casino Coolidge are more in line with those of 305 Las  
6 Vegas, LLC, whom the Court granted Judgment finding that it caused Plaintiff no damages. As  
7 with 305 Las Vegas, Casino Coolidge was owned, in part, by Barnet Liberman, but not David  
8 Mitchell. As with 305 Las Vegas, Casino Coolidge was **not** found to have paid less than fair  
9 market consideration for the real property purchased from Leah. As with 305 Las Vegas, Casino  
10 Coolidge was not a disregarded entity on the Las Vegas Land Partners tax return. It maintains its  
11 own books and records as well as its own bank account. In fact, 305 Las Vegas was involved in  
12 multiple transactions with LiveWork while Casino Coolidge was formed solely for the purpose of  
13 purchasing the property and did not have a “leaseback” or any further entanglements with  
14 LiveWork. As such, the Judgment should be amended to be in favor of Casino Coolidge and  
15 against Plaintiffs.  
16

17  
18                   **B. THERE IS NO COMPETENT EVIDENCE TO SUPPORT THE FINDING**  
19                                   **THAT CASINO COOLIDGE, LLC SHOULD BE A “RELATED ENTITY.”**

20                   The Motion identified fourteen (14) specific findings made by the Court about Casino  
21 Coolidge, LLC as a “related entity” that are not supported by any evidence. The Opposition  
22 focuses on the activities of Defendants Mitchell and Liberman, not the actions of Casino  
23 Coolidge. In the place of these facts, the Plaintiffs make conclusory allegations and statements  
24 about the motives of the Defendants, including conspiracy, working in “active concert,” and  
25 collusion, but again, these are not findings supported by factual evidence as to this Movant.

26                   Plaintiffs contend that because the trial court concluded that the individual defendants  
27 were the alter egos of the individuals and other defendants, Defendant Casino Coolidge is jointly  
28



1 and severally liable with them on the “underlying judgment.” (*Opp.*, P.2, lines 20-25 ref.  
2 FF&CoL at 14). Respectfully, that is not supported by the facts adduced at trial. Like a well-  
3 rehearsed political speech, Plaintiffs argue about the standard of proof for a motion to alter or  
4 amend, or the standards of proof of alter ego liability. These are simply distractions, as Plaintiffs,  
5 by the lack of any opposition to the actual arguments in the Motion, have to agree that Casino  
6 Coolidge was never similarly situated to the “related entities” to be considered same.

7 The point made in the Motion, and never addressed in the Opposition is how Casino  
8 Coolidge, LLC can be a “related entity” when the evidence presented wholly failed to  
9 demonstrate that Casino Coolidge, LLC (1) dissipated assets; (2) frustrated collection of the  
10 judgment; (3) paid less than reasonably equivalent value for the conveyance (and about which the  
11 Court declined to make any adverse finding); or (4) directed that the funds paid to Leah, Inc. not  
12 be disbursed in accordance with its by-laws or its creditor’s rights.

13 There is also no inference the property sold for less than reasonably equivalent value. The  
14 court found:

15 In December 2014, Leah sold certain real property to Casino Coolidge for  
16 \$1,000,000. Mitchell and Liberman caused Leah to distribute sales proceeds  
17 [from that sale] in the amount of \$341,934.47 directly to themselves, rather than  
18 Leah's parent company, LVLP.

19 FoF&CoL P.5, ¶ 33 (in relevant part; emphasis added). Casino Coolidge, LLC paid the  
20 agreed selling price to the property owner. There was no finding that the funds did not change  
21 hands. There was no proof that the conveyance was concealed; the transfer was of record in the  
22 chain of title, and therefore known to all who cared to look. At best, the findings of fact show the  
23 wrongdoing occurred after Casino Coolidge, LLC paid the selling price to Leah, Inc. But no  
24 proof was presented and no finding concludes that Casino Coolidge committed some act of  
25 wrongdoing after the title transfer.

26 Nevada’s Fraudulent Conveyance Act excludes from the definition of a fraudulent  
27 conveyance a transfer of property for an exchange of reasonably equivalent value. Plaintiffs did  
28 not ask the court to set aside the transaction, and within that decision is a tacit admission that the

1 transaction could not be set aside as a statutorily defined fraudulent conveyance. Plaintiffs would  
2 not net more than the sale proceeds of \$341,934.37. If the sale were to be set aside, and then the  
3 property sold at execution sale, the outcome would be less desirable to Plaintiffs than simply  
4 recovering the sale proceeds that Leah, Inc. failed to remit to the judgment debtor.

5 Plaintiff argues that “Casino Coolidge, LLC ignores that Liberman-acting on both sides of  
6 the transaction-used his influence and control over both the seller and the buyer to structure the  
7 transaction to benefit himself and Mitchell, personally, at the expense of both Nype and Mitchell  
8 and Liberman's purportedly separate and distinct entities.” (*Opp.*, P.10, lines 15-18) It is  
9 ignored because that finding, and the argument from it - implicate Liberman, Mitchell, LVLP and  
10 Leah, Inc., not Casino Coolidge, LLC. It is not “the transaction” that is at issue, but the  
11 distribution of the sale proceeds after the sales transaction closed. Plaintiffs would not contend  
12 that the same sale with the proceeds going to Leah and then LVLP is nonetheless a fraudulent  
13 conveyance by Casino Coolidge, LLC. But “transaction” is a term with a fuzzy meaning, and  
14 therefore serves to obfuscate the facts.

15 Plaintiff also argues “Liberman and Mitchell used Casino Coolidge and Leah to act in  
16 concert with each other to further their conspiracy to hide, divert and conceal funds from Nype.  
17 That Liberman and Casino Coolidge were active participants cannot genuinely be questioned  
18 given that the direct distributions to Liberman and Mitchell could not have occurred had  
19 Liberman and Casino Coolidge not signed the settlement statement directing the sales proceeds to  
20 Liberman and Mitchell. These facts reflect unauthorized diversion of funds, treating corporate  
21 assets as the individuals', failures to treat the entities as separate and distinct legal entities and  
22 failures to follow corporate formalities.” (*Opp.*, P.10, lines 18-24) Plaintiffs suggest Casino  
23 Coolidge, LLC was the escrow agent, drawing up the closing statement and directing how Leah,  
24 Inc. was to disburse funds. The argument has no merit and no proof. It does underscore the  
25 paucity of facts that illustrate the weakness of the Plaintiffs’ argument that Casino Coolidge, LLC  
26 engaged in a fraudulent conveyance.

27 Plaintiff in opposition was unable to point to any facts in its Opposition that would  
28 implicate Casino Coolidge for any of the actual facts adduced at trial. Contrary to the citation to

1 evidence on page 9 of the Opposition, none of the evidence supports the Court’s finding. Rather,  
2 the evidence cited confirms the errors and the requirement of amendments. For example, Exhibit 7,  
3 the list of disregarded entities that are included on the LVLP tax return, does **not** include Casino  
4 Coolidge. Exhibits 27-32 are all exhibits reflecting the separateness of Casino Coolidge from the  
5 other entities. Exhibit 45 deals only with Leah, not Casino Coolidge.

6  
7 Similarly Exhibits 30099 and 30100 are separate Casino Coolidge documents that do not  
8 contain any LVLP information. The citation to exhibits in the 40001-40049 range do not support  
9 the findings either. Exhibit 40049 is a document from 2008, some six years before Casino  
10 Coolidge was formed. Inexplicably Plaintiff points to pleadings as evidence that Casino Coolidge  
11 is a “related entity.” (Exhibits 50001 and 50002). The remainder of the exhibits cited confirm the  
12 sale from Leah to Casino Coolidge. A sale, in and of itself, does not rise to the level of liability.

13 **C. THERE IS NO UNDERLYING TORT TO SUPPORT A FINDING OF ALTER**  
14 **EGO LIABILITY AS TO CASINO COOLIDGE, LLC.**

15 “Importantly, Casino Coolidge does not challenge this Court’s findings that Liberman,  
16 Mitchell, LVLP and Leah are each the alter ego of LVLP and each other.” (*Opp.*, *Id.*, P. 11).  
17 There is nothing important about it because it is not relevant to the finding that Casino Coolidge,  
18 LLC was a related entity. The proof may have implicated one or more co-defendants, but it does  
19 not follow that proof of some is sufficient to establish proof as to all. That is the underlying issue  
20 here, and bombastic legal conclusions is all that the Plaintiff can offer in the Opposition.

21 As the Plaintiffs note, the court found that Casino Coolidge was formed in 2014 for the  
22 sole purpose of purchasing the Leah property. (*Opp.*, P.9. lines 18-19). Collection efforts on the  
23 judgment began in the Summer of 2015. (*Amended Complaint*, P.13, ¶ 62) The Plaintiff  
24 recovered a judgment of \$2,608,797.50. Why would a corporate entity formed in 2014 be jointly  
25 and severally liable on all of the transactions, costs and damages over a six-year period that make  
26 up the Plaintiffs’ underlying judgment?

27 Plaintiff did not introduce any evidence showing that Casino Coolidge, LLC did not pay  
28 the reasonably equivalent value for the property. As this is the singular, sole transaction in which

1 Casino Coolidge, LLC participated, and because it paid reasonably equivalent value, there is no  
2 showing that this transaction was fraudulent as to the Plaintiffs.

3 “Plaintiff has established damages on the civil conspiracy claim in the amount of  
4 \$15,148.39.” (FoF&CoL, P. 12, CoL #22). “To establish a claim for civil conspiracy, a plaintiff  
5 must establish: (1) the commission of an underlying tort; and (2) an agreement between the  
6 defendants to commit that tort. *GES, Inc. v. Corbitt*, 117 Nev. 265, 21 P.3d 11, 15 (2001). Further,  
7 the plaintiff must establish with particular specificity “the manner in which a defendant joined in  
8 the conspiracy and how he participated in it.” *Arroyo v. Wheat*, 591 F.Supp. 141,  
9 4144 (D.Nev.1984).” *Peterson v. Miranda*, 991 F. Supp. 2d 1109, 1120 (D. Nev. 2014) There  
10 are no facts that support a finding that Casino Coolidge, LLC committed a tort, nor any  
11 description of when and how Casino Coolidge, LLC joined the conspiracy. The Opposition did  
12 nothing to show otherwise, and so the civil conspiracy claim falls for the lack of an underlying  
13 tort.

## 14 II. CONCLUSION

15 For the reasons set forth, Defendants Casino Coolidge, LLC respectfully requests the court  
16 grant this Motion, and amend the findings as to the identity of the “Related Entities,” and  
17 specifically, that Plaintiff failed to demonstrate Casino Coolidge, LLC was and is a related entity  
18 such that Judgment is entered in favor of Casino Coolidge, LLC and against Plaintiff.

19 DATED this 20th day of February 2020

20 BLUT LAW GROUP, PC

21  
22 By: /s/ Elliot S. Blut  
23 Elliot S. Blut, Esq.  
24 Nevada Bar No. 6570  
25 300 South Fourth Street, Suite 701  
26 Las Vegas, NV 89101  
27 *Attorney for Defendants Barnet*  
28 *Liberman and Casino Coolidge LLC*

**CERTIFICATE OF SERVICE**

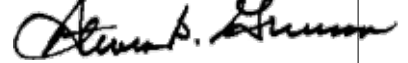
Pursuant to NRCP 5(b), I certify that I am an employee of BLUT LAW GROUP, PC, and that on **February 20, 2020**, I caused a correct copy of the foregoing document entitled **DEFENDANT CASINO COOLIDGE, LLC'S REPLY TO PLAINTIFFS OPPOSITION MOTION TO ALTER OR AMEND AMENDED JUDGMENT AND FINDINGS OF FACT AND CONCLUSIONS OF LAW PURSUANT TO NRCP 52 AND NRCP 59** to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which First Class postage was prepaid: and/or
- ☐ pursuant to NRCP (5)(b)(2)(D) to be served via facsimile; and/or
- ☐ pursuant to EDCR 7.26, to be sent via email; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered,

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

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

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



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16 *Attorneys for Mitchell Defendants*

11 **EIGHTH JUDICIAL DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

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

16 Plaintiffs,

17 vs.

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

Defendants

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

**MITCHELL DEFENDANTS'**  
**OPPOSITION TO PLAINTIFFS' MOTION**  
**FOR AWARD OF ATTORNEY FEES**

COMES NOW the Mitchell Defendants, by and through their counsel of record, H. Stan

Johnson, Esq. of the law firm Cohen Johnson Parker Edwards hereby file their Opposition to Plaintiffs' Motion for Award of Attorney Fees. The Opposition is made and based upon the papers and pleadings on file herein, the memorandum of Points and Authorities submitted in support hereof, and upon any oral argument that this Court may entertain.

DATED this 20<sup>th</sup> day of February 2020.

**COHEN JOHNSON PARKER EDWARDS**

/s/ H. Stan Johnson

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*Attorneys for Mitchell Defendants*

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### INTRODUCTION

Plaintiffs' Motion and the underlying case do not support an award of attorney's fees. Under the American system, fees are not awarded to a party simply because they may have prevailed in a court. While there are a few exceptions to this general rule, none of them apply in this case. Plaintiff has not identified an applicable basis for his request and any further award of fees as special damages is inappropriate. Accordingly, this Motion should be denied.

### II.

#### STATEMENT OF RELEVANT FACTS

The Court entered its judgment in this matter on January 17<sup>th</sup>, 2020. During trial in this matter, the Court stated that under the law, Plaintiffs could seek their fees after the trial if appropriate. Plaintiffs have now brought a Motion for their fees incurred during and after the trial. The Court awarded Plaintiffs' their fees and costs as special damages. Plaintiff did not plead or prove these damages. In addition, the Court found that:

23. Nype has not demonstrated that punitive damages are appropriate in this matter. The Court did not award any damages pursuant to NRS 18.

### III.

#### LEGAL ARGUMENT AND ANALYSIS

##### **A. THERE IS NO BASIS FOR AN AWARD OF ATTORNEY FEES IN THIS MATTER.**

Nevada strictly adheres to the American Rule, meaning that attorney fees may only be awarded when authorized by statute, rule, or agreement. *Pardee Homes v. Wolfram*, 444 P.3d 423, 425-27 (2019). NRS.010(2)(b) allows the Court to award fees only when a defense is "brought or maintained" without reasonable grounds. a claim is frivolous or groundless if there is no credible evidence to support it. *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095, 901 P.2d 684, 687-88 (1995). "Although a district court has discretion to award attorney fees under NRS



1 18.010(2)(b), there must be evidence supporting the district court's finding that the claim or  
2 defense was unreasonable or brought to harass.” *Bower v. Harrah's Laughlin, Inc.*, 125 Nev. 470,  
3 493, 215 P.3d 709, 726 (2009).

4 Here, Plaintiffs point to no agreement, rule, or other statute to support their request for fees  
5 other than NRS 18.010(2)(b), which is not applicable here. Plaintiffs argue ambiguously that  
6 Defendants’ defenses were brought and maintained “without reasonable grounds.” They do not  
7 identify which defense was unreasonable. Neither do they identify any evidence that supports this  
8 conclusion. Defendants only outline various aspects of NRS 18.010 without providing any analysis  
9 at all.  
10

11 This total lack of any argument seems to indicate that Plaintiffs believe that they have  
12 prevailed and so Defendant’s defenses must have been brought without reasonable grounds and  
13 fees are appropriate. This approach is unsupported by Nevada law. Following this logic, Nevada  
14 would no longer be following the American rule at all. The Court has already found that there is  
15 no basis for punitive damages in this case. Accordingly, it is unclear what defenses Plaintiffs  
16 believe rise to the level required by NRS 18.010. While the requirements for punitive damages are  
17 not the same as attorney fees under NRS 18.010, the stated purpose of both is “punish or deter”  
18 bad actors. As Plaintiff has not provided any basis for his contention that fees are appropriate under  
19 NRS 18.101 and no evidence to support this allegation, this Motion for fees should be denied.  
20

21 There is likewise no basis for fees as special damages in this matter. To receive fees as  
22 special damages, a party must conform with NRCP 9(g), which reads that “If an item of special  
23 damage is claimed, it must be specifically stated” in the complaint. *Id.* See Also *Watson Rounds,*  
24 *P.C. v. Eighth Judicial Dist. Court*, 358 P.3d 228, 233, 131 Nev. Adv. Rep. 79 (2015)(Rejecting  
25 the award of attorney fees as special damages when the request was not pleaded in accordance  
26 with NRCP 9(g).) The mere mention of attorney fees in a complaint is insufficient to meet this  
27  
28

1 requirement. *Sandy Valley Associates v. Sky Ranch Estates Owners Ass'n*, 117 Nev. 948, 956-57,  
2 35 P.3d 964, 969 (2001).

3 In addition, to receive attorney fees as special damages, they must have been directly  
4 “foreseeable” and necessitated by a Defendant’s action. *Id.* Conduct that will likely cause a party  
5 to hire an attorney to file a case is not “foreseeable” under this test. *Id.* Rather, the Courts look for  
6 situations that cannot be resolved without the incurring legal fees such as slander of title.  
7 Accordingly, the Nevada Supreme Court has specifically disavowed the award of attorney fees  
8 “broadly.... [even when] the fees [and litigation is] a reasonably foreseeable consequence of  
9 injurious conduct...” *Pardee*, 444 P.3d at 427. Finally, these fees must be “proven by competent  
10 evidence” at trial. *Id.*

11  
12 Plaintiffs did not plead their request for special damages. Further, the claims at issue in  
13 this case cannot give rise to attorney fees as special damages. Cases that will very likely require a  
14 party to hire an attorney do not merit attorney fees as special damages. Only cases where the  
15 attorney’s fees are a direct and foreseeable result of the Defendants’ actions can form the basis  
16 for attorney fees meet this standard. Accordingly, as there is no basis for Defendants’ fees, under  
17 NRS 18 or as special damages, this Motion should be denied.  
18

19  
20 **IV.**

21 **CONCLUSION**

22 As Plaintiffs have not provided any basis for their request for fees, this Motion should be  
23 denied.

24 DATED this 20<sup>th</sup> day of February 2020.

25 **COHEN JOHNSON PARKER EDWARDS**

26 /s/ H. Stan Johnson  
27 H. STAN JOHNSON, ESQ.  
28 Nevada Bar No. 00265

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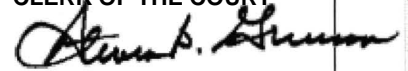
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**CERTIFICATE OF SERVICE**

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on the 20<sup>th</sup> day of February 2020, I caused a true and correct copy of **MITCHELL DEFENDANTS' OPPOSITION TO PLAINTIFFS' MOTION FOR AWARD OF ATTORNEY FEES** to be served via the Court's Wiznet E-Filing system on all registered and active parties.

/s/ Sarah Gondek  
An employee of Cohen|Johnson|Parker|Edwards



1 **OPPM**  
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**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs.

vs.

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

Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

**PLAINTIFFS' OPPOSITION TO  
THE MITCHELL DEFENDANTS',  
LIBERMAN'S AND CASINO  
COOLIDGE'S MOTIONS TO  
ALTER OR AMEND JUDGMENT**

Hearing Date: February 24, 2020  
Hearing Time: 9:00 a.m.

COME NOW Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC (collectively,  
"Plaintiffs" or "Nype")), by and through their attorney of record, JOHN W. MUIJE, ESQ., of the  
Law Firm of JOHN W. MUIJE & ASSOCIATES, and hereby submit their Opposition (the  
"Opposition") to the *Mitchell Defendants' Motion to Alter or Amend Judgment Pursuant to NRC*  
*59(e)* (the "Mitchell Motion") and *Defendants Casino Coolidge, LLC and Barnet Liberman's*

1 *Motion to Alter or Amend Amended Judgment and Findings of Fact and Conclusions of Law*  
2 *Pursuant to NRCP 52 and NRCP 59 (the "Liberian Motion" and, collectively with the Mitchell*  
3 *Motion, the "Motions").*

4  
5 This Opposition is made and based upon the points and authorities that follow, the pleadings  
6 and documents on file herein, and the arguments to be adduced at the hearing hereon.

7 DATED this 20<sup>th</sup> day of February, 2020.

8 JOHN W. MUIJE & ASSOCIATES

9  
10 By: /s/ John W. Muije, Esq.

11 JOHN W. MUIJE, ESQ.

12 Nevada Bar No. 2419

13 1840 E. Sahara Avenue, Suite 106

14 Las Vegas, Nevada 89104

15 *Attorneys for Plaintiffs*

16 **MEMORANDUM OF POINTS AND AUTHORITIES**

17 **I.**

18 **INTRODUCTION**

19 This Court presided over a six-day trial in this matter, wherein the Court carefully noted  
20 and considered all of the evidence presented by all of the parties—including the expert testimony of  
21 Mark Rich, CPA, CFA ("Mr. Rich")—which was unrebutted by competing-expert testimony. This  
22 Court provided Defendants<sup>1</sup> with ample time and opportunity to present all evidence in support of  
23 their cases. After considering the evidence, this Court entered judgment (1) against Defendants  
24 David Mitchell ("Mitchell") and Barnet Liberman ("Liberman") on Nype's cause of action for civil  
25 conspiracy in the amount of \$19,641,515.90 (the "Civil-Conspiracy Judgment") and (2) imposing  
26 joint and several alter ego liability against most—but not all—of the Defendants (including the  
27 Mitchell Defendants) on Nype's underlying judgment in case number A551073 (the "Underlying  
28 Judgment") and also the "the damages, attorney's fees and costs awarded in this action." (See FFCL

1 at 10, ¶ 8; id. at 13-14.) The Court supported its decision through a 14 page Findings of Fact and  
2 Conclusions of Law containing 61 factual findings and 29 conclusions of law. The Court, sua  
3 sponte, entered a nearly identical Amended Findings of Fact and Conclusions of Law (the "FFCL"  
4 or the "Judgement") the next day.

5  
6 Defendants allege no errors by this Court with regard to the admission of evidence at trial.  
7 Nor do they allege any unfairness or bias by this Court. Instead, Defendants largely attempt to retry  
8 their cases by motion raising numerous issues with the Court's findings of facts and conclusions of  
9 law that they assert are unsupported by the evidence admitted at trial. This Court, however, has  
10 already considered and rejected most of Defendants' arguments, and it should do so again in  
11 adjudicating this Motion.

12  
13 As discussed below, each of the Court's findings disputed by Defendants is supported by  
14 substantial evidence admitted at trial and the applicable caselaw. Defendants have failed to meet  
15 their heavy burden of demonstrating otherwise. In making their arguments, Defendants often  
16 cherry pick the limited evidence and caselaw that purportedly support their arguments while  
17 ignoring the substantial evidence and caselaw supporting this Court's Judgment in Nype's favor. As  
18 a result, Defendants fail to provide this Court with any basis for altering or amending the FFCL as,  
19 among reasons, the presence of competing evidence is irrelevant.

20  
21 Indeed, this Court required all parties to submit their own proposed findings of fact and  
22 conclusions of law prior to issuing the Judgement. After having personally observed the entire trial,  
23 considered all of the evidence admitted, and having evaluated the credibility of the witnesses, the  
24 Court carefully drafted its FFCL (appearing to have reviewed and incorporated proposed findings  
25 of fact and conclusions of law submitted by the various parties). This Court's Judgment is solidly  
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27  
28

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<sup>1</sup> As used herein, "Defendants" refer to the Mitchell Defendants and Defendants Barnett Liberman and Casino Coolidge, LLC.

1 based in the evidence presented at trial and should not be altered or amended. The Judgment  
2 appears to be precisely what this Court intended.

## 3 II.

### 4 ARGUMENT

#### 5 A. The Motions Should be Denied on the basis that they were untimely filed

6 NRCP 52 and 59 required Defendants to file the Motions within 28 days of service of the  
7 notice of entry of this Court's **original** Findings of Fact and Conclusions of Law, i.e., by February  
8 13, 2020.<sup>2</sup> See NRCP 52 and 59. Defendants' Motions were filed untimely, however, on the 29<sup>th</sup>  
9 day, i.e., February 14, 2020. The result of Defendants' failure to timely file their Motions is that  
10 this this Court is now "without jurisdiction to consider" the Motions. See e.g., Oelsner v. Charles  
11 C. Meek Lumber Co., 92 Nev. 576, 555 P.2d 217 (Nev. 1976) (holding that an order amending a  
12 judgment was "null and void" where "the 'motion to amend' [filed under NRCP 59] was not filed  
13 within the required 10 day period; therefore the district court was without jurisdiction to consider  
14 it."); Ross v. Giacomo, 97 Nev. 550, 553, 635 P.2d 298 (Nev. 1981) ("Untimely motions for new  
15 trial or judgment n.o.v. must be denied."), overruled on other grounds by Winston Products Co. v.  
16 DeBoer, 122 Nev. 517, 134 P.2d 726 (Nev. 2006); NRCP 6(b) ("A court must not extend the time  
17 to act under Rules...52(b)...and [59](e)."); NRCP 52(b) ("The time for filing the motion cannot be  
18 extended under Rule 6(b)"); NRCP 59(f) (same).

19 Defendant will likely argue that the Motions are not untimely due to the Court's Amended  
20 Findings of Fact and Conclusions of Law, i.e., the FFCL, filed and served on January 17, 2020.  
21 However, immaterial revisions to a final judgment, such as the only item this Court added to the  
22 FFCL (i.e., new footnote number 10 on page 11), that do not disturb or revise legal rights and  
23 obligations, especially those entered *sua sponte*, do not alter or extend the 28-day deadline. See  
24

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<sup>2</sup> Service of notice of entry of the original Findings of Fact and Conclusions of Law occurred on  
January 16, 2020, making February 13, 2020, the 28<sup>th</sup> day.



1 e.g., Fed. Trade Comm'n v. Minneapolis-Honeywell Regulator Co., 344 U.S. 206, 211-212 (1952)  
2 ("[T]he mere fact that a judgment previously entered has been reentered or revised in an immaterial  
3 way does not toll the time within which review must be sought . . . . The question is whether the  
4 lower court, in its second order, has disturbed or revised legal rights and obligations which, by its  
5 prior judgment, had been plainly and properly settled with finality."); accord Farkas v. Rumore, 101  
6 F.3d 20, 22 (2d Cir. 1996) ("Where a judgment is reentered, and the subsequent judgment does not  
7 alter the substantive rights affected by the first judgment, the time for appeal runs from the first  
8 judgment.")  
9

10 Accordingly, this Court need not consider the Motions and indeed may not have jurisdiction  
11 to do so.<sup>3</sup>  
12

13 **B. The Standard: "Substantial Evidence" Is Merely Evidence Adequate To Support**  
14 **The Conclusion Of A Reasonable Mind.**

15 Courts analyze motions under NRCP 52(b) and NRCP 59(e) the same way. See Diebitz v.  
16 Arreola, 834 F. Supp. 298, 302-03 (E.D. Wis. 1993) (interpreting the federal analogs to these  
17 Nevada rules).<sup>4</sup> On a Rule 59(e) motion to alter or amend a judgment, "the moving party bears the  
18 burden of establishing 'extraordinary circumstances' warranting relief from a final judgment."  
19 Schoenman v. F.B.I., 857 F. Supp. 2d 76, 80 (D.D.C. 2012) (noting that "[m]otions under Rule  
20 59(e) are 'disfavored'"); see also Fed. Deposit Ins. Corp. v. Meyer, 781 F.2d 1260, 1268 (7th Cir.  
21 1986) (finding that the movant's burden is to "clearly establish" a basis for relief).  
22

23 Rule 59(e) motions "'may not be used to relitigate old matters, or to raise arguments or  
24 present evidence that could have been raised prior to the entry of judgment.'" Exxon Shipping Co.  
25

26 <sup>3</sup> In an abundance of caution, Nype hereafter presents his substantive opposition to the Motions.  
27

28 <sup>4</sup> "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" Executive Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting Las Vegas Novelty v. Fernandez, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

1 v. Baker, 554 U.S. 471, 486, n.5 (2008) (quoting 11 C. Wright & A. Miller, Federal Practice and  
2 Procedure § 2810.1, pp. 127–128 (2d ed. 1995) (footnotes omitted)). "Motions pursuant to Rule  
3 59(e) should only be granted in rare circumstances." Susinka v. United States, 19 F. Supp. 3d 829,  
4 834 (N.D. Ill. 2014) (emphasis added) (citing Bank of Waunakee v. Rochester Cheese Sales, Inc.,  
5 906 F.2d 1185, 1191 (7th Cir. 1990)).

7 "While '[c]ourts have generally not defined what constitutes 'clear error'<sup>5</sup> under Rule 59(e),'  
8 . . 'clear error' should conform to a 'very exacting standard[.]' Lightfoot v. D.C., 355 F. Supp. 2d  
9 414, 422 (D.D.C. 2005) (alteration in the original) (quoting Piper v. U.S. Dep't of Justice, 312 F.  
10 Supp. 2d 17, 21 (D.D.C. 2004), as amended (May 13, 2004)). "[A] final judgment must be 'dead  
11 wrong' to constitute clear error." Id. (citing Parts & Elec. Motors, Inc. v. Sterling Elec., Inc., 866  
12 F.2d 228, 233 (7th Cir. 1988)). To meet this standard, "'a decision must strike [a court] as more  
13 than just maybe or probably wrong; it must . . . strike [the court] as wrong with the force of a five-  
14 week-old, unrefrigerated dead fish." Parts & Elec. Motors, 866 F.2d at 233)). Hence, "mere  
15 disagreement does not support a Rule 59(e) motion." Hutchinson v. Staton, 994 F.2d 1076, 1082  
16 (4th Cir. 1993); see also Oto v. Metro. Life Ins. Co., 224 F.3d 601, 606 (7th Cir. 2000) ("A  
17 'manifest error' is not demonstrated by the disappointment of the losing party.")

20 Defendants seek to meet this standard by challenging the evidentiary support for the Court's  
21 findings and conclusions. The Nevada Supreme Court "reviews the district court's findings of fact  
22 for an abuse of discretion, and . . . will not set aside those findings 'unless they are clearly erroneous  
23 or not supported by substantial evidence.'" NOLM, LLC v. County of Clark, 120 Nev. 736, 739,  
24 100 P.3d 658, 660–61 (2004) (quoting Sandy Valley Assocs. v. Sky Ranch Estate, 117 Nev. 948,  
25 954, 35 P.3d 964, 968 (2001)) (overruled on in part by Horgan v. Felton, 123 Nev. 577, 170 P.3d  
26  
27

28  
<sup>5</sup> The federal cases use "clear error of law or fact" and "manifest errors of law or fact" interchangeably.

982 (2007)); see also Sheehan & Sheehan v. Nelson Malley & Co., 121 Nev. 481, 486, 117 P.3d 219, 223 (2005) (applying the same standard to conclusions of law). "Substantial evidence is that which 'a reasonable mind might accept as adequate to support a conclusion.'" Radaker v. Scott, 109 Nev. 653, 657, 855 P.2d 1037, 1040 (1993) (quoting State Emp. Security v. Hilton Hotels, 102 Nev. 606, 608, 729 P.2d 497, 498 (1986)). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction that a mistake has been committed." United States v. United States Gypsum Co., 333 U.S. 364, 395, 68 S. Ct. 525, 542 (1948).

Notably, the Nevada Supreme Court has found that the credible testimony of a single witness can provide sufficient evidence to support a court's findings of fact. See Romy Hammes, Inc. v. McNeil Const. Co., 91 Nev. 130, 132, 532 P.2d 263, 264 (1975) (rejecting a claim of insufficient evidence to support a jury verdict and stating that "the testimony of the president of McNeil Construction Company . . . alone provides requisite support for the jury's apparent conclusion that the services were performed at the special instance and request of Romy Hammes, Inc."). "Where the trial court, sitting without a jury, makes a determination predicated upon conflicting evidence, that determination will not be disturbed on appeal where supported by substantial evidence." Trident Const. Corp. v. W. Elec., Inc., 105 Nev. 423, 427, 776 P.2d 1239, 1242 (1989) (emphasis added).

**B. Substantial Evidence and the Applicable Caselaw Supports this Court's Civil-Conspiracy Judgment.**

Defendants challenge this Court's Civil-Conspiracy Judgment on the asserted grounds that: (1) no actionable basis existed to form the necessary predicate upon which this Court could impose civil-conspiracy liability and damages; and (2) for various reasons, the Court's judgment in this regard was excessive in amount. The foundation of Defendants' arguments are their assertions that: (1) Nype failed to present proof that Liberman or Mitchell committed a tort, thereby limiting the

1 measure of damages to those permissible under NRS Chapter 112 on the fraudulent conveyance  
2 claim; and (2) under Cadle Co. v. Woods & Erickson, Ltd. Liab. P'ship, 345 P.3d 1049 (Nev. 2015),  
3 liability on the fraudulent conveyance claims was limited to the lesser of the amounts transferred or  
4 "the amount of the [Underlying J]udgment plus interest." (See, e.g., Mitchell Mot. at 5:11-12.)  
5

6 The cause of action at issue is that of civil conspiracy against Mitchell and Liberman.  
7 "A civil conspiracy is a combination of two or more persons by some concerted action to  
8 accomplish some criminal or unlawful purpose or to accomplish some purpose not in itself  
9 criminal or unlawful by criminal or unlawful means." Eikelberger v. Tolotti, 96 Nev. 525, 528  
10 n.1, 611 P.2d 1086, 1088 (1980) (emphasis added). Nevada law does not require that the unlawful  
11 purpose/conduct arise to the level of a tort. See Cadle., 345 P.3d at 1052 ("In Nevada, however,  
12 civil conspiracy liability may attach where two or more persons undertake some concerted action  
13 with the intent to commit an unlawful objective, not necessarily a tort." (emphasis added).) "The  
14 conspiratorial agreement need not be in any particular form and need not extend to all the details or  
15 the conspiratorial scheme so long as its primary purpose is to cause injury to another." Eikelberger,  
16 96 Nev. at 528 n.1, 611 P.2d at 1088.  
17

18 Here, this Court found that Mitchell and Liberman engaged in the following conduct for the  
19 purpose of harming Nype: (1) "Mitchell and Liberman, engaged in conscious, concerted and  
20 ongoing efforts to conceal, hide, convey, keep secret and/or distribute millions of dollars in assets  
21 away from Nype"; (2) "Mitchell and Liberman received [millions of dollars in] distributions from  
22 LVLP and the Related [E]ntities"; (3) "Mitchell, fabricated and backdated evidence to facilitate the  
23 destruction and/or concealment of material evidence by his agent that would have greatly assisted  
24  
25  
26  
27  
28

1 Nype's case";<sup>6</sup> (4) Mitchell "fail[ed] to produce documents which should have been in his  
2 possession[.]" (See FFCL at 6, ¶ 43, and at 12 ¶ 19(a)-(c).)

3 All of this conduct properly supported this Court's Civil-Conspiracy Judgment as the  
4 conduct was both criminal or unlawful (as a tort or otherwise) and done for criminal or unlawful  
5 purposes.<sup>7</sup> (See, e.g., Mitchell Mot. at 9:11-16 (acknowledging that actionable fraudulent transfers  
6 provide the underlying predicate "necessary for the Court to find civil conspiracy"));<sup>8</sup> NRS 199.210  
7

8  
9 <sup>6</sup> Notably, the Mitchell Defendants have finally given up on contesting their blatantly unlawful  
10 conduct vis-à-vis the subject retention agreements and now admit that "[t]he conduct of Mitchell  
11 and his CPA was wrong." (See Mitchell Mot. at 7:26-28.) They argue, however, that under the  
12 intra-corporate-conspiracy doctrine set forth in Collins v. Union Fed. Sav. & Loan Ass'n, 99 Nev.  
13 284, 303, 662 P.2d 610, 622 (1983), "Mitchell cannot act in conspiracy with his own agent, who in  
14 this case, is his accountant." (Mitchell Mot. at 9:27-27.) Collins is entirely inapplicable to this case  
15 as the case, itself, makes clear that the doctrine only applies, however, when agents and officers of  
16 the corporation "act in their official capacities on behalf of the corporation **and not as individuals  
for their individual advantage.**" Id. (emphasis added). Moreover, the conspiracy here went far  
beyond just Mitchell and Mr. Spitz, acting solely officer and agent of LVLP, and included Mitchell,  
acting both personally (for his individual advantage) and on behalf of LVLP and the Related  
Entities, and Liberman acting in the same capacities.

17 <sup>7</sup> Relying upon Eikelberger, the Mitchell Defendants argue that "fabrication of evidence cannot  
18 form the necessary underlying tort for civil conspiracy[.]" (Mitchell Mot. at 8:1-16.) Eikelberger,  
19 however, acknowledged that the "creation of false and inaccurate" accountings could support a  
20 claim for civil conspiracy in circumstances where the false documents caused a recipient of those  
21 documents damage. Id. 96 Nev. at 531-32, 611 P.2d at 1091. Eikelberger simply stands for the  
22 unremarkable proposition that a claim for civil conspiracy will not lie if the underlying overt acts do  
23 not cause the victim damage. Here, it cannot reasonably be disputed that Mitchell's fabrication of  
24 evidence harmed Nype by causing him to incur substantial attorney's fees and expert costs to  
25 uncover and address the fabricated evidence and incurring the mental anguish, distress and  
frustration associated with the resultant inability to obtain materials necessary to help Nype prevail  
in this action. Nor is it relevant that this Court sanctioned Mitchell for prior discovery misconduct  
as that fact only proves that this Court found that Nype had been harmed by the misconduct.  
Finally, the Mitchell Defendants are incorrect that Nype ultimately was able to obtain all  
appropriate discovery materials as Mr. Rich testified that Mr. Spitz's "working papers" were never  
produced (either because they were withheld or destroyed).

26 <sup>8</sup> Lest there be any doubt, Cadle permits a finding of civil conspiracy to commit fraudulent transfers  
27 among transferees and only precludes such civil-conspiracy liability against "**nontransferees**, i.e.,  
28 those who have **not** received or benefited from the fraudulently transferred property[.]" 345 P.3d at  
1052; see also NCP Bayou 2, LLC v. Medici, 2019 Nev. Unpub. LEXIS 324, \*6, n.2, 437 P.3d 173,  
Docket 73122, 73820, (March 21, 2019, Nev., unpublished disposition) (holding that the district  
court's interpretation that Cadle precluded civil-conspiracy liability "in fraudulent transfer actions

(knowingly procuring forged or fraudulently altered material to offer the same into evidence at a trial or other proceeding constitutes a category D felony); Rosenblit v. Zimmerman, 166 N.J. 391, 405-07, 766 A.2d 749, 757-58 (2001) (recognizing spoliation as a tort in New Jersey);<sup>9</sup> Laxalt v. McClatchy, 622 F. Supp. 737, 751 (D. Nev. 1985) ("In Nevada, the two essential elements of [the tort of] abuse of process are: (1) an ulterior purpose behind the issuance of process;<sup>10</sup> and (2) a willful act in the use of process not proper in the regular conduct of the proceeding."); Consol. Generator-Nevada v. Cummins Engine Co., 114 Nev. 1304, 1311, 971 P.2d 1251, 1255 (1998) (providing the elements of the tort of intentional interference with prospective economic advantage<sup>11</sup>).

In Nevada, damages for civil conspiracy are not those that arise from the mere fact of "the conspiracy itself, but the **injury to the plaintiff produced by [the] specific overt acts**" taken regardless of whether the party is a transferee or a nontransferree" was far too "broad[]" a reading and legally incorrect.))

<sup>9</sup> New Jersey is where Mitchell's CPA, Sam Spitz, operates his business and where he worked in concert with Mitchell to fabricate and fraudulently backdate engagement letters. Spoliation of evidence includes both "[t]he destruction, or the significant and meaningful alteration of a document or instrument." Baxt v. Liloia, 155 N.J. 190, 204 n.4, 714 A.2d 271, 278 (1998) quoting Black's Law Dictionary 1401 (6th ed.1990) (citation omitted).) As this Court correctly noted, its finding of intentional spoliation provided the Court with authority to make adverse inferences that the withheld materials "would have been adverse to Mitchell." (FFCL at 6 ¶ 43.)

<sup>10</sup> Mitchell and Liberman's discovery misconduct in this matter and litigation strategy to annoy, harass and delay and to wear out his financial resources amounted to the tort of abuse of process. See e.g., Hough v. Stockbridge, 152 Wash. App. 328, 346, 216 P.3d 1077, 1086-87 (2009) ("Misuse of "[d]epositions, motions, interrogatories, and other requests for discovery or legal maneuverings to compel or prohibit action by an opponent . . . [are] the type of process that will support an abuse of process claim."); (see also Trial Exhibit 50042 at 5-6 (admitting to Mitchell and Liberman's bad-faith legal strategy).)

<sup>11</sup> The evidence admitted at trial supported that Mitchell and Liberman's actions taken in furtherance of their conspiracy to harm Nype was for the purpose of preventing Nype's ability to do further business with, among others, third-party Forest City. Nype testified that because of his seemingly never-ending litigation with LVLP, Mitchell and Liberman interfered with and precluded his ability to do millions of dollars in multiple business deals with Forest City.

1 in furtherance of the conspiracy. Aldabe v. Adams, 81 Nev. 280, 286-87, 402 P.2d 34, 37-38  
2 (1965) (emphasis added), overruled on other grounds by Siragusa v. Brown, 114 Nev. 1384, 1393,  
3 971 P.2d 801, 807 (1994).<sup>12</sup> For civil conspiracy, a "plaintiff is entitled to recover **all damages** that  
4 'naturally flow from the civil conspiracy.'" Operation Rescue-National v. Planned Parenthood, 937  
5 S.W.2d 60, 83 (Tex. App. 1996) (emphasis added), modified on other grounds by 975 S.W.2d 546  
6 (Tex. 1998), quoting Fenslage v. Dawkins, 629 F.2d 1107, 1110 (5th Cir. 1980); accord Homoki v.  
7 Conversion Servs., 717 F.3d 388, 405 (5th Cir. 2013) ("Damages for civil  
8 conspiracy are measured by the extent of the injury resulting from an act done pursuant to the  
9 conspiracy's common purposes[.]") "Civil conspiracy is a tort and the measure of  
10 compensatory damages is the standard measure of tort damages." Chesapeake Corp. v. Sainz, No.  
11 3:00cv816, 2002 U.S. Dist. LEXIS 28702, at \*46 (E.D. Va. Mar. 19, 2002). Generally in Nevada,  
12 "[a] successful plaintiff [in a tort case] is entitled to **compensation for all the natural and**  
13 **probable consequences of the wrong**, including injury to the feelings from humiliation, indignity  
14 and disgrace to the person, and physical suffering. The injury to health may be due to mental  
15 suffering." Lerner Shops v. Marin, 83 Nev. 75, 79, 423 P.2d 398, 401 (1967) (emphasis added).

16  
17 The above described overt actions of Mitchel and Liberman support a panoply of damage  
18 types that includes, among other things, the following that properly and fully supports this Court's  
19 Civil-Conspiracy Judgment (and the amount thereof): (1) a judgment for the value of the  
20 distributions, up to the present amount of Nype's Underlying Judgment; (2) attorney's fees as  
21 special damages; (3) damage to reputation; (4) lost business opportunities; and (5) compensation for  
22 fear, anxiety, mental anguish and injury to feelings. See e.g., NRS 112.220(2) (supporting the first  
23 category); NRS 112.210(1)(c)(3) (permitting successful creditors in fraudulent-transfer actions to

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28 <sup>12</sup> Siragusa overruled Aldabe on the limited grounds that Aldadbe had improperly held that the  
statute of limitations for a civil conspiracy claim "runs from the date of injury rather than the date  
the conspiracy is discovered." See id.

1 obtain "[a]ny other relief the circumstances require" (emphasis added)); Pardee Homes v.  
2 Wolfram, 444 P.3d 423, 426 n.3 (Nev. 2019) (an award of attorney's fees as special damages are  
3 appropriate as exceptions to the American Rule where "a party incurred the fees in [actions seeking  
4 to] recover[] real or personal property acquired through wrongful conduct of the defendant," and in  
5 "injunctive or declaratory actions compelled 'by the opposing party's bad faith conduct.'" (citations  
6 for quotations omitted));<sup>13</sup> Von Ehrensmann v. Lee, 98 Nev. 335, 337-38, 647 P.2d 377, 378-79  
7 (1982) ("Where equitable relief is sought, an award of attorneys' fees is proper if awarded as an  
8 item of damages."); Volk Constr. Co. v. Wilmescherr Drusch Roofing Co., 58 S.W.3d 897, 901  
9 (Mo. Ct. App. 2001) (attorney's fees justified under the UFTA<sup>14</sup> under the "special circumstances"  
10 exception to the American Rule, such as where a party engaged in intentional misconduct.); Tech.  
11 Comput. Servs., Inc. v. Buckley, 844 P.2d 1249, 1256 (Colo. Ct. App. 1992) ("a claimant in a . . .  
12  
13  
14

15 <sup>13</sup> The Mitchell Defendants' argument that this was not the sort of case that supported an award of  
16 attorney's fees as special damages is risible. This was not a breach-of-contract action like that at  
17 issue in Pardee in which the fees are sought solely because parties typically hire attorneys to  
18 prosecute claims. Instead, this case was similar to the type that the Mitchell Defendants admit  
19 provide an appropriate basis for attorney's fees, i.e., "situations that cannot be resolved without  
20 incurring legal fees such as slander of title." (Mitchell Mot. at 17:22-23.) Here, Nype was required  
21 to engage counsel to attempt to, among other things, unwind the consequences of the Defendants'  
22 fraudulent transfers and the consequences of their acknowledged unethical litigation conduct and  
23 strategy.

24 <sup>14</sup> Defendant's reliance upon Cadle to argue that NRS 112 does not support an award of attorney's  
25 fees as special damages is entirely misplaced. Cadle Co did not address attorney's fees as special  
26 damages in any way and its holding is limited to precluding accessory liability in UFTA actions  
27 from attaching to nontransferees. That Court's discussion of NRS 112.210(1)(c)(3)'s grant of  
28 authority for a court to award "[a]ny other relief the circumstances require" was solely in the  
context of whether that provision permitted the attachment of liability outside the class of  
permissible defendants enumerated in NRS 112, i.e., to nontransferees. Finally, the Nevada  
Supreme Court has never found that attorney's fees as special damages are impermissible in UFTA  
actions (or that the UFTA displaces Nevada's common-law exception for such damages), and  
numerous jurisdictions permit such awards under their substantively identical versions of the  
UFTA, provided that their state law provides an independent basis to award attorney's fees as  
damages. See e.g., Volk Constr., 58 S.W.3d at 901; Harder v. Foster, 463, 401 P.3d 1032, 1045  
(Kan. Ct. App. 2017); Macris & Assocs. v. Neways, Inc., 60 P.3d 1176, 1179-80 (Ut. Ct. App.  
2002); In re Youngstown Osteopathic Hosp. Ass'n, 280 B.R. 400, 410 (Bankr. N.D. Ohio 2002).



1 abuse of process action can recover attorney fees incurred in defending against the prior wrongful  
2 litigation") (citations omitted); Van Vuuren v. Berrien (In re Berrien), 280 F. App'x 762, 766-67  
3 (10th Cir. 2008) (unpublished) (tort "damages [can] include, among other things, emotional distress  
4 [and] lost business opportunity[.]"); Daily v. Gusto Records, Inc., 14 F. App'x 579, 590 (6th Cir.  
5 2001) ("damages for mental suffering<sup>15</sup> are recoverable in an action for civil conspiracy"); Braswell  
6 v. Carothers, 863 S.W.2d 722, 727 (Tenn. Ct. App. 1993) (same); Fenslage v. Dawkins, 629 F.2d  
7 1107, 1110 (5th Cir. 1980) ("Exemplary damages<sup>16</sup> and damages for mental anguish are recoverable  
8 against civil conspirators in the proper circumstances"); Bull v. McCuskey, 96 Nev. 706, 710, 615  
9 P.2d 957, 960 (1980) ("The compensatory damages recoverable in an action for abuse of process . .  
10 . include compensation for fears, anxiety, mental and emotional distress."); Millennium Equity  
11 Holdings, LLC v. Mahlowitz, 456 Mass. 627, 645, 925 N.E.2d 513, 528 (2010) (holding that "the  
12 costs of defending against the improper action; (2) the emotional harm he suffered; and (3) the harm  
13 to his reputation" were each "compensable category of damages for an abuse of process claim"); id.  
14 ("injury to business" is "available for abuse of process"); Lerner Shops, 83 Nev. at 79, 423 P.2d at  
15 401 (tort plaintiffs are generally "entitled to compensation for all the natural and probable  
16 consequences of the wrong").

20 Accordingly, Defendants' are mistaken to argue that this Court's Judgment was excessive  
21 because the "amount of the total distributions to Mitchell and Liberman[.]" could only damage  
22

23 <sup>15</sup> Awards of mental anguish and other similar damage types are left to "the special province of the  
24 [fact finder] to determine the amount that ought to be allowed' . . . [and] a court 'is not justified in  
25 reversing the case or granting a new trial on the ground that the verdict is excessive, unless it is so  
26 flagrantly improper as to indicate, passion, prejudice or corruption of the [fact finder].'" Stackiewicz v. Nissan Motor Corp., 100 Nev. 443, 454, 686 P.2d 925, 932 (1984) quoting Forrester  
27 v. Southern Pacific Co., 36 Nev. 247, 295-296, 134 P. 753, 768 (1913).

28 <sup>16</sup> While this Court declined to award exemplary, i.e., punitive, damages against Mitchell and Liberman, their willful actions taken for the purpose of harming Nype readily demonstrate that they were "guilty of oppression, fraud or malice, express or implied", within the meaning of NRS 42.001 and 42.005, and, therefore, provide alternative grounds to support this Court's Judgment.

1 Nype up to "to the amount of the [Underlying Judgment] plus interest". (See Mitchell Mot. at 5:1-  
2 12.) As a result of Mitchell and Liberman's overt actions, Nype: (1) was left with an uncollectable  
3 Underlying Judgment presently worth approximately \$4,700,000; (2) was forced to incur more than  
4 \$4.5 million in attorney's fees and costs defendants against Defendants' bad-faith, unethical legal  
5 strategy, obtaining the uncollectable Underlying Judgment, and then in seeking to unwind and  
6 address Mitchell's and Libermans improper actions to avoid payment;<sup>17</sup> (3) incurred more than a  
7 decade of ongoing, severe mental anguish and suffering; (4) suffered a damaged business  
8 reputation; and (5) lost numerous business opportunities.<sup>18</sup>

9  
10  
11 Defendants are similarly wrong to argue that proper applications of the statutes of  
12 limitations requires either a reduction in the amount of the award or a complete reversal of the  
13 award.<sup>19</sup> First, the Nevada Supreme Court has conclusively held (as did this Court) that

14  
15 <sup>17</sup> In light of Mitchell's admissions that he, Liberman, LVLP, Livework and Zoe litigated the  
16 underlying case (and by inference this case) in bad faith and for improper purposes, (see Trial Ex.  
17 50042 at 5-6), NRS 18.010(2)(b) provided this Court an alternative basis to award attorney's fees.  
18 See NRS18.010(2)(b) ("A court shall liberally construe" NRS 18.010(2)(b) in order to "punish and  
19 deter frivolous or vexatious claims and defenses because such claims and defenses overburden  
20 limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs  
21 of engaging in business and providing professional services to the public.")

22 <sup>18</sup> At trial, Nype testified that Defendants' ongoing and continuous misconduct, spanning more than  
23 a decade, severely impacted him personally. *Inter alia*, Nype indicated the case significantly  
24 impacted his marriage and materially contributed to his divorce. Nype further testified to being  
25 forced to sell his New York City residence and encumber various other real-property interests.  
26 Perhaps most significantly, he testified extensively regarding his historical successes as regards  
27 real-property-development projects, his strong relationship with senior management at Forest City,  
28 and his recurring income attributable to both his extensive business experience as well as his  
extensive business contacts. As noted by Mr. Nype, he was expressly informed by Senior Forest  
City Management that they were precluded from and could not do any business with him so long as  
he was in litigation with LVLP and its principals. That circumstance, Mr. Nype indicated, almost  
certainly cost him multiple million-dollar transactions and deals which otherwise could and would  
have materialized during the almost 13 years that this dispute has consumed to date.

<sup>19</sup> Defendants are also wrong to argue that Nype's civil-conspiracy claim is barred because the  
statutes of limitations left no actionable wrong to serve as the underlying predicate for the civil-  
conspiracy claims. In addition to the other reasons set forth herein, Defendants' arguments in this  
regard are completely defeated because the statutes of limitation could not have barred claims based

1 "[c]ivil conspiracy is governed by the catch-all provision of NRS 11.220." Siragusa, 114 Nev. at  
2 1391, 971 P.2d at 806. NRS 11.220's "bar of limitations is four years from the date the cause of  
3 action accrues." Aldabe, 81 Nev. at 286, 402 P.2d at 37. And for statute of limitations purposes,  
4 "an action for civil conspiracy accrues when the plaintiff discovers or should have discovered **all of**  
5 **the necessary facts constituting a conspiracy claim.**" Siragusa, 114 Nev. at 1393, 971 P.2d at  
6 807 (emphasis added); see also Petersen v. Bruen, 106 Nev. 271, 274, 792 P.2d 18, 20 (1990)  
7 ("Under the discovery rule, the statutory period of limitations is tolled until the injured party  
8 discovers or reasonably should have discovered [the necessary] facts supporting a cause of action.")  
9 Thus, while NRS 112.230(a)(1) bars claims based purely upon knowledge of the transfers, see NRS  
10 112.230(a)(1), NRS 11.220 only bars civil-conspiracy claims if the plaintiff fails to bring the claim  
11 within 4 years of actual or constructive knowledge of all of the necessary facts constituting the  
12 conspiracy claim.  
13

14  
15 Defendants fail to make—because they can't—any argument that Nype knew or should have  
16 known of all of the necessary facts constituting the conspiracy claim prior to finally starting to  
17 receive post-judgment discovery in late 2015. Indeed, mere knowledge that distributions had  
18 occurred is far from knowledge that the distributions were fraudulent in nature or part of a  
19 conspiracy. Second, Defendants provide no authority—at all—for their novel concept that civil-  
20 conspiracy damages must be limited only to those damages flowing from the underlying wrongful  
21 actions to the extent that statutes of limitations on other claims arising from those wrongs have not  
22 run. Presumably, Defendants provide no authority for this argument because it is flatly inconsistent  
23 with Siragusa's holding that claims for civil conspiracy are governed exclusively by NRS 11.220.  
24 Moreover, however, courts addressing this issue, head on, conclude that the expiration of statutes of  
25  
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27  
28 upon the 2014 distributions to Mitchell and Liberman of the Casino Coolidge/Leah Property sales  
proceeds that this Court found to be a fraudulent transfer. Nor could statutes of limitation bar  
claims based upon the 2018 fabrication of evidence and subsequent conduct related thereto.

1 limitation for other claims that could be brought based upon the same underlying conduct is  
2 irrelevant so long as the statute of limitation applicable to a civil-conspiracy claim has not run. See  
3 e.g., Chevalier v. Animal Rehab. Ctr., 839 F. Supp. 1224, 1233 (N.D. Tex. 1993) ("Although the  
4 remedy for defamation may be destroyed if the statute has run on Plaintiff's defamation claim, the  
5 liability for that alleged defamation remains. As long as Plaintiff timely filed his conspiracy claim,  
6 the remedy for it is unscathed and the extant liability of an underlying defamation claim supports it  
7 regardless of the fate of a remedy for that underlying claim." ).<sup>20</sup>

8  
9 The bottom line is that this Court has "wide discretion" in calculating an award of damages,"  
10 and the Nevada Supreme Court will not disturb its award on appeal "absent an abuse of discretion."  
11 Asphalt Products Corp. v. All Star Ready Mix, Inc., 111 Nev. 799, 802, 898 P.2d 699, 701 (1995)  
12 (internal quotations omitted) (emphasis added). And the Nevada Supreme Court requires only that  
13 substantial evidence support this Court's damages award. See id., at 802-803, 898 P.2d at 700-701.

14  
15 Accordingly, Defendants fail to provide this Court with a reason to alter or amend the  
16 Judgment. The Judgment is supported by substantial evidence that provides numerous bases  
17 appropriately supporting (1) the Civil-Conspiracy Judgment, (2) its amount, and (2) the applicable  
18 judgment debtors liable thereon.<sup>21</sup>

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21  
22 <sup>20</sup> For this reason, alone, the Mitchell Defendants' arguments regarding NRS 86.343 are erroneous.  
23 Separately, the plain text of NRS 86.343 demonstrates that the provision is entirely inapplicable to  
24 this case as it only pertains to actions predicated upon distributions made in violation of NRS 86, on  
25 the basis of the entity's insolvency. Id. ("A member who receives a distribution from a [LLC] in  
26 violation of this section is not liable . . . in the event of its dissolution or insolvency . . . ."; see also  
27 A Commun. Co. v. Bonutti, 55 F. Supp. 3d 1119, 1125-27 (S.D. Ill. 2014) (interpreting Illinois' and  
Delaware's similar LLC statutory provisions and concluding, for various applicable reasons, that  
those provisions did not bar a claim for breach of fiduciary duty based upon "distributions paid out  
more than three years prior to the filing of the instance case").)

28 <sup>21</sup> In light of this Court's alter-ego findings (which Liberman has, notably, not contested),  
Defendants' scattered arguments about certain defendants not bearing any civil-conspiracy liability  
or bearing only some, but not all, such liability are entirely irrelevant and erroneous. (See FFCL at  
10, ¶ 9 (as alter egos, "Mitchell, Liberman and each of the Related Entities are jointly and severally

1 **C. Substantial Evidence Supports This Court's Findings and Conclusions of Alter Ego**  
2 **Liability Against the Mitchell Defendants.**

3 **1. This Court Properly Imposed Alter Ego Liability Based Upon the Totality of**  
4 **the Circumstances and Facts Presented at Trial.**

5 The Mitchell Defendants also attack this Court's findings and conclusion that alter ego  
6 liability is appropriate as to them, challenging the evidentiary basis for the second and third  
7 elements<sup>22</sup> of the claim. (See Mitchell Mot at 10:22 – 17:6.) The Mitchell Defendants' arguments,  
8 however, amount to cherry-picking specific evidence that seemingly support their position while  
9 ignoring the substantial evidence admitted at trial that supports this Court's alter ego findings and  
10 conclusions. Worse, their arguments focus on facts completely isolated from and in derogation of  
11 the totality of the circumstances, treating each fact as if it had to provide—on its own—an  
12 independent basis to fully support the imposition of alter ego liability. Accordingly, the Mitchell  
13 Defendants flatly ignore the binding Nevada precedent that no one factor is exclusive or  
14 determinative, that there is no litmus test the Court must follow and that the proper test is based  
15 upon the particular circumstances before the Court.  
16

17 As this Court knows, "the following factors, **though not conclusive**, may indicate the  
18 existence of an alter ego relationship: (1) commingling of funds; (2) undercapitalization; (3)  
19 unauthorized diversion of funds; (4) treatment of corporate assets as the individual's own; and (5)  
20 failure to observe corporate formalities." LFC Mktg. Grp., Inc. v. Loomis, 116 Nev. 896, 904, 8  
21 P.3d 841, 847 (2000) (emphasis added). These factors are not exclusive, however, Lorenz v.  
22 Beltio, Ltd., 114 Nev. 795, 808, 963 P.2d 488, 497 (1988), and the Nevada Supreme Court has  
23 emphasized that "there is no litmus test for determining when the corporate fiction should be  
24  
25  
26  
27 liable on Nype's [Underlying] Judgment and the damages, attorney's fees and costs awarded in this  
28 action.".)

<sup>22</sup> The Mitchell Defendants thus concede that the first element (of influence and control). As noted above, Liberman has not challenged—at all—this Court's alter-ego findings and conclusions.

disregarded; the result depends on the circumstances of each case." Polaris Indus. Corp. v. Kaplan, 103 Nev. 598, 602, 747 P.2d 884, 887 (1987)). "It is enough if the recognition of the two entities as separate would result in an injustice." Id., 103 Nev. at 601, 747 P.2d at 886. "The essence of the alter ego doctrine is to do justice." Id., 103 Nev. at 603, 747 P.2d at 888.

Here, this Court properly determined that the Mitchell Defendants are the alter ego of each other, Liberman, LVLP, and the other Related Entities, based upon consideration of the **totality of the circumstances** present, including, among other things that: (1) "[a]t all relevant times, each of the Related Entities was beneficially owned, controlled, and managed by Mitchell and Liberman"; (2) "[e]xcept with respect to Livework Manager and Casino Coolidge, none of these entities had its own bank account" and "Mitchell caused [such entities] to use the same bank accounts"; (3) "Mitchell and Liberman caused each of the Related Entities to use the same financial and accounting records, **which are not distinguishable by entity**"; (4) the "accounting records include a few Mitchell and Liberman personal transactions and postings **commingled** from multiple entities"; (5) "Mitchell, Liberman and the Related Entities **commingled funds**, including **personal loans** from various banks which are included in the LVLP accounting records and general ledger"; (6) "Mitchell and Liberman also used journal entries to post commingled transactions for themselves and the Related Entities"; (7) "[i]n 2016, [certain of] the Related Entities stopped using bank accounts and instead began using journal entries apparently transacted personally by Mitchell"; (8) "[t]he manner in which Mitchell and Liberman operated the Related Entities ma[de] it **virtually impossible to identify transactions by purpose and/or entity**"; and (9) as a result, "the individuality and separateness of the Related Entities—vis-à-vis themselves and Mitchell and Liberman—was and remains nonexistent as evidenced by the commingling of funds, transactions, revenues, expenses, assets, liabilities and contributed capital." (See FFCL at 6-7, ¶¶ 45, 48-50 & 52-56 (emphasis added).)

1 Based upon the foregoing, this Court concluded that: (1) "Mitchell, Liberman and the  
2 Related Entities commingled funds, transactions and assets"; (2) the Related Entities were and are  
3 undercapitalized"; (3) "Mitchell, Liberman and the Related Entities distributed funds to Mitchell  
4 and Liberman as individuals without regard to parent entities";<sup>23</sup> (4) "Mitchell, Liberman and the  
5 Related Entities treated assets of the other entities as their own"; and (5) "the related entities failed  
6 to observe corporate or LLC formalities." Id. at ¶ 57. Moreover, the Court specifically found that  
7 "Mitchell, Liberman and the Related Entities ha[d] made distributions to avoid satisfying Nype's  
8 claims and Judgment[.]" id. at 8, ¶ 59, and helped "ensure that funds and/or assets that would  
9 otherwise be available to Nype to satisfy his claim (and Judgment) were kept away from Nype",  
10 thus contributing to Nype's inability to collect on his claim and Judgment. See id. at 5, ¶ 40.

13 Accordingly, this Court concluded that "there is such unity of interest and/or ownership  
14 that Mitchell, Liberman and the Related Entities are inseparable from the other", id. at 8, ¶ 58(b),  
15 and that "[j]ustice and equity require that the Court impose alter ego on Mitchell, Liberman and the  
16 Related Entities." Id. at 10, ¶ 6.

18 The Court's findings and conclusions are supported by, among other proof, the following  
19 substantial evidence: the expert testimony of Mr. Rich; the testimony of Messrs. Nype, Liberman  
20 and Mitchell; and trial exhibits 1-11, 13-16, 34-38, 40, 42, 44-45, 10001-10015, 2001-2046,  
21 30001-30003, 30011-30032, 30034, 30071, 30067, 30076-30079, 30086-30088, 4006, 10036-  
22 10044, 30094-30095, 30096, 70043, 50028, 60053-60069, 60005, 50003, 50004, 40027-40030,  
23 40046, 50013-50024, 50033-50035, 60001, 50036, 50040, 6005, 90054, 90063, 90069, and 50006.

26 <sup>23</sup> As an example of this, the Court found that

27 In December 2014, Leah sold certain real property to Casino Coolidge for \$1,000,000.  
28 Mitchell and Liberman caused Leah to distribute sales proceeds [from that sale] in the  
amount of \$341,934.47 directly to themselves, rather than Leah's parent company, LVLV.  
Id. at 5, ¶ 33 (in relevant part).

2. Numerous Facts Support This Court's Finding that the Second Alter Ego Element was Met.

The Mitchell Defendants first challenge to these findings and conclusions rests on the assertion that there was no basis to find commingling because the parent/subsidiary relationship among LVLP and the Related Entities excused things such as a lack of separate tax returns, bank accounts or independent accounting records. (See Mitchell Mot. at 11-13.)<sup>24</sup> The Mitchell Defendants apparently fundamentally misunderstand (or at least pretend to misunderstand) the issue. This Court didn't find alter ego based simply upon the fact that the Related entities shared tax returns, bank accounts and financial records. Rather, the issue was that Mitchell and Liberman operated the Related Entities in such a jumbled, undocumented and scattered way that (1) the financial and accounting records were "not distinguishable by entity" and (2) it was "virtually impossible to identify transactions by purpose and/or entity." (See FFCL at 7, ¶¶ 49, 56.) As a result of Mitchell and Liberman's "commingling of funds, transactions, revenues, expenses, assets, liabilities and contributed capital[.]" the "individuality and separateness of the Related Entities . . . was and remains nonexistent." *Id.* at ¶ 55.

This lack of individuality and separateness is unsurprising given that the totality of the evidence established that Mitchell and Liberman view and treat their numerous entities as extensions of themselves rather than as separate and distinct entities. As Liberman himself testified:

Q. Given that they all appear to run through one ledger and one checkbook, how are you able to allocate income and expenses between those entities?

A. I don't know why we would.

<sup>24</sup> The Mitchell Defendants' assertion that the "Court erred in finding that Mitchell and Liberman commingled personal funds with company funds" is simply rehashing arguments, based on ostensibly competing evidence, that this Court repeatedly rejected. This Court weighed the supporting evidence offered by Nype's expert, Mr. Rich—who was not rebutted by expert testimony—against evidence offered by the defense. That the Court found Nype's evidence to be more credible is not surprising given the Court's finding that "Mitchell was not credible." (FFCL at 6, ¶ 43.) Defendants' rehashed, sour-grapes, losing-party argument provides no basis to alter or amend the Judgment. *See, e.g., Trident Const.*, 105 Nev. at 427, 776 P.2d at 1242 ("Where the trial court, sitting without a jury, makes a determination predicated upon conflicting evidence, that determination **will not** be disturbed on appeal where supported by substantial evidence." (emphasis added)).



1 ...

2 A. Why would we? It all was part of – they were all derivative of one entity, and  
3 all the money came in and all of the money went out. Did it matter that I took a  
4 cab from one piece of property to another piece of property? No. I don't see why  
5 it mattered. That's an account's question. I don't know.

6 (See Trial Ex. 70043 at pp. 258-260.)

7 Moreover, the lack of separate bank accounts and the jumbled, commingled and  
8 indistinguishable financial and accounting records permitted Mitchell and Liberman to benefit  
9 themselves at Nype's expense and facilitated their efforts to hide and conceal assets from Nype.  
10 Indeed, Mr. Rich opined that Mitchell and Liberman "attempt[ed] to recharacterize millions of  
11 dollars in capital contributions and distributions as loan activity in an attempt to conceal funds  
12 available to satisfy [Nype's Underlying] [J]udgment[.]" (See Trial Ex. 70043 (Expert Report of Mr.  
13 Rich).)

14 The Mitchell Defendants then provide paraphrases of Mr. Rich's testimony to  
15 **disingenuously** create the impression that the manner that Mitchell and Liberman operated,  
16 structured and used the Related Entities was normal and even something Mr. Rich advised his  
17 clients to do. (See Mitchell Mot. at 12:8-17.) While Mr. Rich did acknowledge that some of his  
18 clients operate without separate bank accounts or accounting records, he specifically testified that  
19 he recommended against such conduct—precisely because it is improper and opens the door for  
20 alter ego liability. He certainly did not testify that he advises his clients to operate their entities in  
21 such a way that their financial and accounting records are so jumbled and commingled that they  
22 make impossible to identify transactions purpose or entity or to distinguish the records by entity.

23 The Mitchell Defendants next challenge this Court's finding that Mitchell and Liberman  
24 caused one or more the Related Entities to be undercapitalized by arguing a distinction between  
25 subsequent insolvency and capitalization at entity formation. Id. at 13-14. First, this was not a case  
26 of innocent entities becoming insolvent simply because they were hit by "larger market forces". Id.  
27 at 14:1. Rather, this Court found Mitchell and Liberman's intentional misconduct in taking  
28 distributions for the purpose of avoiding and harming Nype contributed to and/or caused

1 insolvency. (See FFCL at 8 ¶ 60(c).) Moreover, as argued to this Court in Liberman's trial brief,  
2 "the obligation to provide adequate capital begins with incorporation and is a continuing  
3 obligation thereafter during the corporation's operations." (Liberman Trial Brief at 8 quoting De  
4 Witt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 681, 686 (4th Cir. 1976).)  
5 Hiding and diverting assets plainly does not meet one's obligation to continue to provide adequate  
6 capital. Moreover, the Mitchell Defendants' entire argument (regarding initial capitalization) is  
7 misplaced and self-defeating. Capitalizing an entity with just \$10 and a piece of real estate is  
8 undercapitalization when dealing with real estate held for development purposes, as \$10 is  
9 inadequate capital to pay carrying costs and taxes—let alone the significant capital that  
10 development requires. As a perfect example of this, the Court should recall that Mitchell and  
11 Liberman formed their entity, Charleston Casino Partners, LLC ("Casino Partners"), with an initial  
12 capitalization of just \$10.00, but near simultaneously caused it to enter into a 49-year lease with  
13 yearly rental payments totaling \$2,179,995 (at the beginning of the lease, and increasing to  
14 \$10,710,799 per year at the end of the lease term). (See Trial Exs. 30, 40027.)

15  
16 Contrary to the Mitchell Defendants' assertions, there was also substantial evidence  
17 supporting this Court's finding of unauthorized diversion of funds and treatment of corporate assets  
18 as one's own. Mitchell and Liberman caused corporate assets and funds to be diverted, hidden, and  
19 generally made unavailable to Nype. (See e.g., FFCL at 5, ¶¶ 39, 40.) The Leah Property/Casino  
20 Coolidge transaction discussed above is but one example of this. The 305 Las  
21 Vegas/Livework/Casino Partners transactions are another: Mitchell and Liberman received direct  
22 distributions from this sale of at least \$1,096,374 (\$313,730.90 to Mitchell and \$782,643.10 to  
23 Liberman) rather than properly accounting for and distributing funds in accordance with the  
24 corporate structure. Mitchell and Liberman also caused Livework to write off—for absolutely no  
25 consideration flowing to Livework—more than \$12,000,000 owed to it by Liberman's other entity,  
26 305 Las Vegas, because enforcement of that obligation would have resulted in the enforcement of  
27 Casino Partners' multi-million-dollar liability to 305, which liability had been fully guaranteed by  
28 Mitchell and Liberman. Mitchell and Liberman viewed, treated, operated and structured all of their

1 entities and transactions for their personal benefit—often at the expense of Nype, and always at the  
2 expense of their ostensibly separate entities.

3 The Mitchell Defendants' argument regarding corporate formalities is also misplaced and  
4 erroneous. (See Mitchell Mot. at 15-16.) This case was not about whether certain entities had  
5 operating agreements or kept specific corporate records. The case was about Mitchell and  
6 Liberman's operation and use of their numerous entities for their sole personal advantage, without  
7 regard for the separate and distinct legal interests that should have existed (but did not) among the  
8 entities. Indeed, distributing funds directly to Mitchell and Liberman without regard to parent  
9 entities is hardly following corporate formalities. Neither is recharacterizing millions of dollars in  
10 capital contributions and distributions as loan activity for the purpose of hiding and concealing  
11 assets from Nype, refusing to enforce guarantees against themselves and/or writing off millions of  
12 dollars owed from allegedly separate entities. Moreover, the limited evidence of the Mitchell  
13 Defendants following corporate formalities appears to have occurred solely because third parties,  
14 such as lenders and Forest City, forced them to in limited circumstances.

15  
16 Finally, all these arguments are a complete red herring as they reflect the cherry-picking of  
17 facts and circumstances rather than the consideration of the totality of the circumstances present.  
18 Again, the presence, or lack thereof, of a single factor, is irrelevant as no one factor is exclusive or  
19 conclusive and there is no litmus test. Polaris., 103 Nev. 601-03, 747 P.2d at 886-88.

20 **2. This Court's Conclusion That the third Alter Ego Element Was Met Was, in**  
21 **No Way, Based Solely Upon Nype Not Being Paid.**

22 The Mitchell Defendants argue that the fact that Nype was not paid is not enough, on its  
23 own, to support the requisite finding resulting injustice if the corporate form is adhered to.  
24 (Mitchell Mot. at 16:4 – 17:6). Nype agrees! Had he been unable to collect on his Underlying  
25 Judgment solely because LVLP and the Related Entities had fallen on tough times and thus lacked  
26 the resources to pay him, Nype wouldn't have brought this case. The evidence at trial  
27 unequivocally demonstrated, however, that this was not the case and that, instead, Nype was  
28 unable to collect as a result of Mitchell and Liberman's intentional misconduct taken for the  
specific purpose of ensuring this result. The Nevada Supreme Court has specifically found that the

1 third alter ego element of resulting injustice can be found—in a case just like this—where the  
2 misconduct of the individuals contributed to an inability to collect on a judgment. See LFC Mktg.  
3 Group, Inc., 116 Nev. at 905-06, 8 P.3d at 847 (finding that "adherence to the corporate fiction  
4 would sanction a fraud or promote injustice" where the alter-ego's conduct in manipulating the  
5 "carefully designed business arrangements between the LFC entities, William, and NLRC  
6 contributed to the Loomises' inability to collect their judgment"); Polaris, 103 Nev. at 603, 747  
7 P.2d at 888 (finding fraud or injustice where "CRI's officers treated corporate funds as their own  
8 by making ad hoc withdrawals at the bank in the form of advances to themselves at a time when  
9 the corporation's debt to Polaris was not being paid, and that Polaris was damaged because these  
10 actions left the corporation without funds to repay the debt."); see also Flynt Distrib. Co. v.  
11 Harvey, 734 F.2d 1389, 1393-94 (9th Cir. 1984) (concluding that the defendants' conversion and  
12 transfer of corporate assets, which left the corporations undercapitalized, constituted a "prima facie  
13 showing that it would be unjust to shield the [defendants] behind the corporate veil").

14  
15 Based on the foregoing, substantial evidence supports this Court's conclusion imposing  
16 alter ego liability against the Mitchell Defendants.

### 17 III.

### 18 CONCLUSION

19 Based on the foregoing, the Motions should be denied. Substantial evidence supports this  
20 Court's findings and conclusions:

- 21 1. The Casino Coolidge-Leah Transaction was a fraudulent  
22 conveyance
- 23 2. Nype properly pled attorneys fees and costs as special  
24 damages in both his fraudulent conveyance claim and his  
25 civil conspiracy claim (as specifically noted during the Court's  
26 careful review of Plaintiffs' amended complaint in open court  
27 at the time of the Mitchell Defendants' oral NRCP 50 Motion  
28 regarding the same, at the conclusion of Plaintiff's case in chief)
3. The elements of Mitchell and Liberman's civil conspiracy and  
the consequential damages flowing therefrom are amply and  
fully supported by substantial evidence as admitted and  
considered during trial

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1 4. Mitchell and Liberman, and the various related entities are  
2 and were the alter ego of LVLP, LLC and of each other.

3 While Defendants disagree with the Court, that is far from meeting the heavy burden  
4 Rules 52 and 59 require to alter or amend a judgment. The Defendants have wholly failed to  
5 provide any argument to suggest to this Court that its Judgment is "wrong with the force of a five-  
6 week-old, unrefrigerated dead fish." *Parts & Elec. Motors*, 866 F.2d at 233)).

7 DATED this 20<sup>th</sup> day of February, 2020.

8 JOHN W. MUIJE & ASSOCIATES

9  
10  
11 By: 

12 JOHN W. MUIJE, ESQ.  
13 Nevada Bar No: 2419  
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**CERTIFICATE OF SERVICE**


I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 20<sup>th</sup> day of February, 2020, I caused the foregoing document, **PLAINTIFFS' OPPOSITION TO THE MITCHELL DEFENDANTS', LIBERMAN'S, AND CASINO COOLIDGE'S MOTIONS TO ALTER OR AMEND JUDGMENT**, to be served as follows:

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

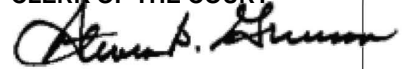
Stan Johnson, Esq.  
James L. Edwards, Esq.  
**COHEN JOHNSON PARKER  
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Casino Coolidge*

  
An employee of JOHN W. MUIJE & ASSOCIATES





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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.: XXVIII

**NOTICE OF ENTRY OF ORDER AND  
JUDGMENT ON 305 LAS VEGAS LLC'S  
MOTION FOR DIRECTED VERDICT**

YOU, and each of you, will please take notice that an Order and Judgment on 305 Las Vegas, LLC's Motion for Directed Verdict in the above entitled matter was filed and entered by

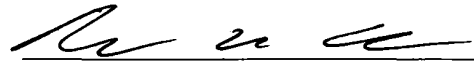
/

/

1 the Clerk of the above-entitled Court on the 24<sup>th</sup> day of February, 2020, a copy of which is attached  
2 hereto

3 Dated this 24<sup>th</sup> day of February, 2020.

4 **HOLLEY DRIGGS WALCH**  
5 **FINE PUZEY STEIN & THOMPSON**

6 

7 BRIAN W. BOSCH, ESQ.  
8 Nevada Bar No. 7612  
9 E-mail: bbosch@nevadafirm.com  
10 400 South Fourth Street, Third Floor  
11 Las Vegas, Nevada 89101

12 *Attorneys for Defendant 305 Las Vegas, LLC*

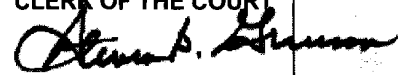


**CERTIFICATE OF MAILING**

I HEREBY CERTIFY that, on the 24<sup>th</sup> day of February, 2020 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 **NOTICE OF ENTRY OF ORDER AND JUDGMENT ON 305 LAS VEGAS LLC'S MOTION FOR DIRECTED VERDICT** to all parties in this case registered with the E-Service System. **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.**

/s/Madeline VanHeuvelen

\_\_\_\_\_  
An employee of Holley Driggs Walch  
Fine Puzey Stein & Thompson



**ORDR**  
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*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

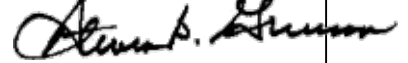
**ORDER AND JUDGMENT ON 305 LAS  
VEGAS, LLC'S MOTION FOR  
DIRECTED VERDICT**

**Trial date: December 30-31, 2019,  
January 2-3, 2020**

This matter having come on for trial on December 30, 2019 and continuing until January 3, 2020, and Defendant 305 Las Vegas, LLC. ("305 Las Vegas"), by and through its attorneys, the law firm of Holley Driggs Walch Fine Puzey Stein & Thompson having made an oral motion for a directed verdict pursuant to NRCP 50(a), and the Court having heard the arguments of counsel, having considered the evidence and testimony presented at trial, and good cause appearing therefore, finds and orders as follows:

HOLLEY DRIGGS  
WALCH FINE PUZEY STEIN THOMPSON





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Nevada State Bar No. 6570  
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*Attorneys for Defendants,  
BARNET LIBERMAN and CASINO COOLIDGE LLC*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

Case No. A-16-740689-B  
Dept. No. 11

**DEFENDANTS CASINO COOLIDGE  
LLC AND BARNET LIBERMAN'S  
NOTICE OF APPEAL**

**COMES NOW**, Defendants *CASINO COOLIDGE LLC*, and *Barnet Liberman*, by and  
through its attorney of record, ELLIOT S. BLUT, ESQ. of BLUT LAW GROUP, PC, and hereby  
appeals from the following orders, judgment and decrees of the Eighth Judicial District Court to the  
Nevada Supreme Court as follows:

1. Order, Findings of Fact and Conclusions of Law entered on January 16, 2020 and awarding Plaintiff judgment against these Defendants and others for \$19,641,515.90;
2. Order, Findings of Fact and Conclusions of Law entered on January 16, 2020 for \$4,835,111.37;
3. Order, Findings of Fact and Conclusions of Law entered on January 16, 2020 on the alter ego claim in the amount of the underlying judgment in A5510373.
4. Amended Order, Findings of Fact and Conclusions of Law entered on January 17, 2020 for \$19,641,515.90;
5. Amended Order, Findings of Fact and Conclusions of Law entered on January 17, 2020 for \$4,835,111.37;
6. Amended Order, Findings of Fact and Conclusions of Law entered on January 17, 2020 on the alter ego claim in the amount of the underlying judgment in A5510373.

DATED this 25th day of February 2020

BLUT LAW GROUP, PC

By: /s/ Elliot S. Blut  
Elliot S. Blut, Esq.  
Nevada Bar No. 6570  
300 South Fourth Street, Suite 701  
Las Vegas, NV 89101  
*Attorney for Defendants Barnet  
Lieberman and Casino Coolidge LLC*

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of BLUT LAW GROUP, PC, and that on **February 25, 2020**, I caused a correct copy of the foregoing document entitled NOTICE OF APPEAL to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which First Class postage was prepaid: and/or
- ☐ pursuant to NRCP (5)(b)(2)(D) to be served via facsimile; and/or
- ☐ pursuant to EDCR 7.26, to be sent via email; and/or
- ☒ pursuant to EDCR 8.05(a) and 8.05(f), to be electronically served through the Eighth Judicial District Court's electronic filing system, with the date and time of the electronic service substituted for the date and place of deposit in the mail; and/or
- ☐ to be hand-delivered,

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

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

/s/ Linda Dinerstein

An Employee of Blut Law Group, PC