

**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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**ERRATA TO APPELLANTS' APPENDIX - VOLUME II OF XXIX**

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

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11/19/19	Errata to Complaint in Intervention	VI	AA 1083-1088
2/20/20	Joinder to Mitchell Defendants' Motion to Alter/Amend Judgment [Lieberman and Casino Coolidge]	VII	AA 1392-1394
4/26/18	Joinder to Mitchell Defendants' Motion to Compel Discovery [Lieberman and 305 Las Vegas]	IV	AA 726-728
5/30/18	Joinder to Mitchell Defendants' Reply to Motion to Compel Discovery	V	AA 829-831
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12/27/19	Joint Pre-Trial Memorandum [Partial Document Only]	VI	AA 1183-1202



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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

<u><b>Date</b></u>	<u><b>Description</b></u>	<u><b>Vol.</b></u>	<u><b>Bates No.</b></u>
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11/12/19	Motion to Intervene	VI	AA 994-1036
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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
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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
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<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
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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
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Undated	Plaintiffs' <b>Trial Exhibit 40</b> [Wink One Company Documents] [ <b>Sealed</b> ]	XXIV	SAA 583-588
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Undated	Plaintiffs' <b>Trial Exhibit 44</b> [Meyer Property - Operating Agreement]	XVI	AA 2673-2677
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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
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<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
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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
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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

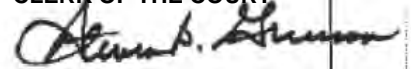
<b><u>Date</u></b>	<b><u>Description</u></b>	<b><u>Vol.</u></b>	<b><u>Bates No.</u></b>
Undated	Plaintiffs' <b>Trial Exhibit 40047</b> [Personal Guaranty - Lease]	XVI	AA 2740-2747
Undated	Plaintiffs' <b>Trial Exhibit 50001</b> [Underlying Complaint: A-07-551073]	XVI	AA 2748-2752
Undated	Plaintiffs' <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
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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
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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



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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

16 *Plaintiffs,*

17 vs.

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

*Defendants.*

CASE NO: A-16-740689-B

DEPT NO: XV

Date of Hearing: July 13, 2017

Time of Hearing: 9:00 a.m.

**OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**

COME NOW Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC, (herein collectively "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 to Defendants' Motion to Dismiss Plaintiffs' Complaint.

1  
2 This Opposition is made and based upon the Points and Authorities that follow, the exhibits  
3 attached hereto, and the arguments to be adduced at the hearing hereon.

4 DATED this 14th day of June, 2017.

5 JOHN W. MUIJE & ASSOCIATES

6  
7  
8 By: 

9 JOHN W. MUIJE, ESQ.

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16 *Attorneys for Plaintiffs*

17 **POINTS AND AUTHORITIES**

18 **I.**

19 **BACKGROUND**

20 The Court has already had a preliminary opportunity to learn some of the relevant facts  
21 and considerations important to this case, at the prior Motion to Strike Jury Demand heard on May  
22 2, 2017. As the Court directly determined, the present case derives and arises out of Plaintiffs' effort  
23 to ultimately obtain the fruits of the judgment awarded it and against the primary defendant herein,  
24 Las Vegas Land Partners, LLC (hereinafter "LVLP"). Defense counsel correctly notes that having  
25 failed to successfully effectuate collection of its judgment during the year after the entry thereof,  
26 Plaintiff elected to bring a subsequent suit deriving in all respects from the underlying events and  
27 transactions addressed in the first litigation. A true and correct copy of the Findings of Fact,  
28 Conclusions of Law and Judgment in the underlying litigation (hereinafter referred to as the



“First Case”) is attached hereto as Exhibit “1” and by this reference incorporated herein.)

The Court has determined that the various claims asserted by Plaintiffs as against the Defendants herein, seek the imposition and enforcement of equitable remedies to facilitate and assist in the successful collection of the judgment rendered against LVLP. It should be noted that the named defendants herein are alleged and believed to be subsidiaries, affiliates, and associated entities deriving their existence and purpose from the ongoing activities and operations of the judgment debtor in the first action, LVLP. The alleged factual predicates and relevant transactional history is set forth in the original complaint herein, starting at p. 2, ¶¶4 through p. 4, ¶14.

It should be noted that defendants have diligently scoured virtually the entire history of Nevada jurisprudence to develop a wide array of arguments, consuming 28 pages of the 30 pages allowed under EDCR 2.20. While there are numerous headings and sub-headings, and dozens of citations set forth by defendants, a brief summary of the primary assertions made by defendants (obviously hoping that one or more would find favor with the court), are as follows:

- (1) Failure of Plaintiff LLC to register to do business in the State of Nevada;
- (2) Personal jurisdiction against one or more of the defendants;
- (3) Failure to state claims as regards each claim asserted by Plaintiffs, but predicated primarily upon statute of limitations arguments; and
- (4) Alter ego.

1 While the array of contentions and arguments asserted by defendants sounds overwhelming,  
2 Nype respectfully suggests that even to the extent any such argument finds favor in an individual or  
3 isolated case, taken in the context of existing litigation spanning over a decade, the complex of  
4 factors cannot be viewed in isolation. The First Case is characterized by a judgment debtor that has  
5 repeatedly delayed, obfuscated, and refused to produce relevant documentation (while affirmatively  
6 under-taking steps to assure that to the extent Nype ultimately prevailed, there would be no readily  
7 attachable or available liquid assets to satisfy Nype's claims). See Exhibit "2", ¶s 11, 12 and 14.  
8 Given that context and background, respectfully, technical arguments that might otherwise find  
9 favor in an isolated case or circumstance merge with the totality of equitable remedies sought by  
10 Nype, serving the very purpose of equity, i.e. to redress various misconduct, such as fraud, unjust  
11 enrichment, etc. where traditional legal remedies have proven adequate. Cf Waldman vs. Maini, 124  
12 Nev. 1121, 1131-1132, 195 P.3d 850, 854-58 (2008).  
13  
14

15 Indeed, overlying and buttressing the response to defendants' varied arguments, is one  
16 abiding theme, set forth in detail and more fully in Exhibit "3", the Affidavit of Mark Rich, attached  
17 hereto and by this reference incorporated herein. Summarizing the same, Mr. Rich explains why the  
18 various machinations, financial shenanigans, and the very existence of viable claims, including  
19 primarily fraudulent conveyance and alter ego, could not have been reasonably discovered, until  
20 LVLP and its associated entities finally began producing important financial source data. (See  
21 Exhibit 2, ¶s 5-20). As noted, such source data is critical to properly understanding the financial  
22 cash flows, transactions, and the fact that the collective impact of the numerous individual  
23 transactions functionally rendered LVLP insolvent, a primary and necessary element to sustain a  
24 claim of fraudulent conveyance. See Exhibit 2, ¶ 31. As noted by Mr. Rich, the ongoing apparent  
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1 activity of LVLP, even as noted on its tax returns, did not afford the data necessary to understand  
2 that available liquid attachable assets were being dissipated and placed beyond the reach of creditors,  
3 until such time as sufficient source data had been accumulated, commencing approximately six  
4 months post-judgment, starting in the Fall of 2015 and continuing to this day. *Id.*, at ¶'s 17, 18, 25,  
5 26, 31 and 32.

6  
7 As will be analyzed more fully below, the many straws at which defendants grasp must  
8 necessarily slip through their fingers, insofar as the totality of circumstances, and the particular facts  
9 of this case given the previously undisclosed ongoing transactions of LVLP and its affiliated entities,  
10 patently demonstrate the appropriate applicability of the various equitable remedies which Nype now  
11 seeks.

12  
13 **II.**

14 **REVENUE PLUS NEED NOT QUALIFY WITH**  
15 **THE NEVADA SECRETARY OF STATE**

16 Defendants' first argument is a traditional opening shot fired by defendants in cases  
17 involving an out-of-state Plaintiff entity. In this case, given that the judgment in the first case  
18 involves Revenue Plus LLC as a co-judgment creditor with its principal, Russell Nype, Revenue Plus  
19 LLC joined this litigation as a party from the inception. Revenue Plus has never registered or  
20 qualified to do business in the State of Nevada. Very simply, the reason for the same is that Revenue  
21 Plus is a New York entity wholly owned and operated by Plaintiff Russell Nype, who is also not a  
22 resident of the State of Nevada. As is set forth in detail in the Declaration of Russell Nype, neither  
23 he nor Revenue Plus LLC have ever maintained an office in Nevada, employed Nevada residents,  
24 nor done anything other than engage in the one specific transaction which resulted in a judgment in  
25 their favor in the First Case.  
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1 Even more significantly, neither Nype nor Revenue Plus LLC was a Plaintiff in the First  
2 Case. Instead, it was the present primary defendant LVLP, and two associated entities (also  
3 defendants herein), as directed by LVLP's principals, who first chose to commence Nevada litigation  
4 vs. Nype and Revenue Plus! See Exhibit "2", paragraph 2. It has long been the law of Nevada that  
5 suing an unqualified corporation waives any issue regarding the right of said entity to defend. Scott  
6 vs. Day-Bristol Consolidated Mining Co., 37 Nev. 299, 142 Pac.625 (1914), cited Walker Bank &  
7 Trust Co. vs. Smith, 88 Nev. 502, at 507, 501 P.2d 639 (1972).

9 While LLC's are a relatively new creature under Nevada law, as explored more fully in  
10 Section V hereinafter, the jurisprudence and case law surrounding them tracks and mirrors that  
11 regarding the common law of corporations. In this regard, one of the leading Nevada cases regarding  
12 qualification to do business as a foreign corporation specifically held that transacting a single piece  
13 of business in the State, or attending a convention, were not such activities as would necessitate a  
14 corporation qualifying to do business in this state. See In re Hilton Hotel Fire Litigation, 101 Nev.  
15 489, 492-493, 706 P.2d 137 (1985).

17 Further, when the Nevada legislature first adopted, provisions within the Limited Liability  
18 Code applicable to those foreign companies, in 2003, a specific statute defining activities not  
19 constituting the transaction of business was included in the statute:  
20

21 **NRS 86.5483 Activities not constituting transaction of business.**

- 22 1. For the purposes of NRS 86.543 to 86.549, inclusive, the following activities do  
23 not constitute transacting business in this State:
- 24 (a) Maintaining, defending or settling any proceeding;
  - 25 (b) Holding meetings of the managers or members or carrying on  
other activities concerning internal company affairs;
  - 26 (c) Maintaining accounts in banks or credit unions;
- 27  
28

- (d) Maintaining offices or agencies for the transfer, exchange and registration of the company's own securities or maintaining trustees or depositaries with respect to those securities;
- (e) Making sales through independent contractors;
- (f) Soliciting or receiving orders outside this State through or in response to letters, circulars, catalogs or other forms of advertising, accepting those orders outside this State and filling them by shipping goods into this State;
- (g) Creating or acquiring indebtedness, mortgages and security interests in real or personal property;
- (h) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts;
- (i) Owning, without more, real or personal property;
- (j) Isolated transactions completed within 30 days and not a part of a series of similar transactions;
- (k) The production of motion pictures as defined in **NRS 231.020**;
- (l) Transacting business as an out-of-state depository institution pursuant to the provisions of title 55 of NRS; and
- (m) Transacting business in interstate commerce.

2. The list of activities in subsection 1 is not exhaustive.

3. A person who is not transacting business in the State within the meaning of this section need not qualify or comply with any provision of this chapter, title 55 or 56 of NRS or chapter 645A, 645B or 645E of NRS unless the person:

- (a) Maintains an office in this State for the transaction of business; or
- (b) Solicits or accepts deposits in the State, except pursuant to the provisions of **chapter 666** or **666A** of NRS.

4. The fact that a person is not transacting business in this State within the meaning of this section:

- (a) Does not affect the determination of whether any court, administrative agency or regulatory body in this State may exercise personal jurisdiction over the person in any civil action, criminal action, administrative proceeding or regulatory proceeding . . .

1 *Emphasis supplied.*

2 Stated in another way, not only have the minimal activities of Nype and Revenue Plus not  
3 risen to the level required to qualify as a foreign registered LLC, but the legislature itself has  
4 decreed that the type of activity in which they engage, which led to an affirmative judgment in  
5 their favor in the First Case, does not require such qualification! Plus, as a practical matter, this  
6 case is a continuation of the First Case! Cf NRS 86.5483(1)(a).  
7

8 Additionally, as has long been the precedent in Nevada, by originally choosing to sue  
9 Revenue Plus LLC in Nevada, LVLP and its associated entities in essence have waived and  
10 should be estopped to assert the contention that the target defendant they chose to sue should  
11 somehow be precluded from collecting the monies the Eighth Judicial District Court has awarded  
12 to them in the Original Case.  
13

14 As noted above, the present case is not about business transactions or conducting business.  
15 It is the new filing and new litigation seeking equitable remedies to enforce the judgment Revenue  
16 Plus and Nype were previously awarded in the First Case. To allow Nype and Revenue Plus LLC,  
17 defendants in the First Case, to take a substantial judgment against the out-of-state entities who  
18 chose Nevada as the forum, but to preclude them from actually collecting that judgment, seems  
19 nonsensical, as well as being totally inequitable.  
20

21 Defendants' arguments regarding failure to qualify to do business are specious and should  
22 be summarily rejected.  
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III.

**PERSONAL JURISDICTION APPLIES**

The next major argument advanced by Defendants is that somehow, despite Nype's allegations, the Court does not have personal jurisdiction over virtually all of the defendant entities. In this regard, for purposes of the analysis herein, it is respectfully suggested that defendants have placed the cart before the horse.

For example, fundamental jurisprudence advises that for purposes of a motion to dismiss, the allegations asserted by a plaintiff must be taken at face value and construed most favorably in favor of the claimant. *Morris vs. Bank of America*, 110 Nev. 1274, 88 2d P.2d 454 (1994). Furthermore, defendants have not introduced any supporting documentation, evidence, or information which would make their motion to dismiss anything more than a naked motion to dismiss. While not doing so, they patently assert, that ten of the named defendants, which Nype acknowledges are all Delaware LLC's, have no employees or property in Nevada. Yet there is no corroboration, affidavit, declaration, or proof of the same. Even then, the court must carefully read between the lines because each of these entities has, at one time or another, had an beneficial or equity interest in various real estate related to or deriving from LVLP, either standing on its own, or in conjunction with its joint venture with Forest City Enterprises!

And, with all due respect, and with no corroboration whatsoever, defendants then state that the ten designated Delaware LLC's, "are not currently qualified to conduct business in Nevada." Yet, defendants cavalierly neglect to advise the court that several of the identified LLC's at one time were qualified and registered to do business in the State of Nevada, and/or owned beneficial interests in Nevada real estate.

1 The crux of plaintiff's case, it must be remembered, is that the defendants have acted  
2 jointly to gerrymander their beneficial interests and valuable assets and conceal them in out-of-  
3 state LLC's, which in reality are all *alter egos* of LVLP and its principals.

4 In the same context, Defendants contend that Liberman and Mitchell "have not conducted  
5 business in an individual capacity in Nevada." (See Defendants' Motion to Dismiss, p. 8, lines 5  
6 & 6). But, that statement ignores the factual averments and allegations set forth in Nype's  
7 complaint which must be accepted as true. One of the most important allegations asserted by  
8 Nype is that Liberman and Mitchell have a unity of interest, a unity of control, and that to  
9 recognize as independent entities the LLC's would operate as a fraud and facilitate an injustice  
10 on LVLP's creditors! Cf. Polaris Industrial Corp. vs. Kaplan, 103 Nev. 598, 601, 747 P.2d 884  
11 (1987).  
12

13 Stated in another way, as required in evaluating a motion to dismiss, and accepting the  
14 factual allegations supporting plaintiff's *alter ego* claims as true, it is patently apparent that the  
15 individual defendants, the principals of LVLP, have acted as the alter ego of LVLP, as to whom  
16 there is no *bona fide* question of personal jurisdiction, and therefore necessarily have been active  
17 and doing ongoing business in Nevada for over a decade!  
18

19 Indeed, in terms of evaluating the Defendants' motion, one of the leading jurisdictional  
20 cases cited by defendants provides the answer in terms of a legal standard by which the court  
21 should evaluate Defendants' jurisdictional motion. As noted by the Nevada Supreme Court in  
22 Viega GmbH v. Eighth Judicial District Court, 130 Nev.Adv.Opn. 40, at pages 5-6 stated:  
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1 “The alter ego theory allows plaintiffs to pierce the  
2 corporate veil to impute a subsidiary’s contacts to the parent  
3 company by showing that the subsidiary and the  
4 parent are one and the same. See, e.g., Goodyear  
5 564 U.S. at \_\_\_\_\_, 131 S. Ct. at 2857 (implying,  
6 but not deciding, that an alter ego theory would be  
7 appropriate in such a situation); see also Platten v.  
8 HG Bermuda Exempted, Ltd., 437 F.3d 118, 139  
9 (1<sup>st</sup> Cir. 2006); Patin v. Thoroughbred Power Boats,  
10 Inc., 294 F.3d 640, 653 (5<sup>th</sup> Cir. 2002). The rationale  
11 behind this theory is that the alter ego subsidiary is  
12 the same entity as its parent, and thus, the jurisdictional  
13 contacts of the subsidiary are also jurisdictional  
14 contacts of the parent. Patin, 294 F.3d at 653.

15 *Id. Emphasis supplied.*

16 Finally, and also telling as to the *bona fides* of defendants, the defendants wholly failed to  
17 mention that two of the ten purported entities claim which claim not to be subject to personal  
18 jurisdiction in fact affirmatively chose to come to the Nevada courts and participate as  
19 affirmative plaintiffs in the First Case vs. Nype! To the extent that they may have terminated  
20 prior contacts with Nevada in the interim, such severance will not divest the court of jurisdiction  
21 to hold them legally accountable for their past affirmative voluntary forum activity, the details of  
22 which were concealed and never disclosed prior to the belated discovery of relevant and financial  
23 transactional data, as attested to more fully in Exhibit “3”.

#### 24 IV.

#### 25 PLAINTIFF’S CLAIMS FALL WITHIN THE

#### 26 STATUTE OF LIMITATION DUE TO THE DISCOVERY RULE,

#### 27 AND THE CLAIMS ASSERTED HAVE BEEN PLED WITH

#### 28 REQUISITE PARTICULARITY

The next wave of assertions circle snipe at the individual elements of and components of  
multiple claims asserted by Nype, but all come down to the gravaman of the assertion that the

1 actions complained of occurred outside of and beyond the statute of limitations on the one hand,  
2 and that somehow plaintiffs have failed to plead with requisite particularity the specific details of  
3 defendants' alleged misconduct.

4       The problem, of course, is that the very reason why, without conceding the validity of  
5 defendants' arguments, the complaint is less specific than it might ideally be, and that the claims  
6 were not filed until July 2016, is because the defendants purposely concealed, and affirmatively  
7 undertook covert and secretive efforts to assure that judgment creditor such as Nype would not  
8 be in a position to effectively enforce the judgment Nype obtained. See Exhibit "2", ¶11. As is  
9 corroborated in detail in both Exhibits "2" and "3", the source financial documentation necessary  
10 to ascertain some of the relevant details of the fraudulent conveyance transactions were first  
11 disclosed to plaintiff less than one year prior to the filing of this suit, i.e. in the Fall of 2015.  
12 Even then, the documentation was woefully incomplete and required Nype to seek an Order  
13 Compelling Discovery to obtain additional financial information as to the affiliated companies  
14 and subsidiaries, much of which has yet to be provided! The reason Nype was not in  
15 a position to make a good faith assertion of fraudulent conveyance and/or alter ego at a sooner  
16 date is attributable directly to the fact that the defendants consciously and affirmatively  
17 undertook steps to assure that Nype would not have sufficient data, evidence, and information to  
18 buttress and support such claims.

19       Fortunately, Nevada is a notice pleading state. Additionally, the statutes of limitation  
20 have long been applied so that the time limitation does not commence running until plaintiff  
21 discovers or reasonably should have discovered the operative facts necessary to assert a claim.  
22 As regards the fraudulent conveyance statute of limitation, of four years, as noted in Exhibit "3",  
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¶¶s 31 and 32, the limited financial documentation provided earlier in time was wholly inadequate and insufficient to determine or suggest that the transfers that had occurred had rendered LVLP functionally insolvent. Indeed, as noted in Exhibit "3", ¶32, the limited documentation supplied prior to the Fall of 2015 suggested that LVLP was not insolvent, but was instead active and operating. Only when the underlying general ledgers, banking documents, and detailed source financial information was first partially disclosed did Nype have reason, or even the possibility, of discovering and knowing that the transactions in question had in fact rendered LVLP functionally insolvent!

Finally, defendants have suggested somehow that fraudulent conveyance claims are subject to the specificity requirement of common law fraud, which is hardly the case. The statute specifies what must be proven, and which facts are relevant in evaluating whether or not the conveyance is fraudulent. The allegations pled by Nype address all of the elements required under NRS Chapter 112. Given that Nevada is a notice pleading state, defendants are certainly on notice as to Nype's theories and claims, and are not prejudiced in any way by a lack of itemized specific details. Those normally are the province of discovery, not pleading. Indeed, even if a heightened pleading requirement were applicable to a fraudulent conveyance statute claim, Nevada jurisprudence recognizes that where the specific factual data necessary to prove the claim lies within the unique province of the defendants, pleading with less particularity is appropriate, and a plaintiff should be entitled to undertake reasonable discovery to pin down and determine the specific details of the misconduct that has occurred, which information is uniquely and exclusively within the possession of the defendants (who have obvious reason to conceal and not make such information available), despite the District Court's Order requiring them to

1  
2 produce all such documentation. See Exhibit "3", Sub-Exhibit "B", p. 3, line 24 - page 4, line 4.  
3 Rocker v. KPMG LLP, 122 Nev, 1185, 1194-1195, 148 P.3d 703 (2006).

4 The Court is certainly aware of the long-standing Nevada jurisprudence indicating that a  
5 complaint must merely set forth sufficient facts to set forth and establish the necessary elements  
6 of a claim, so that a defending party has adequate notice of the nature of the claim and the relief  
7 sought. Hay vs. Hay, 100 Nev. 196, 678 P.2d 672 (1984).  
8

9 A proper analysis of the statute of limitations starts right with the language of the  
10 fraudulent conveyance statute, at NRS 112.230(1)(a) which specifically provides:

11 NRS 112.230 Limitation of actions; exception for spendthrift trusts.

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

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

17 "*Id. Emphasis supplied.*"

18 This dovetails well with Nevada common law standards as to statutes of limitation.  
19 Specifically, Nevada law has long held that the issue of whether a plaintiff knew or should have  
20 known the operative facts necessary to assert a claim is a matter to be determined by its trier of  
21 fact. Bemis vs. Estate of Bemis, 114 Nev. 1021, 967 P.2d 437 (1998).

22 Defendants' assertions as to the applicability of the statute of limitations are predicated almost  
23 exclusively upon the age of the transactions, and the fact that some transactions involve  
24 conveyances of real estate. One of the fundamental requirements, however, of a fraudulent  
25

1 conveyance claim under NRS 112.180(1), is whether the subject transaction would functionally  
2 render the debtor insolvent or unable to pay his debt as they became due.! See NRS  
3 112.180(1)(b). As is noted in both Exhibit "2" and Exhibit "3", until detailed post-judgment  
4 discovery regarding the specifics of LVLP's finances occurred, commencing in September, 2015,  
5 Nype did not have knowledge or reason to believe that LVLP was in fact functionally insolvent.  
6 As noted in the *Bemis* case, *supra*, that issue is uniquely one to be determined by the trier of fact,  
7 after hearing all evidence. For now, the uncontroverted sworn statements of Nype and his  
8 forensic accounting expert stand unchallenged, i.e. the fact that numerous transactions were  
9 actually fraudulent and rendered LVLP insolvent were not known and could not have been  
10 discovered until the Fall of 2015, at the earliest, less than a year prior to the filing of this  
11 litigation.  
12

13  
14 Finally, one of the claims challenged by defendants is the assertion of civil conspiracy.  
15 As the court has already noted in determining defendants' motion to strike jury demand, Nevada  
16 precedent addresses the standards of such claims specifically. Hilton Hotels vs. Butch Lewis  
17 Productions, 109 Nev. 1043, 862 P.2d 1207 (1993). In this particular matter, the same  
18 arguments regarding the discovery of relevant evidence of conspiratorial activity, applies equally  
19 to learning the operative facts supporting plaintiffs' theories of a civil conspiracy by the  
20 defendants to avoid the effect of Nype's judgment against the parent company, LVLP.  
21

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V.

**PLAINTIFFS' ALTER EGO CLAIMS ARE PROPER**

In Section IV.F. of their Memorandum, Defendants assert that Plaintiffs' alter-ego claims should be dismissed for failure to state a claim, because Nevada law precludes alter-ego claims against members of LLCs. Defendants' Motion to Dismiss at 25. In support, Defendants cite NRS 86.371 and 86.381. *Id.* Defendants make an *expressio unius est exclusio alterius* argument to the effect that because those sections do not expressly include an exception for alter-ego claims like a provision of the corporation statute now does, the legislature must have intended LLC members, as opposed to corporate shareholders, to be immune from such claims.

Defendants' argument fails flatly, for a number of reasons.

First, the statutory provisions cited by Defendants simply do not apply in this case. As alleged in the Complaint, all the LLC Defendants were organized under Delaware law. Complaint at ¶5. The statutory provisions cited by Defendants apply only to LLCs organized under Nevada law, and so do not apply to the Defendants in this case.

In particular, NRS Chapter 86 uses specific definitions to differentiate between "LLCs" and "Foreign LLCs", and only applies to foreign LLCs where it specifically says so. A "Foreign limited-liability company" means a limited-liability company formed under the laws of any jurisdiction other than Nevada. NRS 86.051. A "Limited-liability company" or "company", as used in Chapter 86, means a limited-liability company organized and existing under Chapter 86, i.e. under the laws of Nevada. NRS 86.061. The provisions of Chapter 86 that are cited by Defendants, 86.371 and 86.381, speak only of "limited liability companies", not "foreign limited liability companies". Under the express definitions of Chapter 86, then, those provisions only apply to LLCs organized under the laws of Nevada, which all of the Defendant LLCs are not. An

1 entirely separate section of Chapter 86 deals with Foreign Limited Liability Companies such as  
2 the Defendants. It does not purport to define the liability of the owners of such foreign LLCs,  
3 most likely because the statutes of their home state typically address the same.

4 Moreover, even if the inapplicability of the cited provisions was not made clear by the  
5 Definitions in Chapter 86, the critical provision itself does so. NRS 86.371 actually states  
6 expressly that it applies to “any limited-liability company formed under the laws of this State.”  
7 (“Unless otherwise provided in the articles of organization or an agreement signed by the  
8 member or manager to be charged, no member or manager of any limited-liability company  
9 formed under the laws of this State is individually liable for the debts or liabilities of the  
10 company.” NRS 86.371 [emphasis added].)

11 Defendants quote this statutory provision accurately, but when making their argument,  
12 they ignore the express (and fatal) limitation in its text.

13 Accordingly, Defendants’ effort to dismiss Plaintiffs’ alter ego claims fails, first, because  
14 the statutes it relies upon simply do not apply to the Defendants in question.

15 Second, an *expressio unius* argument is unavailing here in any event. The underlying  
16 logic of Defendants’ argument seems to be that alter-ego liability exists only where it is provided  
17 for by statute. This is simply wrong.

18 Alter-ego liability is a longstanding common-law doctrine of equity that has existed in the  
19 United States at least since Justice Cardozo’s well-known acknowledgement of it in 1926.  
20 *Berkey v. Third Avenue Railway Co.*, 244 N.Y. 84, 94 (1926) (purpose is to overcome a  
21 perversion of the privilege to do business in a corporate form). It has existed in Nevada at least  
22 since the Supreme Court relied upon it in the *McCleary Cattle* case in 1957. *McCleary Cattle*

1 *Co. v. Sewell*, 317 P.2d 957 115 (Nev. 1957)(adopting California formulation of the doctrine),  
2 *overruled on other grounds by Callie v. Bowling*, 123 Nev. 181, 160 P.3d 878 (2007) (rejecting  
3 one procedure for applying the doctrine, but not the doctrine itself).

4 The purpose of the equitable doctrine of alter-ego is to prevent unsavory characters from  
5 misusing statutory protections inherent in the entity form to “sanction a fraud or promote  
6 injustice,” *McCleary Cattle*, 317 P.2d at 959. In other words, equity will override the protections  
7 otherwise created by the plain text of a statute; it follows, of course, that the doctrine would not  
8 have appeared originally in the statute whose protections it was designed to pierce.

10 Indeed, the Nevada Corporation statute, NRS Chapter 78, never contained any reference  
11 to alter ego liability until 2001, when the section cited by Defendants was added in its entirety.  
12 Nevertheless, the common-law, equitable doctrine of alter-ego liability plainly existed in Nevada  
13 at least as far back as *McCleary Cattle*, some 50 years prior to its codification in the 2001  
14 addition to the corporation statute. *See* 2001 Statutes of Nevada, p. 3170 (enactment of NRS  
15 78.747). An *expressio unius* argument should rightly focus not on that new 2001 section, but  
16 rather on NRS 78.225, the section of the Corporation statute that actually parallels NRS 86.371,  
17 the provision of the LLC statute cited by Defendants. That parallel section of the Corporation  
18 statute, NRS 78.225, was revised in 1991 to track the wording of the LLC statute cited by  
19 Defendants, NRS 86.371, at the same time as the LLC statute was enacted, making no reference  
20 *then or now* to an alter ego exception.

23 NRS 78.225, as revised in 1991 and unchanged since, reads, “Unless otherwise provided  
24 in the articles of incorporation, no stockholder of any corporation formed under the laws of this  
25 State is individually liable for the debts or liabilities of the corporation. [...]” It says nothing  
26 about the alter-ego doctrine.  
27  
28



1 NRS 86.371, adopted simultaneously in 1991, reads, “Unless otherwise provided in the  
2 articles of organization or an agreement signed by the member or manager to be charged, no  
3 member or manager of any limited-liability company formed under the laws of this State is  
4 individually liable for the debts or liabilities of the company.”

5 In other words, when NRS 86.371 was added to the Nevada Statutes in 1991, NRS  
6 78.225 was revised at the same time to parallel its wording, and neither section said anything  
7 about the alter ego doctrine, even though it was then firmly a part of Nevada law.  
8

9 Accordingly, the proper comparison of the corporation statutes with the limited liability  
10 company statutes would recognize: (1) that their parallel provisions as to owners’ liability were  
11 adopted simultaneously at a time when the alter ego doctrine had been widely recognized in  
12 Nevada for more than 40 years; and (2) that neither NRS 78.225 nor NRS 86.371 carved out an  
13 express exception for alter ego then or now, nor did either provision purport to revoke it.  
14 Instead, the doctrine was left unmolested.  
15

16 It is not a logical inference that the legislature intended to revoke the protections of as  
17 widely-recognized and important a doctrine as alter ego by mere implication.  
18

19 The correct analysis would be that the addition to the corporation statute in 2001 defined  
20 and perhaps limited the scope of alter ego liability as to Nevada Corporations without imposing  
21 the same construction on alter-ego liability as to Nevada LLCs, which would logically continue  
22 to be governed by the existing common law.

23 Following essentially this logic, the Nevada Supreme Court has assumed without  
24 deciding that the alter-ego doctrine applies to Nevada LLCs. *Webb v. Shull*, 128 Nev. Adv. Opn.  
25 8, 270 P.3d 1266, 1271 n.3 (Nev. 2012). As noted by the Nevada Supreme Court in *Webb vs.*  
26 *Shull*, supra, pp. 7-8 at fn. 3:  
27  
28

1 See *Montgomery vs. eTreppid Technologies, LLC*, 548 F. Supp. 2d 1175, 1180-81 (D.

2 Nev. 2008) (recognizing that federal and state courts have consistently applied to LLCs

3 corporate laws for piercing the corporate veil under the alter ego doctrine.

4 In an unpublished opinion, the Ninth Circuit has done the same. *Volvo Constr. Equip. Rents, Inc.*

5 *v. NRL Rentals, LLC*, 2015 U.S. App. LEXIS 9791, n.1 (9th Cir. Nev. June 11, 2015). This is

6 consistent with the legislative history of the 2001 amendment which added the cited section, as

7 analyzed by the U.S. Bankruptcy Court in 2004. *In re Giampietro*, 317 B.R. 841 (Bankr. D. Nev.

8 2004)

9  
10 Accordingly, Defendants' *expressio unius* argument is unavailing, and alter-ego liability  
11 would exist as to LLC members, even if the cited Nevada statutes did apply to Foreign LLCs,  
12 which they do not.

13  
14 Third, the courts of the several states routinely apply the alter ego doctrine to LLCs  
15 organized under Delaware law, which is where the Defendant LLCs at issue in this action were  
16 organized. *See, e.g., Taberna Preferred Funding II, Ltd. v. Advance Realty Group LLC*, 5  
17 N.Y.S.3d 330, 45 Misc. 3d 1204 (Sup. Ct. NY Cty. 2014)

18 As stated by the court in *Taberna, supra*:

19  
20 "The parties agree that the Taberna Funds' veil piercing claims are  
21 governed by Delaware law because ARG is a Delaware LLC.  
22 *See Capmark Fin. Group Inc. v Goldman Sachs Credit Partners*  
23 *L.P.*, 91 BR 325, 346 (SDNY 2013) (" Piercing the corporate veil  
24 is a state law theory of liability that requires facts establishing that a  
25 controlling entity ignored the separate legal status of, and dominated  
26 the affairs of, a controlled entity.' Under New York's choice of law rules,  
the law of the state of incorporation determines when the corporate form  
will be [\*17]disregarded"), quoting *In re Champion Enter., Inc.*, 2010  
WL 3522132, at \*10 (Bankr D Del 2010) and *Fletcher v Atex, Inc.*,  
68 F3d 1451 (2d Cir 1995).

27 *Id.* Emphasis supplied

1 In this regard, an earlier Delaware decision laid out that state's standards for applying the  
2 alter ego doctrine to a Delaware LLC:

3 "Determining whether to [pierce the corporate veil] requires a  
4 fact intensive inquiry, which may consider the following factors,  
5 none of which are dominant: (1) whether the company was adequately  
6 capitalized for the undertaking; (2) whether the company was solvent;  
7 (3) whether corporate formalities were observed; (4) whether the  
8 controlling shareholder siphoned company funds; or (5) whether,  
9 in general, the company simply functioned as a facade for the controlling  
10 shareholder."

11 *Winner Acceptance Corp. v Return on Capital Corp.*, 2008 WL5352063, at \*5 (Del Ch  
12 2008)."

13 Assuming, arguendo, that the defendants were correct that NV law does not allow the  
14 application of the alter ego doctrine to Nevada LLC's, there is nothing in Nevada law or practice  
15 that would cause a Nevada court not to apply Delaware alter ego doctrine to Delaware LLC's.

16 Accordingly, Defendants have not shown a proper reason to dismiss Plaintiffs' alter-ego  
17 causes of action, and their Motion to dismiss on that ground should be denied.

## 18 VI.

### 19 CONCLUSION

20 Defendants have filed a far ranging motion setting forth numerous contentions as to why  
21 plaintiffs' complaint as against them is deficient. Yet, respectfully, plaintiffs are hoist by their  
22 own petard. On the one hand, Defendants claim that Revenue Plus LLC has never qualified to do  
23 business. They further claim that there is a lack of personal jurisdiction over LVLP's affiliated  
24 companies and principals. They also contend that the relevant transactions underlying plaintiff's  
25 complaint occurred outside of the statute of limitations.

26 Yet, the defendants cavalierly overlook the fact that LVLP, and two of its affiliated  
27 companies, chose to sue Nype and Revenue Plus LLC in Nevada in the first place. LVLP also  
28

1 overlooked the fact that many of the affiliated companies were in fact previously qualified and  
2 registered to do business in Nevada, during the relevant time, and that *assuming, arguendo*, the  
3 truth of plaintiff's *alter ego* allegations, the common law governing personal jurisdiction  
4 provides that personal jurisdiction does attach to affiliated entities acting as the alter ego of the  
5 parent! Above all else, it must be remembered that LVLP, operating under the behest and control  
6 of its principals, is certainly subject to personal jurisdiction, and has never challenged the same.  
7 In fact, LVLP chose the Las Vegas forum to bring its lawsuit involving its diverse and extensive  
8 Las Vegas real estate investing and activities against Mr. Nype, which choice ultimately resulted  
9 in a judgment in favor of Nype and Revenue Plus, on their counterclaim.  
10

11 Finally, as noted, had defendants been candid and forthright regarding their finances and  
12 the various transactions they undertook, the issues regarding fraudulent conveyances, alter ego,  
13 etc. could and likely would have been addressed in the underlying litigation. Instead, LVLP  
14 belatedly produced a bare minimum documentation required by the court in the first litigation,  
15 which tax returns on their face showed an ongoing operating entity, active in the Las Vegas,  
16 Nevada area, with substantial assets allegedly worth more than the putative amount of Nype's  
17 claims. Only after Nype obtained his judgment, and commenced post-judgment discovery, was it  
18 learned by careful examination of the underlying source financial documents (which incidentally  
19 do not match or reconcile to the actual tax returns as filed!) that the details of those transactions  
20 ultimately culminated in a circumstance where LVLP is functionally insolvent and unable to pay  
21 regular bills as they become due.  
22

23 The Honorable Ronald Israel has already determined, in the first case, that LVLP and its  
24 principals are scoundrels, and have unjustly and improperly deprived Nype and Revenue Plus of  
25 monies which they were solemnly promised, and as to which they expended great time and  
26  
27  
28

1 efforts on behalf of and for the benefit of LVLP. To encourage or countenance, game playing  
2 activity by LVLP and its principals, such as obviously has occurred, would be inherently  
3 improper and unjust.

4 The fact of the matter is that the defendants' conduct has necessitated this subsequent  
5 post-judgment suit in equity, seeking equitable remedies sufficient to achieve justice, in a case  
6 where traditional legal remedies such as writs of execution and writs of garnishment come up  
7 empty.  
8

9 Defendants' motion can and should be denied.

10 DATED this 14<sup>th</sup> day of June, 2017.

11 JOHN W. MUIJE & ASSOCIATES

12  
13 By: 

14 JOHN W. MUIJE, ESQ.

15 Nevada Bar No. 2419

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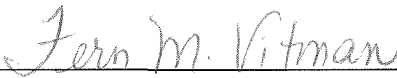
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of JOHN W. MUIJE & ASSOCIATES, and that on the 14<sup>th</sup> day of June, 2017, I caused to be served a true and correct copy of the foregoing **OPPOSITION TO DEFENDANTS' MOTION TO DISMISS**, in the following manner:

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

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An employee of JOHN W. MUIJE & ASSOCIATES

# **EXHIBIT “1”**

**ORIGINAL**

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CLERK OF THE COURT

FCO

Judge Ronald J. Israel  
Eighth Judicial District Court  
Department XXVIII  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89155  
(702)671-3631

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

\*\*\*

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. 07A551073

DEPT NO. XXVIII

**FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND DECISION**

RUSSELL L. NYPE; REVENUE PLUS,  
LLC;

Counterclaimants,

vs.

LAS VEGAS LAND PARTNERS, LLC,

Counterdefendant.



I.

**FINDINGS OF FACT**

1. Plaintiff/Counterdefendant Las Vegas Land Partners, LLC, is a Delaware limited liability company.

2. Plaintiffs Live Work, LLC, and Zoe Properties, LLC (referred to collectively with Las Vegas Land Partners, LLC, as "LVLP") are Delaware limited liability companies.

3. All three LVLP entities are owned and controlled, directly or indirectly, by David Mitchell ("Mr. Mitchell") and Barnet Liberman ("Mr. Liberman").

4. Defendant/Counterclaimant Revenue Plus, LLC, is a New York limited liability company. Revenue Plus, LLC, is wholly owned and operated by Defendant/Counterclaimant Russell L. Nype ("Mr. Nype") (referred to collectively with Revenue Plus, LLC as "Nype").

5. At all relevant times, Mr. Nype, Mr. Mitchell and Mr. Liberman resided in the state of New York.

6. In 2005, Las Vegas Land Partners, LLC, and its affiliates owned an assemblage of five city blocks of prime real estate in downtown Las Vegas (the "Property").

7. Currently, the Property is bordered by Clark Avenue and Garces Avenue, on the north and south, respectively, and Casino Center Boulevard and Main Street, on the east and west, together with the present Las Vegas City Hall at 495 Main Street and a nearly 6.5-acre parcel in Symphony Park.

8. The parties met in 2005. LVLP and Nype discussed LVLP's desire to find a development partner to invest in the development of the Property.

9. Early in the process, Nype identified Forest City Enterprises ("Forest City") as a strong potential candidate.

10. Mr. Nype had been a vice president of marketing for Forest City for several years, beginning in or around 1989, and performed consulting services for Forest City through 2004.

1           11. Mr. Nype had close, meaningful relationships with the Ratner family—the  
2 controlling owners and decision makers at Forest City.

3           12. Mr. Nype had worked on numerous, high-density, urban developments at  
4 Forest City that were similar to LVLP's development project.

5           13. Mr. Nype understood Forest City's specific business model and what it would  
6 be looking for in a joint-venture project.

7           14. With LVLP's approval, Nype brought in Glenn Myles ("Mr. Myles") and his  
8 company, First Wall Street Capital International ("FWS"), in order to potentially expand the  
9 scope of possible development partners for LVLP.

10           15. "Las Vegas Land Partners, LLC, together with its affiliates," entered into a  
11 signed, written agreement with FWS, dated January 25, 2006, entitled "Non-Exclusive  
12 Agent/Financing Engagement Letter" (the "FWS Agreement"). (See Exhibit ("Ex.") 509-1  
13 through 509-6.)

14           16. Nype was not a party to the FWS Agreement.

15           17. Nevertheless, Nype worked in conjunction with FWS to obtain a partner to  
16 help develop the Property with LVLP.

17           18. Mr. Nype and Mr. Myles attempted to negotiate a separate "Fee Share  
18 Agreement," pursuant to which Revenue Plus, LLC, was to receive 80% of any  
19 compensation received by FWS from a deal between LVLP and Forest City, and 50% of any  
20 compensation received from other potential development partners. No final "Fee Share  
21 Agreement" was ever executed.

22           19. The stated purpose of the FWS Agreement was for LVLP to engage FWS to  
23 act as an advisor to LVLP "in connection with its intent to find a joint venture and/or equity  
24 partner (the "Partner") for the redevelopment of the [LVLP] owned five city blocks in  
25 downtown Las Vegas."

26 ///

27 ///

1           20. Under the FWS Agreement, it was LVLP's "intention, in connection with the  
2 Partner, to redevelop the properties into new commercial, retail, office and condominium  
3 buildings (the "Project")." (Ex. 509-1.)

4           21. The FWS Agreement listed three potential development partners ("Identified  
5 Parties"), one of which was Forest City.

6           22. Nype was responsible for introducing the Project to Forest City, due to Mr.  
7 Nype's longstanding relationship with Forest City and its principals.

8           23. FWS had no relationship with or contacts at Forest City.

9           24. Beginning in or around the first part of 2006, Nype worked to generate interest  
10 from Forest City in the Project and to obtain meetings with Forest City for LVLP.

11           25. In the FWS Agreement, LVLP agreed to compensate FWS for its services by  
12 paying FWS a transaction fee "equal to four percent (4%) of all equity capital (including  
13 securities convertible into equity) and 1% of all debt capital" committed for the development  
14 project by an "Identified Party" named in the FWS Agreement "or an affiliate of an  
15 Identified Party." This transaction fee was to be paid "in cash promptly at each closing of  
16 each transaction."

17           26. In addition to the transaction fee, the FWS Agreement provides that LVLP will  
18 make an "LOI Payment" to FWS once an Identified Party issues a bona fide letter of intent to  
19 LVLP, LVLP executes the letter of intent, and the Identified Party and LVLP proceed with  
20 an investment transaction.

21           27. In addition to any other fees LVLP may owe under the FWS Agreement,  
22 LVLP agreed to "reimburse FWS for all of its reasonable out-of-pocket expenses, as pre-  
23 approved by [LVLP], (including but not limited to travel costs . . . ) incurred from time to  
24 time during the term hereof in connection with the services to be provided under this  
25 Agreement, promptly after invoicing [LVLP] therefore." *Id.*

26 ///

27 ///

1           28. As a result of a dispute related to their "Fee Share Agreement" negotiations, in  
2 April of 2006, Mr. Myles terminated FWS's relationship with Nype and any potential fee  
3 share arrangement.

4           29. Thereafter, Mr. Myles engaged in no further communications with Nype or  
5 LVLP and had no more involvement in the Project.

6           30. As a result, Nype sent FWS a letter on or about May 12, 2006, explaining that  
7 their relationship was over and that FWS was no longer involved in the Project due to Mr.  
8 Myles' complete lack of communication, involvement or performance.

9           31. LVLP wished to continue working with Nype, not FWS, and LVLP and Nype  
10 worked cooperatively thereafter to extricate themselves from FWS.

11           32. Mr. Mitchell asked Mr. Nype to proceed with a scheduled meeting with Forest  
12 City, regarding the Project, in Las Vegas, from May 21 – May 24, 2006.

13           33. Mr. Mitchell told Mr. Nype they would work out the terms of an agreement  
14 between LVLP and Nype after returning to New York.

15           34. The meeting with Forest City in Las Vegas went very well, and LVLP and  
16 Nype returned to New York on or about May 25, 2006, anticipating a proposed letter of  
17 intent from Forest City.

18           35. On or about June 1, 2006, LVLP sent FWS a letter withdrawing its offer to  
19 engage FWS pursuant to the FWS Agreement on the basis that FWS had never signed (i.e.,  
20 accepted) the FWS Agreement. (Ex. 527-2.)

21           36. LVLP was anxious to get to a letter of intent and to complete the transaction  
22 with Forest City, and it needed Nype's assistance to do so.

23           37. Mr. Mitchell and Mr. Liberman confirmed at trial (through live testimony and  
24 deposition testimony) LVLP's intent to continue working with Nype, to close a transaction  
25 with Forest City, after LVLP had ended its relationship with FWS.

26           38. On June 2, 2006, Nype sent LVLP a letter requesting reimbursement of  
27 expenses for Nype's trip to Las Vegas, "[p]er our agreement." (Ex. 541-1.)  
28

1           39.    LVLP and Forest City began negotiating the terms of a letter of intent ("LOI")  
2 on June 1, 2006.

3           40.    Forest City rejected the potential transaction on June 8, 2006, due to certain  
4 LVLP demands.

5           41.    Nype was ultimately able to resuscitate the deal, in part through his outreach to  
6 Forest City's Chairman, James Ratner.

7           42.    LVLP acknowledged Nype's role in resuscitating the deal, and expressed this  
8 in emails to Mr. Nype. (*See, e.g.*, Ex. 575-1.)

9           43.    In late June 2006, as LVLP and Forest City were attempting to finalize an LOI,  
10 Nype sought to obtain an executed engagement letter from LVLP to memorialize, in writing,  
11 the Nype Contract adopting the terms of the FWS Agreement.

12           44.    Around this same time, LVLP paid Nype's expenses from the trip Nype took  
13 to Las Vegas to meet with Forest City, thus indicating that LVLP had entered into the Nype  
14 Contract based upon the terms of the FWS Agreement.

15           45.    No ongoing negotiations between the parties with regard to the terms of the  
16 Nype Contract took place between June 1, 2006, and June 29, 2006.

17           46.    On or around June 30, 2006, LVLP began to offer a different agreement.  
18 Nype never agreed to these terms.

19           47.    From June 1, 2006, until the end of November 2006, Nype continued to advise  
20 and assist LVLP in finalizing its letter of intent with Forest City, and in working with Forest  
21 City during the due diligence phase.

- 22           • Nype continued to perform valuable services for LVLP, at LVLP's request, and LVLP  
23 continued to request and encourage these services from June 2006-November 2006.  
24 (*see, e.g.*, Ex. 619-1.)
- 25           • On August 1 and August 14, 2006, Nype made two trips to Las Vegas with LVLP  
26 related to the Project, and he was reimbursed \$2,059.00 by LVLP, pursuant to Section  
27

28       ///

1 4 (the "Expenses" provision) of the adopted terms of the FWS Agreement. (See Ex.  
2 626; Ex. 509-2.)

- 3 • In August 2006, Nype assisted in resolving a conflict between Forest City and LVLP  
4 in which Forest City was on the verge of pulling out of the transaction with LVLP.
- 5 • On September 8, 2006, LVLP specifically told Mr. Nype that he had worked hard to  
6 bring LVLP together with Forest City and that he should be paid for those efforts.  
7 (Ex. 619.)
- 8 • LVLP did not draft a written agreement reflecting modified payment terms until  
9 September 28, 2006, at which time LVLP sent Nype a written agreement that was  
10 identical to the FWS Agreement—with the exception of only the payment terms. (Ex.  
11 621-2.)
- 12 • LVLP also stated that the attached written agreement was "cleaned up to reflect [the  
13 parties'] current understanding" (Ex. 621-2.)
- 14 • LVLP continued throughout this time to refer to Nype as LVLP's "representative"  
15 and to LVLP as Nype's "client." (Ex. 621-1; Ex. 635-1). On October 4, 2006, Mr.  
16 Liberman told Nype that he and Mr. Mitchell were working hard to save Nype's  
17 commission. (Ex. 625-1.)
- 18 • As late as November 2006, LVLP was still contacting Nype for assistance in  
19 communicating with Forest City. (Ex. 635.)

20 48. On June 29, 2006, LVLP received Forest City's executed copy of the LOI with  
21 LVLP.

22 49. The LOI states that, other than Mr. Nype, LVLP did not employ, retain,  
23 consult or deal with any other brokers or agents. (Ex. 597-1 through 597-6.)

24 50. LVLP praised and encouraged Nype throughout 2006, confirming that LVLP  
25 found Nype's services advantageous and beneficial to it.

26 51. LVLP continued to acknowledge throughout 2006 that LVLP owed Nype  
27 payment for the services Nype provided in furtherance of the Project.  
28

1           52.    LVLP benefitted from Nype's work. Among other things, it received months  
2 of Nype's services, which Nype performed at LVLP's request. Moreover, at the initial  
3 closing, Forest City invested approximately 101 million dollars into the Project. At least  
4 \$10,500,000 in cash went directly to Mr. Mitchell and Mr. Liberman's entity, Plaintiff Live  
5 Work, LLC. LVLP saved millions of dollars in interest payments on the Project's existing  
6 loan financing, and Mr. Mitchell and Mr. Liberman were relieved, at that time, of more than  
7 \$19,484,000.00 in personal guarantees.

8           53.    The expert testimony of Dr. Kenneth Wiles ("Dr. Wiles") established that  
9 Nype also benefitted LVLP by helping it to survive the recession in 2008. Without Nype's  
10 work to bring Forest City to the table, financial conditions at that time would have made it  
11 extremely difficult for LVLP to obtain replacement financing.

12           54.    The evidence does not support a finding that Mr. Nype misrepresented the  
13 status of his contractual relationship with FWS.

14           55.    The evidence also does not support a finding that LVLP relied upon any  
15 representation from Mr. Nype regarding his contractual status with FWS. LVLP made a  
16 business decision to end its relationship with FWS and to enter into an agreement with Nype.

17           56.    The evidence does not support a finding that LVLP relied upon Mr. Nype's  
18 representations regarding his licensing status. Rather, LVLP and its principals, Mr. Mitchell  
19 and Mr. Liberman, are sophisticated business people that made their own business decision  
20 to enter into an agreement with Nype, regardless of Nype's or FWS's licensing status.

21           57.    The evidence does not support a finding that Mr. Nype had a conflict of  
22 interest that precluded him from fairly representing LVLP's interests with regard to the  
23 transaction with Forest City.

24           58.    There is no evidence that Nype shared confidential information with Forest  
25 City that LVLP had instructed Nype to keep confidential.

26    ///

27    ///

1           59. There is no evidence that Mr. Nype and Mr. Myles intended to form a  
2 partnership or joint venture or to create a fiduciary relationship. No fiduciary duties between  
3 Mr. Nype and Mr. Myles arose or were breached.

4           60. LVLP failed to demonstrate that Nype committed any misconduct that caused  
5 LVLP harm.

6           61. The preponderance of the evidence at trial supports a finding that Nype did not  
7 act for the purpose of furthering a sale or lease of real property such that Nype was required  
8 to possess a real estate license under NRS Chapter 645 to recover the compensation Nype  
9 seeks.

10           62. At all relevant times, Nype acted for the purpose of furthering a business  
11 relationship between LVLP and Forest City as indicated in the FWS Agreement and in the  
12 LOI. (*See also* Ex. 621 (describing Nype's services).)

13           63. LVLP and Forest City always had control over the structure their business  
14 relationship would take, and Nype was excluded from structure determinations.

15           64. LVLP did not engage Nype to work as a real estate agent. Neither Mr. Mitchell  
16 nor Mr. Liberman testified that they intended to sell the Property that they hired Nype to  
17 help sell or lease the Property, that they instructed Nype to assist in selling or leasing the  
18 Property, or that Nype's duties included selling and/or leasing the Property.

19           65. The evidence at trial supports a finding that, throughout Nype's performance,  
20 neither Nype nor LVLP intended that the negotiations with Forest City would conclude with  
21 a real estate sale. For example:

22           • Mr. Nype specifically testified that LVLP repeatedly told him that it did not  
23 wish to sell its real estate, which testimony was undisputed.

24           • Peter Gelb, a former managing director of FWS, testified that LVLP's  
25 transaction with Forest City was not a sale of property.

26       ///

27       ///



1       • During the original negotiations over the FWS Agreement, Mr. Nype  
2 explained to FWS that LVLP is "hiring us as an agent to help [them] find a partner for [its]  
3 developments." (Ex. 506-1.)

4       • The FWS Agreement did not state that Nype was to assist with the sale of real  
5 property. Rather, it stated that Nype was to "act as an advisor to [LVLP] in connection with  
6 its intent to find a joint venture and/or equity partner . . . " by "introduc[ing] [LVLP] to  
7 principals of the Identified Parties" and "assist[ing] [LVLP] in presenting the Project to the  
8 Identified Parties and perform such other services as mutually agreed to by [Nype and  
9 LVLP] with a view to assisting [LVLP] in closing a Transaction." (Ex. 509-1). The  
10 definition of "Transaction" in the FWS Agreement does not include the sale of real estate,  
11 but instead is defined as "rais[ing] equity and/or debt capital from the Partner[.]"

12       • The LOI does not mention the sale of real estate, instead stating that the  
13 "Structure" of the transaction between Forest City and LVLP will be the formation of a  
14 limited liability company. (Ex. 584.)

15       • LVLP's admissions confirmed that the LOI did not involve or contemplate a  
16 sale of real estate, rather the LOI contemplated the formation of a partnership to develop the  
17 Property and outlined possible terms of a future joint venture agreement between LVLP and  
18 Forest City. (Ex. 709, ¶¶13 - 17.)

19       • Mr. Mitchell admitted that that the LOI involved a capital investment, not the  
20 sale of real estate. (Ex. 709, ¶¶13 - 17.)

21       66. The preponderance of the evidence at trial supports a finding that the concept  
22 of accomplishing LVLP's and Forest City's development partnership through a sale of real  
23 property was raised for the first time by David LaRue, of Forest City, to LVLP, in or around  
24 mid November 2006, when Mr. LaRue proposed a tenancy-in-common structure for tax  
25 reasons. Among other evidence, David LaRue's testimony and David Mitchell's own  
26 admissions support this finding. (*See also* Ex. 709, ¶¶13 - 17.)

27       ///  
28

1        67. The final structure of the transaction was determined by LVLP and Forest  
2 City, without Nype's involvement or knowledge.

3        68. Nype had no involvement with LVLP's and Forest City's negotiations  
4 regarding the sale of a portion of the property to Forest City via a tenancy-in-common. (*See*  
5 *e.g.*, Ex. 709, ¶ 15.)

6        69. Nype had no knowledge that Forest City and LVLP intended that their  
7 transaction be accomplished through a sale of real property until, at the earliest, February  
8 2007. At that time, Nype was no longer performing services for LVLP; and Nype is only  
9 seeking compensation for services performed through November of 2006.

10       70. LVLP began freezing Nype out of the transaction in or around October of  
11 2006.

12       71. Nype did not perform any activities related to leasing, negotiating leases, or  
13 soliciting lessees for LVLP. Rather, Nype's services in this regard were limited to advising  
14 LVLP to focus its efforts on securing lease commitments and to communicating with Forest  
15 City regarding the potential for, and status of, leasing opportunities.

16       72. The few, sporadic points in time in which Mr. Nype appeared to believe that  
17 the development partnership might be accomplished through a sale of real property, or that  
18 his services required a real-estate license, do not alter the weight of the evidence supporting  
19 the above findings.

20       73. Nype seeks compensation for services performed after June 1, 2006, beginning  
21 at the LOI stage, at which time the parties contemplated and were working toward the  
22 formation of a limited liability company. Accordingly, it is irrelevant what was contemplated  
23 in the March 2006 executive summary or discussed in April 2006, pre-LOI communications  
24 with Forest City. Moreover, the executive summary contains conflicting language regarding  
25 the nature of the transaction (to which Mr. Nype testified that the executive summary was  
26 not for the purpose of selling real estate). And Mr. Nype's mistaken belief, for a few days in  
27 April 2006, that the development partnership would be accomplished through the sale of real  
28

1 property, was immediately corrected by Mr. Mitchell, who reiterated to Mr. Nype that LVLP  
2 did not wish to sell its real estate, and further instructed Mr. Nype not to involve himself  
3 with the structure of the transaction. Mr. Nype's testimony in this regard was undisputed by  
4 LVLP.

5 74. Mr. Nype's mistaken belief, at points in June 2006, that he may have needed a  
6 real-estate license or that he may have been performing real estate brokerage services is also  
7 irrelevant. These are legal conclusions that Mr. Nype was not equipped to make. Moreover,  
8 Mr. Nype was unclear about the precise structure the transaction would take, and he was  
9 immediately corrected by Mr. Mitchell, who told him that the transaction was not a real  
10 estate deal, that he did not need a real estate license, and that he was not performing real-  
11 estate-brokerage services. Mr. Nype's testimony in this regard was also undisputed by  
12 LVLP.

13 75. Even if the evidence in question has marginal relevance regarding Mr. Nype's  
14 state of mind, Mr. Mitchell's contrary admissions and Mr. LaRue's testimony that a land sale  
15 was not intended or contemplated until mid November 2006, at the earliest, as well as the  
16 preponderance of the other evidence at trial, supports the finding that Nype was not acting  
17 for the purpose of furthering a land sale from June through November 2006.

18 76. Nype did not sell or offer to sell a security in Nevada or elsewhere.

19 77. The LOI contemplated the mutual formation of an LLC structure. No contract  
20 to sell or dispose of the interest in the contemplated, to-be-formed LLC ever existed. The  
21 only contract of sale that LVLP and Forest City entered into was the Agreement of Purchase  
22 and Sale based upon a tenancy-in-common structure (*See Ex. 665*).

23 78. Under the LOI structure Nype worked towards, interests in an LLC were not  
24 being sold, disposed of or purchased; ownership in the newly-formed LLC was not going to  
25 change hands.

26 79. The LLC structure was first proposed by Forest City in early June 2006, in an  
27 initial letter of intent draft. Forest City composed the first drafts of the LOI and emailed  
28

1 them from California and Ohio to LVLP in New York. LVLP executed the final LOI in  
2 New York.

3 80. No evidence at trial established that Mr. Nype performed securities  
4 transactions as part of his business often enough such that he could be considered "engaged  
5 in the business" of effecting transacting in securities.

6 81. Mr. Nype testified that he had never worked as a securities broker, previously  
7 worked to accomplish a transaction in securities, held himself out to the public as a securities  
8 broker, worked in the capital raising industry, or worked to facilitate a business relationship  
9 between two companies.

10 82. No evidence at trial established that Nype had the ability to make the  
11 formation of the new LLC happen. Nype had no control over the ultimate structure of the  
12 transaction. The evidence at trial also did not establish that Nype ever held himself out to  
13 Forest City or LVLP as having such ability.

14 83. The undisputed evidence at trial establishes that in any business relationship  
15 that LVLP and Forest City might have formed, Forest City was always going to have an  
16 active, managerial level role in the redevelopment of the Property. There is no evidence that  
17 Forest City was going to be a passive investor that would rely solely, or even substantially,  
18 on LVLP's, rather than its own, efforts to obtain a profit on its investment. To the contrary,  
19 under the LOI, Forest City was going to have a 75% ownership interest in the newly-formed  
20 LLC. (See Ex. 597-2.) Forest City would be the "Managing Partner" and LVLP would be  
21 the "Minority Partner." *Id.* Moreover, the ultimate relationship that was formed provided  
22 Forest City with extensive management authority and responsibilities. (See Ex. 663). LVLP  
23 and Forest City always intended that the profits would come from their joint efforts, with  
24 Forest City taking the lead role.

25 ///

26 ///

27 ///

1 Any finding of fact that is determined to be a conclusion of law shall be deemed  
2 accordingly.

3 II.

4 CONCLUSIONS OF LAW

5  
6 1. Each party bears the burden to prove its claims and defenses by a  
7 preponderance of the evidence.

8 2. LVLP was unjustly enriched by the performance and services provided by  
9 Nype after June 2006.

10 3. "Unjust enrichment exists when the plaintiff confers a benefit on the defendant,  
11 the defendant appreciates such benefit, and there is "acceptance and retention by the  
12 defendant of such benefit under circumstances such that it would be inequitable for him to  
13 retain the benefit without payment of the value thereof.'" *Certified Fire Protection, Inc.*, 283  
14 P.3d at 257 (quotations omitted).

15 4. "[B]enefit in the unjust enrichment context can include 'services beneficial to  
16 or at the request of the other,' 'denotes any form of advantage,' and is not confined to  
17 retention of money or property." *Id.* (quoting *Restatement of Restitution* § 1 cmt. b (1937)).

18 5. Throughout 2006, Nype used his unique personal and professional relationship  
19 with Forest City to attract Forest City to the Project and to secure Forest City as a  
20 development partner for LVLP.

21 6. The services Nype provided LVLP after June 1, 2006, were beneficial to  
22 LVLP and were done at LVLP's request.

23 7. Nype was a significant, contributing factor in Forest City's investment in the  
24 Project.

25 8. Among other benefits, as a result of the development partnership, LVLP: (1)  
26 obtained a deep-pocketed, nationally-recognized development partner; (2) was able to  
27 survive the "Great Recession"; (3) saved millions of dollars in interest payments on the  
28

1 Project's existing loan financing; (4) shared liability on its debt financing with a multi-billion  
2 dollar company; and (5) Messrs. Liberman and Mitchell were able to extinguish more than  
3 \$19,484,000 in personal loan guarantees.

4 9. Messrs. Liberman and Mitchell continue to have an ownership interest in the  
5 Project, which, under certain circumstances, can be increased back to 40%.

6 10. Moreover, LVLP received the benefit of approximately six months of Nype's  
7 services—without payment.

8 11. It would be inequitable for LVLP to retain the benefit of Nype's services  
9 without payment of the value thereof.

10 12. For purposes of damages, "[q]uantum meruit [] is 'the usual measurement of  
11 enrichment in cases where nonreturnable benefits have been furnished at the defendant's  
12 request, but where the parties made no enforceable agreement as to price.'" *Certified Fire*  
13 *Protection, Inc.*, 283 P.3d at 257 (quoting *Restatement (Third) of Restitution and Unjust*  
14 *Enrichment* § 49 cmt. f (2011)).

15 13. "[T]he unclean hands doctrine precludes a party from attaining an equitable  
16 remedy when that party's 'connection with the subject-matter or transaction in litigation has  
17 been unconscientious, unjust, or marked by the want of good faith.'" *Las Vegas Fetish &*  
18 *Fantasy Halloween Ball, Inc. v. Ahern Rentals, Inc.*, 124 Nev. 272, 275, 182 P.3d 764, 766  
19 (2008) (citations omitted).

20 14. The unclean hands doctrine does not apply unless the misconduct is  
21 "connected with the matter in litigation so that it has in some manner affected the equitable  
22 relations subsisting between the parties and arising out of the transaction." *Gravelle v.*  
23 *Burchett*, 73 Nev. 333, 341, 319 P.2d 140, 144-45 (1957).

24 15. "In determining whether a party's connection with an action is sufficiently  
25 offensive to bar equitable relief, two factors must be considered: (1) the egregiousness of the  
26 misconduct at issue, and (2) the seriousness of the harm caused by the misconduct." *Las*  
27 *Vegas Fetish & Fantasy Halloween Ball, Inc.*, 124 Nev. at 276, 182 P.3d at 767. "Only  
28

1 when these factors weigh against granting the requested equitable relief will the unclean  
2 hands doctrine bar that remedy." *Id.*

3 16. Here, the factors of egregious misconduct and serious harm are both lacking  
4 and thus Nype committed no misconduct precluding him from obtaining equitable relief.

5 17. As a matter of law, the unclean hands doctrine does not bar Nype's equitable  
6 claims.

7 18. Moreover, even if the statute of frauds did apply, the Nype Contract is still  
8 enforceable because the exceptions of full performance and estoppel apply. *See Edwards*  
9 *Indus., Inc. v. DTE/BTE, Inc.*, 112 Nev. 1025, 1032, 923 P.2d 569, 574 (1996) ("Full  
10 performance by one party may also remove a contract from the statute of frauds.").

11 19. Nype performed no real-estate services between June 1, 2006, and November  
12 2006, for which Nype seeks to recover.

13 20. The services that Nype performed between June 1, 2006, and November 2006,  
14 when Nype was excluded from the transaction, were for the purpose of furthering the  
15 business relationship between Forest City and LVLP.

16 21. Under NRS 645.270, an unlicensed person cannot sue to collect compensation  
17 for the performance of the acts of a real estate broker:

18 A person, limited-liability company, partnership, association or corporation  
19 engaged in the business or acting in the capacity of a real estate broker or a real  
20 estate salesperson within this State may not commence or maintain any action  
21 in the courts of this State for the collection of compensation for the  
22 performance of any of the acts mentioned in NRS 645.030 without alleging and  
23 proving that the person, limited-liability company, partnership, association or  
24 corporation was a licensed real estate broker or real estate salesperson at the  
25 time the alleged cause of action arose.

26 22. "NRS 645.270 applies only to those whose actions fall within NRS 645.030's  
27 definition of real estate broker." (Nevada Supreme Court's Sept. 26, 2013, Order of Reversal  
28 & Remand ("Order") at 1.)

23. NRS 645.030(1)(a), in relevant part, defines a "real estate broker" as follows:

1 [A] person who . . . [s]ells, exchanges, options, purchases, rents or leases, or  
2 negotiates or offers, attempts or agrees to negotiate the sale, exchange, option,  
3 purchase, rental or lease of, or lists or solicits prospective purchasers, lessees or  
renters of, any real estate or the improvements thereon[.]

4 24. Any person who "does, offers or attempts or agrees to do, engages in, or offers  
5 or attempts or agrees to engage in" any one of these acts is considered a real estate broker  
6 and is required to be licensed under Nevada law. See NRS § 645.260.

7 25. NRS 645.030's definition of real estate broker focuses on "the nature of the  
8 action, not the nature of the ultimate outcome." (Order at 4 (emphasis in the original).)  
9 "[O]nly persons who act for the purpose of furthering a sale, lease, or rent contract for real  
10 property fall within the definition of real estate broker and are subject to NRS 645.270." Id.

11 26. "[A] person who is not a licensed real estate broker may recover a commission  
12 where the work was not done to further or procure the sale of an interest in land but  
13 nevertheless resulted in a land sale contract." Id. at 5.

14 27. "[T]he licensing requirement will not preclude payment of a commission  
15 unless the services rendered fall within acts outlined in NRS 645.030," and "this  
16 determination rests on the individual circumstances of the services." Id. at 4-5.

17 28. Accordingly, this Court must focus on the actual services Nype rendered  
18 pursuant to the Nype Contract, and on the purpose of those services, in determining whether  
19 NRS 645.270 applies.

20 29. LVLP failed to meet its burden of proving, by a preponderance of the evidence  
21 that Nype acted for the purpose of furthering a sale or lease of real property.

22 30. The preponderance of the documentary and testimonial evidence establishes  
23 that Forest City, LVLP and Nype did not anticipate or intend a sale of real estate at any time  
24 between June 1, 2006, and November 2006.

25 31. Neither the FWS Agreement nor the LOI mention or anticipate a sale of real  
26 property.

27 32. The LOI contemplates the mutual formation of an LLC.  
28



1           33. Mr. Mitchell admitted that the LOI involved investment and development, not  
2 a sale of real estate.

3           34. It was undisputed at trial that Nype had no involvement in the negotiations  
4 between LVLP and Forest City regarding the sale of a percentage of the property.

5           35. Nype did not act for the purpose of furthering a land sale.

6           36. The few, sporadic points in time in which Nype appeared to mistakenly believe  
7 that the transaction might be accomplished through a sale of real property are insufficient to  
8 overcome the weight of the evidence that Nype did not act for the purpose of furthering a  
9 land sale.

10          37. Nype's advice to LVLP to focus its efforts on securing lease commitments,  
11 and Nype's communications with Forest City regarding the status of lease commitments,  
12 does not constitute acting for the purpose of furthering a real-estate transaction under NRS  
13 645.270.

14          38. NRS 645.270 only precludes suits to collect compensation for the performance  
15 of the acts of a real estate broker. Nype is not suing to collect compensation for the  
16 purported real estate broker's act of offering to perform leasing services. Moreover, Nype  
17 never performed or contracted to perform any such offered, leasing services.

18          39. NRS 645.270 does not apply to preclude Nype from collecting compensation  
19 in this matter.

20          40. LVLP bears the burden to prove, by a preponderance of the evidence, that  
21 Nype was required to possess a securities license under Nevada or federal law.

22          41. Under NRS 90.840(1), "[n]o person subject to this chapter who makes or  
23 engages in the performance of a contract in violation of this chapter[.] . . . may obtain relief  
24 on the contract." (emphasis added).

25          42. Under NRS 90.830, entitled "Scope of chapter[.]" NRS 90.310 only "applies to  
26 a person who sells or offers to sell a security . . . if (a) [a]n offer to sell is made in this State;  
27 or (b) [a]n offer to purchase is made and accepted in this State."  
28

1       43.    An "offer to sell" "includes every attempt or offer to dispose of, or solicitation  
2 of an offer to purchase, a security or interest in a security for value." NRS 90.280(1).

3       44.    An "offer to purchase" "includes every attempt or offer to obtain, or  
4 solicitation of an offer to sell, a security interest in a security for value . . . ." NRS 90.280(2).

5       45.    "[A]n offer to sell or to purchase is made in this State, whether or not either  
6 party is present in this state, if the offer: (a) originates in this state; or (b) is directed by the  
7 offeror to a destination in this State and received where it is directed, or at a post office in  
8 this State, if the offer is mailed." NRS 90.830(3).

9       46.    Under NRS 90.310(1) "[i]t is unlawful for any person to transact business in  
10 this State as a broker-dealer . . . unless licensed or exempt from licensing under this chapter."

11       47.    NRS 90.220 defines a "broker-dealer" as "any person engaged in the business  
12 of effecting transactions in securities . . . ."

13       48.    Even if it did, there is no evidence that a contract to sell or dispose of an  
14 interest in the LLC existed.

15       49.    Nype did not sell or offer to sell a security within the meaning of NRS 90.280.

16       50.    The creation and apportionment of member units in a new LLC does not  
17 constitute an offer to sell a security within the meaning of NRS 90.280.

18       51.    Even if Nype offered to sell a security within the meaning of NRS 90.280,  
19 Nype made no offer to sell a security in Nevada.

20       52.    No offer to purchase a security was made and accepted in Nevada. Forest  
21 City's purported offer to purchase a security (via drafts of the LOI) did not originate in  
22 Nevada nor did Forest City direct its purported offer to Nevada. Even if the executed LOI  
23 constitutes an accepted offer of purchase, LVLP executed the LOI, i.e., "accepted" the offer,  
24 in New York—not Nevada.

25       53.    Accordingly, under NRS 90.830(1), Nype was not subject to NRS 90.310's  
26 licensing requirement. As such, Nype did not engage in the performance of a contract in  
27 violation of NRS 90.310; and Nype may obtain relief in this matter. *See* NRS 90.840(1).  
28

1           54. Even if NRS 90.310's licensing requirement applied, Nype did not violate NRS  
2 90.310 because Nype does not meet NRS 90.220's definition of a "broker-dealer." Nype was  
3 not "engaged in the business of effecting transactions in securities." See *S.E.C. v. Kenton*  
4 *Capital, Ltd.*, 69 F. Supp. 2d 1, 12 (D.D.C. 1998); *Marble v. Clein*, 347 P.2d 830, 832  
5 (Wash. 1959); *Matter of Las Vegas Hilton Hotel Fire Litig.*, 101 Nev. 489, 492-93, 706 P.2d  
6 137, 139 (1985); *In re Slatkin*, 525 F.3d 805, 817 (9th Cir. 2008).

7           55. Under federal law, "LLC membership interests are not 'securities' unless they  
8 meet the four criteria of an 'investment contract' set forth in *Securities and Exchange*  
9 *Commission v. W.J. Howey Co.*, 328 U.S. 293, 66 S. Ct. 1100, 90 L. Ed. 1244 (1946)." *Keith*  
10 *v. Black Diamond Advisors, Inc.*, 48 F. Supp. 2d 326, 332 (S.D.N.Y. 1999). Under *Howey*,  
11 "[a]n investment contract for purposes of the Securities Act means a contract, transaction or  
12 scheme whereby a person [1] invests his money in [2] a common enterprise and is led to [3]  
13 expect profits solely from the efforts of the promoter or a third party." *Koch v. Hankins*, 928  
14 F.2d 1471, 1476 (9th Cir. 1991) (emphasis added) (alterations in the original) (quoting *SEC*  
15 *v. W.J. Howey Co.*, 328 U.S. 293, 298-299 (1946)).

16           56. "An investment satisfies this third element [of the *Howey* test] when the efforts  
17 made by those other than the investor are the ones which affect significantly the failure or  
18 success of the enterprise." *Reeves v. Teuscher*, 881 F.2d 1495, 1499 (9th Cir. 1989)  
19 (emphasis added). "Where profits are to come substantially from the efforts of others . . . a  
20 security will be present. On the other hand, where profits are to come from the joint efforts  
21 of partners . . . , a security usually will not be present." *Consol. Mgmt. Grp., LLC v. Dep't of*  
22 *Corporations*, 162 Cal. App. 4th 598, 610, 75 Cal. Rptr. 3d 795, 805 (2008) (quoting *II Loss*  
23 *et al.*, *Securities Regulation* (4th ed. 2007) *Coverage of the Securities Act of 1933*, pp. 985–  
24 986, fns. omitted).

25           57. Any relationship between Forest City and LVLP contemplated Forest City  
26 having an active, managerial-level role in the redevelopment of the Property, such that  
27 Forest City would not be a passive investor that would rely solely, or even substantially on  
28

1 LVLP's, rather than its own, efforts to obtain a profit. Accordingly, as the third-element of  
2 the *Howey* test is lacking, the LLC structure under the LOI did not involve a "security" under  
3 federal law; therefore, Nype was not required to have a federal securities license.

4 58. Accordingly, LVLP has failed to prove that either Nevada or Federal law  
5 required Nype to possess a securities license in order to recover for his services.

6 59. Mr. Nype was uniquely qualified to facilitate a business relationship with  
7 Forest City because of his close, personal relationships with Forest City's key decision  
8 makers and his insider's knowledge of how Forest City operated. In addition, Nype  
9 facilitated a transaction that LVLP had attempted to develop for years, without success.

### 10 III.

### 11 DECISION

12  
13 The testimony is uncontradicted that Mr. Mitchell and his partner, Mr. Liberman,  
14 intended to compensate Mr. Nype. Mr. Mitchell clearly stated in his testimony that Mr.  
15 Nype provided services throughout the entire negotiation period eventually resulting in the  
16 tenants in common ("TIC") agreement.  
17

18 Mr. Nype and Mr. Mitchell both lack credibility when it comes to their monetary  
19 interests. There is no question that Mr. Nype was working with FWS when the initial  
20 introduction was made, which ultimately resulted in the TIC agreement between the parties.  
21 Both Mr. Nype and Mr. Mitchell each wanted the FWS/LVLP agreement to be dead for their  
22 individual economic interests. On June 9, 2005, the deal between Forest City and LVLP was  
23 essentially dead; however, it was revived immediately prior to June 29, 2005, with the  
24 efforts of Mr. Nype.  
25  
26

27 FWS and LVLP litigated their agreement in court; however, there was no  
28

1 determination as a settlement was reached. Mr. Nype clearly backed out of his agreement  
2 with FWS when he became concerned that FWS did not have a real estate license. His  
3 testimony regarding obtaining some information from an unknown lawyer regarding this  
4 issue is clearly not credible. It was only relevant in that it led to FWS and Nype terminating  
5 whatever agreement they had and Mr. Mitchell attempting to terminate whatever agreement  
6 he had with FWS on behalf of LVLP. It is also important to note that Mr. Nype continued  
7 working on the project on behalf of Mr. Mitchell until he was excluded from negotiations in  
8 approximately November 2006.  
9

10  
11 Mr. Nype claims that Mr. Mitchell, on behalf of LVLP, orally agreed to the same  
12 terms as in the FWS agreement and only later sought to change the terms of that agreement.  
13 Although the oral contract theory is plausible, Defendant/Counterclaimant Nype does not  
14 meet the burden of proof of preponderance of the evidence on that cause of action given both  
15 key players' unreliable testimony.  
16

17 The second cause of action, quantum meruit, is proven by a preponderance of the  
18 evidence. Mr. Mitchell's own testimony was that Mr. Nype deserved compensation for the  
19 efforts he put in reaching this agreement. Mr. Nype's initial introduction was done pursuant  
20 to the LVLP/FWS agreement and therefore FWS might be entitled to compensation but that  
21 is not for this Court to decide. Taking the totality of almost six weeks of testimony, 50% of  
22 the compensation is attributable to the initial introduction (done by Nype as an agent of  
23 FWS). Under the quantum meruit theory of recovery, Mr. Nype is entitled to the four  
24 percent (4%)/one percent (1%) referred to throughout the trial but that must be reduced by  
25 50% for work which was done by Nype while he was associated with FWS.  
26  
27  
28

1 Defendants' expert, Mr. Wills, testified that four percent (4%)/one percent (1%) was  
2 reasonable under the circumstances and that a finder's fee for hard money could be as high  
3 as 5 – 10%. Mr. Hygins testified for the Plaintiff/Counterdefendant that 0.6% was a  
4 reasonable fee and, that at most, one to one and a half percent (1 – 1 ½%) for a finder's fee  
5 for hard money is reasonable. Mr. Hygins' testimony was not credible as he opined that  
6 refinancing approximately \$89,000,000.00 in loans and getting the personal guarantees  
7 removed from Mr. Mitchell and Mr. Liberman had little to no value. The testimony was that  
8 Mr. Mitchell and Mr. Liberman, the owners of LVLP, had tried for almost two years to  
9 obtain a partner in order to develop this property and that considerable loans were becoming  
10 due, which could have resulted in the loss of the property. In addition, Mr. Hygins opined  
11 that the refinancing at a lower interest rate based on Forest City's net worth was also of little  
12 benefit. Lastly, Mr. Hygins testified that LVLP and Forest City's renegotiating the  
13 partnership agreement in 2009 would override the unjust enrichment theory, as LVLP  
14 effectively owned no further interest in the project. Although this may be the overall effect  
15 of the current financial agreement, it prevented the loss of the property by requiring Forest  
16 City to make all payments on the loans freeing LVLP of any encumbrances.

21 As previously stated, the benefits Mr. Mitchell and Mr. Liberman received from being  
22 relieved of their personal guarantees given the financial recession and/or depression in Las  
23 Vegas was enormous.

24 Lastly, Mr. Hygins testified that Forest City obtaining the \$100,000,000.00 loan based  
25 on their credit was of no benefit since LVLP was still a creditor on the note; however, it is  
26 clear that Forest City was the only entity that had assets should the note become due, given  
27  
28

1 the fact that the property was no longer worth even a third of the amount of the loan.

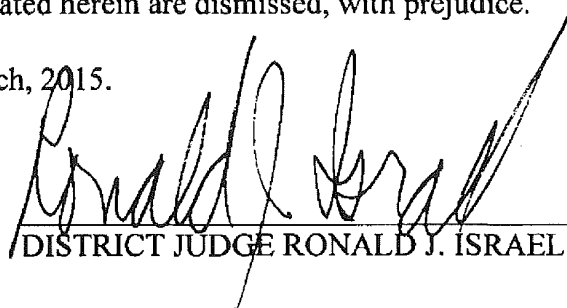
2 Mr. Wills testified at trial as to a range of damages. This Court, based on the  
3 evidence, finds damages in the amount of \$5,217,595.00 reduced by 50% attributable to  
4 work done by Nype while he was associated with FWS.

5  
6 Any conclusion of law that is determined to be a finding of fact shall be deemed  
7 accordingly.

8  
9 The Court hereby FINDS in favor of Defendants/Counterclaimants RUSSELL L.  
10 NYPE and REVENUE PLUS, LLC, and against Counterdefendant LAS VEGAS LAND  
11 PARTNERS, LLC., on Nype's claims in the total amount of TWO MILLION SIX  
12 HUNDRED EIGHT THOUSAND SEVEN HUNDRED NINETY-SEVEN DOLLARS and  
13 FIFTY CENTS (\$2,608,797.50).

14 The Court FURTHER FINDS in favor of Defendants/Counterclaimants RUSSELL L.  
15 NYPE and REVENUE PLUS, LLC, and dismisses, with prejudice, Plaintiffs Las Vegas  
16 Land Partners, LLC, LIVEWORK, LLC, and ZOE PROPERTIES, LLC's claims for  
17 declaratory relief, implied indemnity, equitable indemnity, and equitable estoppel. Any of  
18 the parties' claims not explicitly adjudicated herein are dismissed, with prejudice.

19 DATED this 26 day of March, 2015.

20  
21   
22 DISTRICT JUDGE RONALD J. ISRAEL

23 ///

24 ///

25 ///

26 ///

27 ///

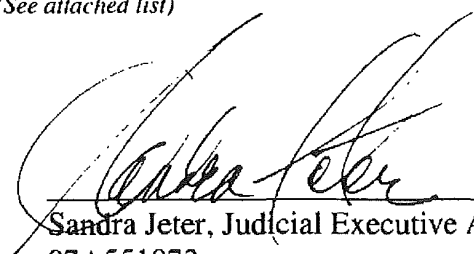
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 26<sup>th</sup> day of March, 2015, I e-served a true and correct copy of the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECISION as follows:

Matthew Dushoff, Esq.  
KOLESAR & LEATHAM  
*All e-service recipients listed in Wiznet/Odyssey (See attached list)*

Joshua H. Reisman, Esq.  
REISMAN SOROKAC  
*All e-service recipients listed in Wiznet/Odyssey (See attached list)*

  
Sandra Jeter, Judicial Executive Assistant  
07A551073  
Certificate of Service



# **EXHIBIT “2”**

DECL  
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*Attorneys for Plaintiffs*

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Entity Defendants.

CASE NO: A-16-740689-B

DEPT NO: XV

**DECLARATION OF RUSSELL NYPE**

STATE OF \_\_\_\_\_ )  
 ) ss:  
COUNTY OF \_\_\_\_\_ )

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

1  
2 1. My name is Russell Nype and I am one of two named Plaintiffs in the present case  
3 pending against Las Vegas Land Partners LLC, and its various principals, subsidiaries, affiliates,  
4 and associated companies.

5 2. Myself, and my wholly-owned company, Revenue Plus LLC, find ourselves as  
6 Plaintiffs in this case only after being involuntarily hailed to court as defendants in Nevada by  
7 Las Vegas Land Partners LLC, and two of its associated entities, Live Work, LLC and Zoe  
8 Properties, LLC.  
9

10 3. Indeed, early in the litigation in the first case, the Nevada litigation was stayed and  
11 litigation efforts proceeded in New York where in fact LVLP's principals, myself, and Revenue  
12 Plus were all operating.

13 4. Neither Revenue Plus nor I have ever maintained a regular office in the State of  
14 Nevada.  
15

16 5. Neither Revenue Plus nor I have ever had full-time employees operating in  
17 residing in the State of Nevada.

18 6. Most of the negotiations and underlying transactions which led to my judgment in  
19 the first case occurred in New York, Ohio, or outside the State of Nevada, and many were indeed  
20 conducted remotely by telephone, fax, and email.  
21

22 7. Other than Revenue Plus being a participant in the transaction between Las Vegas  
23 Land Partners and Forest City Enterprises, with regard to what ultimately turned into a joint  
24 venture between those two entities, as well as the affiliates and associated companies of LVLP,  
25 Revenue Plus, LLC has done virtually no business whatsoever nor had any presence whatsoever  
26 in the State of Nevada.  
27  
28

1           8.       When forced to defend ourselves in the litigation brought by LVLP and its  
2 associated companies, after significant expense and effort, we were ultimately able to prevail and  
3 obtain a judgment against LVLP on the counterclaim we brought.

4           9.       LVLP owns or owned, either directly or through associated entities multiple  
5 valuable parcels of real property, both developed and undeveloped all in Las Vegas, NV.  
6

7           10.      Having obtained a counterclaim judgment against LVLP, and given the fact that  
8 LAS VEGAS LAND PARTNERS LLC's primary activities were focused on the Las Vegas,  
9 Nevada area, what choice did Revenue Plus or I have but to come to Nevada to attempt to  
10 enforce our judgment!?

11           11.     Indeed, during the course of the first litigation, it was represented to me that the  
12 principals of Las Vegas Land Partners had boasted that they would undertake steps to assure that  
13 any judgment or award against them on my counterclaim would ultimately prove uncollectible.  
14

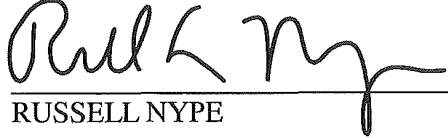
15           12.     Only after obtaining the judgment, and beginning serious post-judgment discovery  
16 and collection efforts, did it become readily apparent to myself that Las Vegas Land Partners  
17 LLC had structured its business affairs and finances so as to render itself without meaningful  
18 cash flow, without liquid assets, and effectively insolvent.  
19

20           13.     The aforesaid determination is based upon knowledge gained primarily from the  
21 post-judgment document production which commenced in September, 2015, and which  
22 continues through this day.

23           14.     In working with my attorneys, and accountants, and reviewing the documents that  
24 LVLP has been forced to produce, it has become readily apparent that LVLP continues to conceal  
25  
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1 important documents, make only partial production, and not comply with its discovery  
2 obligations, despite the existence of an order compelling discovery.

3 FURTHER YOUR DECLARANT SAYETH NAUGHT.

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6 RUSSELL NYPE  
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# EXHIBIT “3”

**DECL**  
 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 Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

CASE NO: A-16-740689-B

Plaintiffs,

DEPT NO: XV

vs.

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

Entity Defendants.

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

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

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

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

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

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

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

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

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

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

26  
27 ....  
28



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

6  
7 9. In point of fact, despite herculean efforts on the part of Nype and his counsel, the  
8 various underlying financial records of LVLP, including most importantly the various financial  
9 records regarding it's affiliated and associated entities and subsidiaries, were never obtained pre-  
10 judgment.

11  
12 10. In checking my records, and consulting with John W. Muije, collection counsel  
13 for Nype, the first wave of significant backup and underlying documents allegedly supporting the  
14 LVLP tax returns, including banking records and general ledgers, were not obtained until the Fall  
15 of 2015, commencing in September 2015 and initially spanning approximately three months  
16 thereafter.

17  
18 11. Even those general ledgers and banking records were not complete, resulting in  
19 Nype having to file a Motion to Compel on information and belief, on or about August 31, 2016.

20  
21 12. After several months of briefing and multiple hearings, on information and belief,  
22 the Court ultimately entered a Order Compelling Discovery, a true and correct copy of which is  
23 attached hereto as Exhibit "B".

24  
25 13. I have been in regular touch with Nype and his various counsel as to the progress  
26 of obtaining documents subsequent to the motion to compel.

27  
28 14. I am advised, informed and therefore believe and state that even after the order  
compelling production of documents, (Exh. "B"), which required significant financial

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

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

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

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

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

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

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

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

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

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

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

16  
17 25. What is critically important, however, is that only in the Fall of 2015 and  
18 continuing to the present, has LVLP actually started producing underlying source and financial  
19 documentation critically necessary to understand its many transactions, and the financial impact  
20 thereof.  
21

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

27 . . . .  
28

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

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

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

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

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

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

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

6  
7 FURTHER YOUR DECLARANT SAYETH NAUGHT.

8  
9   
10 MARK RICH

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28

# **EXHIBIT “A”**

**Mark D. Rich  
Certified Public Accountant  
Certified in Financial Forensics**

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

**EDUCATION/CERTIFICATIONS:**

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

Certified in Financial Forensics, CFF (AICPA designation)

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

**PROFESSIONAL EXPERIENCE:**

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

**PROFESSIONAL MEMBERSHIPS:**

Nevada Society of CPA's

Past: Elected to Board of Directors  
Served on Financial Accounting Standards Committee  
Served on Litigation Consulting Services Committee  
Served on various other committees since 1981

American Institute of Certified Public Accountants

American Institute of Certified Public Accountants, Certified in Financial Forensics

Association of Certified Fraud Examiners

Institute of Internal Auditors (inactive)

Participant in AICPA/Nevada Society Quality Review Program (Peer Review)

Phi Kappa Phi Honor Society

UNLV Alumni Association Board Member/Membership Chair

UNLV Planned Estate Giving Advisors Council

Enrolled to Practice before Gaming Control Board

Served on Board of Directors of Habitat for Humanity (CFO)

Industry Partner in Institute of Real Estate Management (IREM)

**SPECIALIZED AREAS OF INDUSTRY EXPERIENCE:**

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

**ADDITIONAL TRAINING AND PROFESSIONAL COURSES:**

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

**PUBLICATIONS:**

National Business Institute: Real-Life Ethics for Nevada CPAs

**FIRM BILLING RATES EFFECTIVE 2016:**


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



# **SIGNIFICANT CASE HISTORY:**

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

# **EXHIBIT “B”**

  
CLERK OF THE COURT

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

DISTRICT COURT  
CLARK COUNTY, NEVADA

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

Plaintiffs,

CASE NO: A-07-551073

vs.

DEPT. NO: XXVIII

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

Defendants.

**DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATIONS**

15 RUSSELL L. NYPE; REVENUE PLUS, LLC

DATE: October 14, 2016

Judgment Creditors,

TIME: 9:00 a.m.

vs.

18 LAS VEGAS LAND PARTNERS, LLC,

Judgment Debtor.

**DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION**

Hearing Date: October 14, 2016

Hearing Time: 9:00 a.m.

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

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

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

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



I.

FINDINGS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 of the following for LVLP's subsidiaries:

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

5 The Court notes that LVLP has agreed to produce such documentation at its offices ~~are~~ in  
6 New York.

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

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

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

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

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

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

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

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

16 **II.**

17 **RECOMMENDATIONS**

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

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

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

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

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

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

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

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

24       ....  
25       ....  
26       ....  
27       ....  
28       ....



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

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

7 CONCLUDING RECOMMENDATIONS

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

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

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

LAS VEGAS LAND

NYPE

ASSISTANT

10/14/16 Hearing

4. Nype's request for sanctions is denied.

DATED this 20 day of <sup>December</sup> November, 2016.

  
DISCOVERY COMMISSIONER

Submitted by:

JOHN W. MUIJE & ASSOCIATES

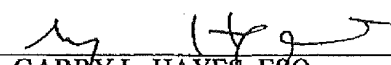
By:

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

Approved as to form and content by:

HAYES & WELSH

By:

  
GARRY L. HAYES, ESQ.  
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Facsimile: (702) 434-3739  
E-Mail: [ghayes@nevlaw.com](mailto:ghayes@nevlaw.com)  
Attorneys for Plaintiff/Counter-  
Defendant, LAS VEGAS LAND  
PARTNERS, LLC

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

NOTICE

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

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

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

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

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

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

By: Notiki Fekanson  
Commissioner Designee

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

ORDER

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

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

\* \* \*

AND

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

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

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

DATED this 1 day of Feb, 2017.

  
DISTRICT COURT JUDGE

R:\J Files\Nype vs Las Vegas Land Partners, 13792\HW\Pending\11-29-16 Discovery Commissioner's Report & Recommendation.wpd

# **EXHIBIT “C”**

**Subject:** Fwd: Disregarded entities  
**Date:** Friday, December 16, 2016 at 9:47:00 AM Pacific Standard Time  
**From:** David Mitchell  
**To:** Garry Hayes  
**Attachments:** image001.jpg, ATT00001.htm, DISREGARDED ENTITIES.pdf, ATT00002.htm

.....  
**DAVID MITCHELL**  
.....

Mitchell Holdings LLC  
801 Madison Avenue  
New York NY 10065  
USA  
1212-486-4444  
[djm@mitchellholdings.com](mailto:djm@mitchellholdings.com)

Begin forwarded message:

**From:** Sam Spitz <[sam@skecpa.com](mailto:sam@skecpa.com)>  
**Date:** December 16, 2016 at 12:45:50 PM EST  
**To:** "David Mitchell ([djm@mitchellholdings.com](mailto:djm@mitchellholdings.com))" <[djm@mitchellholdings.com](mailto:djm@mitchellholdings.com)>  
**Subject:** Disregarded entities

Attached is a schedule we previously provided to you which lists all of the entities that are disregarded for tax purposes. All transactions were reported on LVL tax return

*Sam K. Spitz, Esq., CPA*  
[sam@skecpa.com](mailto:sam@skecpa.com)

LVLP HOLDINGS

LLC	Property	Date Acquired
GAVIAYANA COMPANY LLC	JUDGES	2004
EXCHANGE FOR CASA MITCHELL LLC	LAKES	2004
CASA MITCHELL LLC	WHEELER	2005
LAS VEGAS BONNEVILLE PARTNERS LLC	PRUDENTIAL	2004
AVA PROPERTY LLC	DOCTORS	2004
STELLA PROPERTY LLC	KREIGER	2005
ZOE PROPERTY LLC	777 PROPERTY	2005
ZOE PROPERTY LLC	QUEEN OF HEARTS	2006
AARON PROPERTY LLC	GRAGSON	2005
MARC PROPERTY LLC	GREGORY II	2005
LEAH LLC	COOLIDGE	2005 PARTIAL SALE 2007
ADRIAN PROPERTY LLC	MASON	2005
AQUARIUS OWNER LLC	EAST CHARLESTON	2006 SOLD 2007
LAS VEGAS LAND PARTNERS	BLAYLOCK	2006
MEYER PROPERTY LLC	DEVLIN	2006
??	BOOKSTORE	2006
LIVEWORK LLC	SPILATRO	2005
LIVEWORK LLC	DESERT MANOR	2005
LIVEWORK LLC	BIGELOW "DAISY"	2005
LIVEWORK LLC	BIGELOW	2005
LIVEWORK LLC	SUNSTATE	2005
LIVEWORK LLC	APACHE	2005
LIVEWORK LLC	TOWERS	2005
LIVEWORK LLC	GLENNEN	2005
LIVEWORK LLC	COLEMAN	2005
LIVEWORK LLC	BEESEY	2006
LIVEWORK LLC	TRIOPOLY	2006
LIVEWORK LLC	LOGAN	2006
LIVEWORK LLC	CROMER	2007

# **EXHIBIT “D”**



**2015—08-11 1<sup>st</sup> document prod**

01-2006 Signature Bank Statements.pdf  
02-2007 Signature Bank Statements.pdf  
03-2008 Signature Bank Statements.pdf  
04-2009 Signature Bank Statements.pdf  
05\_October-December 2011 Signature Bank Statements.pdf  
06\_January-December 2012 Signature Bank Statements.pdf  
07\_January-December 2013 Signature Bank Statements.pdf  
08\_January-March 2014 Signature Bank Statements.pdf  
09\_2013 Federal and NY State Tax Returns.pdf  
10\_2012 Federal and NY State Tax Returns.pdf  
11\_2011 Federal and NY State Tax Returns.pdf  
12\_2010 Federal and NY State Tax Returns.pdf  
13\_2009 Federal and NY State Tax Returns.pdf  
14\_2008 Federal and NY State Tax Returns.pdf  
15\_2007 Federal and NY State Tax Returns.pdf  
16\_2006 Federal and NY State Tax Returns.pdf  
17\_2013 Federal and NY State Tax Returns.pdf  
18\_Management Agreements.pdf  
19\_Entity & Organizational Documents.pdf  
Index to bind # 1.doc

**2015---08-28 2d doc production**

- 01\_Closing Binder 01-11-2006.pdf
- 02\_Sale of Livework to Forest City.pdf
- 03\_Unanimous Consnet of The Members of LV Land Partners LLC.pdf
- 04\_Demand Promissory Note 02-01-2008.pdf
- 05\_Lav Land Partners and Regional Trans. Commission of S. NV.pdf
- 06\_Certificate of Borrower Leah Property.pdf
- 07\_Sale of Casino Center Property.pdf

**2015---09-01 3d doc production**

PDF (Folder, Contains Tab01.pdf through Tab19.pdf)  
Cromer Purchase Agreement (Final Executed).pdf  
First Amendment to Parking Lot Contract.pdf  
Guggenheim Corporate Funding, LLC.pdf  
INDEX.pdf  
Parking Lot Contract.pdf  
Purchase Agreement (with Amendment & Assignment) - Tripoly.pdf  
Queen of Hearts Executed Final Purchase Sale Agreement.pdf  
2<sup>nd</sup> Letter Agreement Amending Logan Contract.doc  
Book Store Property Contract.doc  
Letter Agreement Amending Book Store Contract.doc  
Letter Agreement Amending Logan Contract.doc  
Logan Trust (Oregon) Contract of Sale (outside).doc

**2015---10 - LVLP Supplemental Docs produced**

2015—11-12 COPY OF LVLP TAX RETURN FOR 2014.pdf

lvlp3a.pdf

LVLP 2006 Ledger.pdf

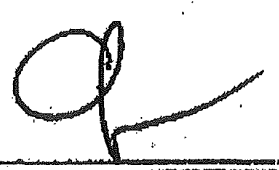
LVLP 2007 Ledger.pdf

LVLP 2008 Ledger.pdf


LVLP 2009 Ledger.pdf

LVLP 2010 Ledger.pdf

# **EXHIBIT “E”**

<b>DAVID J. MITCHELL</b> 801 MADISON AVE 4TH FLOOR NEW YORK, NY 10068		9152-3 ✓	<small>PURCHASE ORDER BANK NEW YORK, NY 10068 FOR ACH &amp; WIRE TRANSFER ONLY</small>	<b>2068</b> <small>1-220000 0000</small>
			<b>02/20/15</b>	
<b>PAY TO THE ORDER OF</b>	<b>Kolesar &amp; Leatham LLP</b>			<b>\$ 57,132.80</b>
<b>Fifty-Seven Thousand One Hundred Thirty-Two and 80/100</b>				<b>DOLLARS</b>
<b>Kolesar &amp; Leatham LLP</b>				
<b>MEMO</b>		<b>AUTHORIZED SIGNATURE</b>		
<b>⑆002068⑆ ⑆026013220⑆ 80000623513⑆</b>				

Check # 2068 Date 2/26/2015 Amount \$57,132.80

<b>DAVID J. MITCHELL</b> 801 MADISON AVE 4TH FLOOR NEW YORK, NY 10065		9152-3 ✓	2115 <small>NEW YORK, NY 10020          POSTAL SERVICE PERMIT NO. 1000 NEW YORK, NY</small>
		04/07/15	
PAY TO THE ORDER OF <b>Kolesar &amp; Leatham LLP</b>		\$ 5,684.92	
Five Thousand Six Hundred Eighty-Four and 92/100			DOLLARS
Kolesar & Leatham LLP			
MEMO NY #167252			
		AUTHORIZED SIGNATURE	
⑈002115⑈ 4026013220⑈ 80000623513⑈			

Check # 2115 Date 4/14/2015 Amount \$5,684.92

6152-3

2128

**V-1000**

05/11/19

**\$ 16,691.22**

**Eighteen Thousand Five Hundred Ninety-One and 22/100 \*\*\*\*\* DOLLARS**

**Kolster & Leatham LLP**

# AGELIO


Inv #167836

### AUTHORIZED REPRESENTATIVE

#002128# @026013420# 80000623514#

**Check # 2128 Date 5/19/2015 Amount \$18,591.22**



<b>DAVID J. MITCHELL</b> 601 MADISON AVE 8TH FLOOR NEW YORK, NY 10065		<b>2090</b> <small>1-1222/150 0479</small>
		<b>03/10/15</b>
PAY TO THE ORDER OF	<b>Kofas &amp; Leatham LLP</b>	<b>\$ 18,472.14</b>
Eighteen Thousand Four Hundred Seventy-Two and 14/100		DOLLARS
Kofas & Leatham LLP		
MEMO (4) Inv #165822 (9/82-3)	AUTHORIZED SIGNATURE	
⑆002090⑆ ⑆026013220⑆ 80000623513⑆		

Check # 2090 Date 3/17/2015 Amount \$18,472.14



Transaction Details Prepared for  
David J Mitchell  
Account Number  
XXXX-XXXXXX-66003

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
APR27 2016	HAYES AND WELSH OP 899000002931176 - HENDERSON, NV	DAVID J MITCHELL	\$335.45
<p>Doing business as: <b>HAYES &amp; WELSH OP</b> 199 N ARROYO GRANDE BLVD STE 200 HENDERSON NV 89074 UNITED STATES OF AMERICA (THE) 702.434.3444</p> <p>Additional Information: GHAYES@LVLAW.COM Reference: 320161190267761695 Category: Business Services - Legal Services</p>			



Transaction Details Prepared for  
David J Mitchell  
Account Number  
XXXX-XXXXXX-66003

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
MAY24 2016	HAYES AND WELSH OP 899000002931176 - HENDERSON, NV	DAVID J MITCHELL	\$12,500.00
<p>Doing business as: <b>HAYES &amp; WELSH OP</b> 199 N ARROYO GRANDE BLVD STE 200 HENDERSON NV 89074 UNITED STATES OF AMERICA (THE) 702.434.3444</p> <p>Additional Information: GHAYES@LVLAW.COM Reference: 320161460728742622 Category: Business Services - Legal Services</p>			



Transaction Details Prepared for  
David J Mitchell  
Account Number  
XXXX-XXXXXX-66003

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
JUN20 2016	HAYES AND WELSH OP 899000002931176 - HENDERSON, NV	DAVID J MITCHELL	\$12,500.00
<p>Doing business as: <b>HAYES &amp; WELSH OP</b> 199 N ARROYO GRANDE BLVD STE 200 HENDERSON NV 89074 UNITED STATES OF AMERICA (THE) 702.434.3444</p> <p>Additional Information: GHAYES@LVLAW.COM Reference: 320161730190593248 Category: Business Services - Legal Services</p>			



Transaction Details Prepared for  
David J Mitchell  
Account Number  
XXXX-XXXXXX-66003

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
FEB1 2016	MARQUIS AURBACH COFFIN - LAS VEGAS, NV	DAVID J MITCHELL	\$12,500.00
<p>Doing business as: <b>MARQUIS AURBACH COFFING PC</b> 10001 PARK RUN DR LAS VEGAS NV 89145 UNITED STATES OF AMERICA (THE) 702.382.0711</p> <p>Additional Information: 702-382-0711 Reference: 320160330861139406 Category: Business Services - Legal Services</p>			



Transaction Details Prepared for  
**David J Mitchell**  
Account Number  
XXXX-XXXXXX-66003

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
MAY2 2016	MARQUIS AURBACH COFFIN - LAS VEGAS, NV	DAVID J MITCHELL	\$37,500.00
<p>Doing business as: <b>MARQUIS AURBACH COFFING PC</b> 10001 PARK RUN DR LAS VEGAS NV 89145 UNITED STATES OF AMERICA (THE) 702.382.0711</p> <p>Additional Information: 702-382-0711 Reference: 320161240369539112 Category: Business Services - Legal Services</p>			



Transaction Details Prepared for  
David J Mitchell  
Account Number  
XXXX-XXXXXX-93009

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
MAR21 2016	MARQUIS AURBACH COFFIN - LAS VEGAS, NV	DAVID J MITCHELL	\$12,500.00
Doing business as: <b>MARQUIS AURBACH COFFING PC</b> 10001 PARK RUN DR LAS VEGAS NV 89145 UNITED STATES 702.382.0711  Additional Information: 702-382-0711 Reference: 320160820651585996 Category: Business Services - Legal Services			



Transaction Details Prepared for  
David J Mitchell  
Account Number  
XXXX-XXXXXX-93009

DATE	DESCRIPTION	CARD MEMBER	AMOUNT
JUN27 2016	MARQUIS AURBACH COFFIN - LAS VEGAS, NV	DAVID J MITCHELL	\$37,500.00
<p>Doing business as: <b>MARQUIS AURBACH COFFING PC</b> 10001 PARK RUN DR LAS VEGAS NV 89145 UNITED STATES 702.382.0711</p> <p>Additional Information: 702-382-0711 Reference: 320161800307454991 Category: Business Services - Legal Services</p>			



4784  
reattached

3036

**LAS VEGAS LAND PARTNERS, LLC**  
801 MADISON AVE, 4TH FL  
NEW YORK, NY 10065

**SIGNATURE BANK**  
PRIVATE CLIENT GROUP 222  
NEW YORK, NY 10018  
1-1357-260

11/25/14

PAY TO THE ORDER OF Gibbs, Giden, Locher, Turner, Senet, Wittbrodt LLP \$ 20,000.00


Twenty thousand & no/100 DOLLARS

MEMO Settlement Agreement (50%)

Of  
AUTHORIZED SIGNATURE

⑈003036⑈ ⑆026013576⑆ 1500570489⑈

FOR DEPOSIT ONLY  
002277018  
122016066



1 **ROPP**

2 GARRY L. HAYES, ESQ.

3 Nevada State Bar No. 1540

4 MEGAN K. MAYRY MCHENRY, ESQ.

5 Nevada State Bar No. 9119

6 LAW OFFICE OF HAYES & WELSH

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8 Henderson, Nevada 89074

9 Phone: 702-832-5592

10 Fax: 702-434-3739

11 [m.mayry@lvlaw.com](mailto:m.mayry@lvlaw.com) ; [L.finchio@nevlaw.com](mailto:L.finchio@nevlaw.com)

12 *Attorneys for Defendants*

13 DISTRICT COURT

14 CLARK COUNTY, NEVADA

15 RUSSELL L. NYPE; REVENUE PLUS, LLC;  
16 DOES I-X; DOE CORPORATIONS I-X; and  
17 DOE PARTNERSHIPS I-X,

18 Plaintiffs,

19 v.

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

Defendants.

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

Hearing Date: July 13, 2017  
Time of Hearing: 9:00 a.m.

**DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO MOTION TO  
DISMISS PLAINTIFFS' COMPLAINT PURSUANT TO  
NRS 86.548(2), NRCP 12(b)(2) AND 12(b)(5)**

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

1 LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS,  
2 LLC; LIVE WORKS TIC SUCCESSOR, LLC; and, CASINO COOLIDGE LLC (hereinafter  
3 "Defendants"), by and through their attorney of record, the Law Office of Hayes & Welsh,  
4 hereby file their Reply to Plaintiffs' Opposition to Defendants' Motion to Dismiss.

5 This Reply is based upon the pleadings and papers on file herein, the Memorandum of  
6 Points and Authorities filed herewith and any oral argument the Court allows at the time of  
7 hearing on this matter.

8 Dated this 6<sup>th</sup> day of July, 2017.

9  
10 LAW OFFICE OF HAYES & WELSH

11   
12 MEGAN K. MAYRY MCHENRY, ESQ.

13 Nevada Bar No. 9119

14 199 N. Arroyo Grande Blvd., Suite 200

15 Henderson, NV 89074

16 *Attorneys for Defendants*

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 **I.**

19 **INTRODUCTION**

20 Plaintiffs' Opposition to Defendants' Motion to Dismiss (hereinafter "Opposition")  
21 fails to address the deficiencies in their Complaint which are the basis of Defendants'  
22 Motion to Dismiss. Instead of addressing the fact that Plaintiffs' Complaint has failed to  
23 provide sufficient facts to give notice of the basis of their claims, Plaintiffs attempt to  
24 distract the Court by setting forth all the alleged misdeeds of Defendant, Las Vegas Land  
25 Partners, LLC (hereinafter "LVLP"). It is already uncontested that there is a dispute  
26 between Plaintiffs and LVLP in a separate case. The question is exactly on what basis are  
27 Plaintiffs suing the other defendants? The fact that Plaintiffs have been unable to collect on  
28 their Judgment against LVLP is not a sufficient basis for them to seek recovery from the  
other defendants. Plaintiffs are required to establish personal jurisdiction over the out-of-  
state defendants, and plead every element of their causes of action against Defendants to be

1 allowed to proceed with their case against these third parties. Plaintiffs, however, have  
2 failed to do so, and their Complaint should therefore be dismissed.

3  
4 **II.**

5 **FAILURE TO REGISTER IN NEVADA**

6 It is undisputed that Plaintiff, Revenue Plus, LLC, has never been registered with the  
7 Nevada Secretary of State. In their Opposition, Plaintiffs assert that they should not be required  
8 to comply with the provisions of NRS 86.544 and NRS 86.548(2) because they were originally  
9 sued by LVLP. Although Plaintiffs believe that this case should be treated as an extension of  
10 their first case with LVLP, this is a new and separate case with different causes of action against  
11 different defendants. In this case, Plaintiffs have hauled fifteen new defendants into Nevada  
12 court. As it provides in NRS 86.548(2), to be able to avail itself of the Nevada courts, Revenue  
13 Plus, LLC must be registered with the Nevada Secretary of State.

14  
15 As cited by Plaintiffs, NRS 86.5483 provides a list of activities which do not constitute  
16 transacting business within the state. Plaintiffs' activities in Nevada go well beyond those  
17 listed in the statute, however. It has always been Plaintiffs' position that they performed real  
18 estate activities, including attending meetings, conducting property tours, and developing  
19 marketing materials, all for real property located in Las Vegas, Nevada, for approximately two  
20 years.

21  
22 The case cited by Plaintiffs in their Opposition, *In the Matter of the Las Vegas Hilton*  
23 *Hotel Fire Litigation*, 101 Nev. 489, 706 P.2d 137 (1985), is not analogous to the facts in this  
24 case. In the *Hilton Hotel* case, the court held that attending a convention in Las Vegas is not  
25 considered to be "doing business," but is an "isolated business act," which does not require  
26 registration with the Nevada Secretary of State. In this case, however, Plaintiffs were  
27 conducting business related to Las Vegas property over a period of approximately two years.  
28

1 Plaintiffs allegedly performed so much work related to the Las Vegas property that they were  
2 awarded \$2,608,797.50. This is well beyond an “isolated business act.” Therefore, Revenue  
3 Plus, LLC has clearly conducted business in Nevada without registering with the Nevada  
4 Secretary of State and is barred from filing suit in Nevada.

5 **III.**

6 **PERSONAL JURISDICTION**

7 **A. Plaintiffs Must Establish Personal Jurisdiction Over Each Defendant**  
8 **Individually to Avoid Immediate Dismissal of their Complaint**

9 Plaintiffs correctly state that for purposes of a motion to dismiss, the allegations in the  
10 Complaint must be construed in favor of the plaintiff. In their Opposition, however, Plaintiffs  
11 incorrectly request that the Court extend this principle to their obligation of establishing  
12 personal jurisdiction over each and every defendant. Plaintiffs allege that Defendants have not  
13 presented any supporting documentation or evidence to support their Motion to Dismiss.  
14 Despite Plaintiffs’ contention, Defendants are not required to present evidence in a motion to  
15 dismiss. Instead, Plaintiffs are required to make a prima facie case of personal jurisdiction  
16 over each defendant individually at this juncture, in order to proceed to discovery on their  
17 claims. Additionally, Plaintiffs have the burden of establishing personal jurisdiction over each  
18 defendant individually by a preponderance of the evidence at a pre-trial evidentiary hearing.<sup>1</sup>  
19  
20  
21  
22

23 \_\_\_\_\_  
24 <sup>1</sup> Defendants do not contest jurisdiction over Defendants, Las Vegas Land Partners, LLC and Casino  
25 Coolidge LLC. LVLP is a Delaware LLC, registered in Nevada. Casino Coolidge LLC is a Nevada  
26 LLC.

26 Plaintiffs do need to establish personal jurisdiction over the other defendants, however. As discussed  
27 in detail in Defendants’ Motion to Dismiss, David J. Mitchell is a resident of New York; and, Meyer  
28 Property, Ltd., Mitchell Holdings, LLC, Zoe Property, LLC, Leah Property, LLC, Live Work, LLC,  
Live Work Manager, LLC, Live Works TIC Successor, LLC, LVLP Holdings, LLC, Aquarius  
Owner, LLC, and Wink One LLC are all Delaware LLCs. Defendants have never had any  
relationship with the dissolved Liberman Holdings, LLC, and Defendants believe that it has been  
erroneously included as a defendant.

1 As it states in *Viega GMBH v. Eighth Judicial Dist. Court*, 328 P.3d 1152 (Nev. 2014),  
2 the Court can only exercise jurisdiction over a nonresident defendant after a plaintiff shows  
3 the exercise of jurisdiction satisfies the requirements of Nevada’s long-arm statute and does  
4 not offend principles of due process. *Id.* at 1156. Plaintiffs must present evidence to support  
5 either general jurisdiction or specific personal jurisdiction and that it is reasonable to subject  
6 Defendants to suit here. *See id.* at 1156 – 57.

7 It is undisputed that this Court does not have general jurisdiction over Defendants.  
8 General jurisdiction can only be exercised “over a foreign company when its contacts with the  
9 forum state are so ‘continuous and systematic as to render [it] essentially at home in the forum  
10 state.” *Id.* In their Opposition, Plaintiffs allege that Defendants were “at one time qualified  
11 and registered to do business in the State of Nevada, and/or owned beneficial interests in  
12 Nevada real estate.” (*See* Plaintiffs’ Opposition at page 9, lines 23 – 25.) Although Plaintiffs  
13 do not provide any evidence in support of these allegations, they clearly do not create a  
14 question of general personal jurisdiction.  
15

16 Accordingly, Plaintiffs are required to establish specific personal jurisdiction over each  
17 defendant individually in order to avoid dismissal. To establish specific personal jurisdiction  
18 over Defendants, Plaintiffs must prove by a preponderance of the evidence that each defendant  
19 purposefully entered Nevada, established contacts and affirmatively directed conduct in  
20 Nevada, and that Plaintiffs’ claims arise from the same purposeful contact or conduct. *See id.*  
21 at 1157.  
22

23 **B. Plaintiffs’ Alter Ego Claim Does Not Establish Personal Jurisdiction Over**  
24 **Defendants**

25 Plaintiffs’ only argument in support of personal jurisdiction is that if Defendants are  
26 found to be the alter egos of LVLP, then the Court will have personal jurisdiction over  
27 Defendants. If Plaintiffs’ alter ego claim is not dismissed at this juncture, Plaintiffs “must  
28

1 produce some evidence in support of all facts necessary for a finding of personal jurisdiction”  
2 in order to proceed to discovery. *See Trump v. Eighth Judicial Dist. Court*, 109 Nev. 687, 692,  
3 857 P.2d 740, 743 (Nev. 1993). The burden of proof never shifts to Defendants. *See id.*  
4 Instead, Plaintiffs must make a prima facie showing supported by some evidence; allegations  
5 are not sufficient. *See id.* “If the plaintiff makes a prima facie case of jurisdiction prior to trial,  
6 the plaintiff must still prove personal jurisdiction at trial by a preponderance of the evidence.”  
7 *Id.* at 693, 744. Additionally, Defendants may require Plaintiffs “to prove personal jurisdiction  
8 by a preponderance of the evidence in a pretrial evidentiary hearing rather than being forced  
9 to wait until trial to put the plaintiff to full proof.” *Id.* at 693 – 694, 744.

11 Requiring Plaintiffs to prove personal jurisdiction at an evidentiary hearing is  
12 especially appropriate since Plaintiffs’ sole argument for personal jurisdiction over Defendants  
13 is based on their alter ego claim. Defendants should not be forced to endure expensive  
14 discovery, unless Plaintiffs can present evidence to support their alter ego claim against  
15 Defendants. As discussed in detail in Section VI. below, Plaintiffs have not alleged any  
16 specific facts in support of their alter ego claim in this case. Only conclusory allegations have  
17 been made by Plaintiffs, which is not enough to establish personal jurisdiction.

19 Additionally, as discussed in Section VI. below, the parties agree that Delaware law  
20 should apply since the defendant LLCs were formed under the laws of the State of Delaware.

21 Regarding personal jurisdiction in alter ego actions, the Delaware Courts have held that:

22 Once a defendant challenges personal jurisdiction, the plaintiff bears the burden  
23 of establishing a *prima facie* case that the court has personal jurisdiction over  
24 the defendant. . . . “Failure to make an adequate evidentiary showing of facts  
25 sufficient to satisfy the requirements of either component of the personal  
jurisdiction test [is] fatal to plaintiffs’ defense of [a] motion [to dismiss for lack  
of personal jurisdiction].”

26 *Marketing Products Management, LLC v. Health and Beauty Direct.com, Inc.*, Memorandum  
27 Opinion, C.A. No. 02C-04-256 CLS, at \*2 - 3 (Del. Super. Jan. 28, 2004). Additionally, in a  
28

1 case cited by Plaintiffs in their Opposition, *Taberna Preferred Funding II, Ltd. v. Advance*  
2 *Realty Group LLC*, 5 N.Y.S.3d 330 (N.Y. Sup. Ct. 2014), the Court noted that the complaint's  
3 deficiencies in regard to personal jurisdiction were not remedied by the submission of an  
4 affidavit detailing other instances where the defendants conducted business in New York. "In  
5 short, the Taberna Funds have failed to demonstrate that Coccoziello or Sheridan, whether  
6 personally or through their agents, engaged in activity in this state in relation to the 2008  
7 restructuring that would subject them to the jurisdiction of this court." *Id.*

8  
9 In *Viega GMBH*, the plaintiffs alleged an agency relationship between the defendants  
10 as the basis for personal jurisdiction over the foreign corporations. *Viega GMBH*, 328 P.3d at  
11 1161. The plaintiffs argued that they should be allowed to conduct "jurisdictional discovery  
12 for the purpose of obtaining evidence to prove personal jurisdiction" over the foreign  
13 corporations. *Id.* However, since the plaintiffs had not shown more than a typical parent-  
14 subsidiary relationship, they could not be allowed to proceed with their case against the foreign  
15 corporations. *Id.* The Nevada Supreme Court stated:

16  
17 We recognize that without discovery it may be extremely difficult for plaintiffs  
18 . . . to make a prima facie showing of jurisdiction over a foreign corporation. . .  
19 . [But] [t]he rules governing establishment of jurisdiction over such a foreign  
20 corporation are clear and settled, and it would be inappropriate for us to deviate  
21 from them or to create an exception to them because of the problems plaintiffs  
22 may have in meeting their somewhat strict standards.

23 *Id.* (quoting *Jazini v. Nissan Motor Co., Ltd.*, 148 F.3d 181, 186 (2<sup>nd</sup> Cir. 1998)). Therefore,  
24 pursuant to *Viega GMBH*, Plaintiffs must prove the basis for personal jurisdiction over  
25 Defendants, i.e. alter ego, by a preponderance of the evidence before they can proceed with  
26 their case against Defendants.

27 **C. Even if Plaintiffs Meet Their Burden of Proof, This Case Should Not Proceed**  
28 **in Nevada**

If Plaintiffs meet their burden of proof for personal jurisdiction, Defendants should then  
be given the opportunity to show that jurisdiction is still unreasonable under the *World-Wide*



1 *Volkswagen Corp.* factors. *See Trump*, 109 Nev. at 701, 857 P.2d at 749. Since Plaintiffs and  
2 a majority of the defendants are not residents of Nevada, it is likely that the Court will find that  
3 jurisdiction in Nevada is not reasonable. Additionally, if Delaware law applies to Plaintiffs'  
4 claims in this case, Plaintiffs' claims should be filed and heard in the Delaware Chancery  
5 Court, so that it can decide whether the corporate alter ego doctrine applies to limited liability  
6 companies. A court in Nevada should not decide such a significant question under Delaware  
7 law. Finally, Delaware Courts have already held that the "Delaware Court of Chancery has  
8 sole jurisdiction over actions to 'pierce the corporate veil.'" *See Marketing Products*  
9 *Management, LLC v. Health and Beauty Direct.com, Inc.*, C.A. No. 02C-04-256 CLS, at \*9  
10 (Del. Super Jan. 28, 2004).

12 In conclusion, if the Court finds that Plaintiffs have not met their burden to make a  
13 prima facie case of personal jurisdiction over each defendant individually, Defendants' Motion  
14 to Dismiss should be granted on that basis. If the Court finds that Plaintiffs have made a prima  
15 facie case of personal jurisdiction, for the sake of judicial economy and the resources of the  
16 numerous defendants in this case, Defendants request that the Court hold an evidentiary  
17 hearing as soon as possible, at which Plaintiffs must prove personal jurisdiction over each  
18 defendant individually by a preponderance of the evidence.

#### 20 IV.

#### 21 FAILURE TO STATE A CLAIM

22 At the outset, it should be noted that only the allegations contained in the pleadings  
23 should be considered on a motion to dismiss under NRCP 12(b)(5). NRCP 12(b) states in  
24 pertinent part:  
25

26 If, on a motion asserting the defense numbered (5) to dismiss for failure of the  
27 pleading to state a claim upon which relief can be granted, matters outside the  
28 pleading are presented to and not excluded by the court, the motion shall be  
treated as one for summary judgment and disposed of as provided in Rule 56,

1 and all parties shall be given reasonable opportunity to present all material made  
2 pertinent to such a motion by Rule 56.

3 Therefore, it follows that if a motion to dismiss is only based on the pleadings, information  
4 and evidence outside of the pleadings should not be considered. Defendants' Motion to  
5 Dismiss is not based on matters outside of the pleadings, which is why there were no exhibits  
6 or affidavits attached. In their Opposition, Plaintiffs use new information, including the  
7 declaration of Plaintiff and of a potential expert witness, to try to prevent dismissal, without  
8 addressing the deficiencies in the Complaint. The undisputed fact is that Plaintiffs' Complaint  
9 has failed to state a claim upon which relief can be granted and should be dismissed.

10 In their Opposition, Plaintiffs repeatedly argue that the Complaint is less specific than  
11 it might ideally be, and it was not filed until July 2016, because of Defendants' alleged actions  
12 to prevent Plaintiffs from enforcing the Judgment. Rather than provide the factual basis for  
13 their claims in this case, Plaintiffs' Opposition seeks to air their grievances regarding their  
14 disputes with LVLP in the first case. The first case and the discovery disputes between the  
15 parties in that case are not relevant to this case. For Plaintiffs' claims against Defendants in  
16 this case to survive dismissal, Plaintiffs were required to plead sufficient facts to give notice  
17 of their claims to Defendants, which they failed to do. In their Opposition, Plaintiffs still do  
18 not allege sufficient facts to support their claims.

19  
20  
21 **A. Dismissal of Plaintiffs' First Claim for Relief for Constructive Trust, Third Claim**  
22 **for Relief for Civil Conspiracy, and Fourth Claim for Relief for Declaratory**  
23 **Relief, is Unopposed by Plaintiffs**

24 Plaintiffs do not even address their failure to state actionable claims for constructive  
25 trust, civil conspiracy, and declaratory relief, in their Opposition. The law on these causes of  
26 action was briefed at length in Defendants' Motion to Dismiss, and Plaintiffs have not provided  
27 any other law or argument. Therefore, Plaintiffs' first claim for relief for constructive trust,  
28

1 third claim for relief for civil conspiracy, and fourth claim for relief for declaratory relief  
2 should be dismissed at this time.

3 **B. Plaintiffs' Second Claim for Relief for Fraudulent Conveyance Should be**  
4 **Dismissed Because Plaintiffs Have Failed to Allege Sufficient Facts to Give Notice**  
5 **of Their Claim to Defendants**

6 Although Plaintiffs state in their Opposition that they have the relevant details of the  
7 fraudulent conveyance transactions, they failed to provide any of the details. The facts  
8 supporting the claim were required to be pled in the Complaint, and Plaintiffs still failed to  
9 provide them in their Opposition. For this reason alone, Plaintiffs' second claim for relief for  
10 fraudulent conveyance should be dismissed.

11 In their Opposition, Plaintiffs allege that "some of the relevant details of the fraudulent  
12 conveyance transactions were first disclosed to plaintiff less than one year prior to the filing of  
13 this suit, i.e. in the Fall of 2015." (See Plaintiffs' Opposition at page 12, lines 10 – 12.) In  
14 their Complaint, Plaintiffs allege that the information on the fraudulent transfers was revealed  
15 to Plaintiffs on August 14, 2014 and during the three months thereafter. (See Plaintiffs'  
16 Complaint at page 13, para. 47.) Clearly, there is a conflict between the Complaint and the  
17 Opposition. Regardless of which date Plaintiffs first obtained the details of the alleged  
18 fraudulent conveyance transactions, Plaintiffs still have not provided the details to Defendants  
19 or the Court. These details are not only relevant in determining the expiration of the statute of  
20 limitations, they are required for Plaintiffs to proceed with their fraudulent transfer claim  
21 against Defendants.  
22

23 Plaintiffs allege that their fraudulent transfer claim is not subject to the heightened  
24 pleading requirements of NRCP 9(b), without providing any legal authority for their position.  
25 NRCP 9(b) clearly states that all averments of fraud must be stated with particularity. *Brown*  
26 *v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981), further holds: "In actions involving  
27 fraud, the circumstances of the fraud are required by NRCP 9(b) to be stated with particularity."  
28

1 It appears to be Plaintiffs' unsubstantiated position that fraudulent transfers do not constitute  
2 fraud, even though the name contains the word "fraud" and the statute outlines what conduct  
3 is fraudulent.

4 Although the application of NRCP 9(b) to fraudulent transfer claims has not been  
5 directly addressed in Nevada, other courts have routinely applied heightened pleading  
6 standards to fraudulent transfer claims based upon "fraudulent intent" rather than "the  
7 economic circumstances existing at the time of the transfer." *See In re Commercial Financial*  
8 *Services, Inc.*, 322 B.R. 440, 443 (N.D. Okla. 2003). In other words, when a fraudulent transfer  
9 claim is brought under NRS 112.180(1)(a) - where the plaintiff is alleging the transfer was  
10 made with "actual intent to hinder, delay or defraud any creditor" - NRCP 9(b) should be  
11 applied. On the other hand, when a fraudulent transfer claim is brought under NRS  
12 112.180(1)(b) - where the plaintiff is alleging the transfer was made "without receiving  
13 reasonably equivalent value in exchange for the transfer" and the debtor was insolvent - NRCP  
14 9(b) should not be applied. *See id.* at 450. Although Plaintiffs failed to specify in the  
15 Complaint which type of fraudulent transfer they are alleging, it appears from Plaintiffs'  
16 Opposition that they are seeking recovery under NRS 112.180(1)(a). (*See* Section V. below.)  
17

18 In *In re OPM Leasing Services, Inc.*, 32 B.R. 199, 204 (S.D.N.Y. 1983), the Court held  
19 that the following paragraphs in the complaint did not meet the heightened pleading  
20 requirements of Rule 9(b):  
21

22 From the years commencing 1978 to and including the date of this complaint,  
23 OPM was insolvent and between on or about January 17, 1978 and December  
24 19, 1979, funds aggregating the sum of \$495,347.34, the property of OPM, were  
25 by a series of payments transferred to or for the use and benefit of Zimmerman,  
Designs, and Designs of New York.

26 In making its findings, the Court noted that there is a more liberal approach to fraud pleading  
27 in bankruptcy cases as opposed to civil actions. *Id.* at 202. "A civil action charging fraud must  
28 allege with some specificity the acts constituting fraud." *Id.* The Court in *OPM Leasing*

Services further held that “fair notice requires more than a quotation from the statute. . . .” *Id.* at 204 (quoting *In re Hart*, 461 F.Supp. 328, 328 - 330 (E.D. Ark. 1978)). “A complaint that merely repeats the wording of a statute and includes no facts in support of its allegations will be met with disfavor.” *Id.* “A general complaint of fraud circumvents the purposes of the pleading process to give notice to the opposing party of the contentions he will have to meet. Also, an allegation of fraud, unlike most other claims, may have serious impact on the reputation of the defendant. *Id.* at 203. “The stringent requirements of Rule 9(b) . . . are designed to prevent a long and drawn out discovery process in the hopes of uncovering substantive, incriminating facts.” *Id.*

In this case, Plaintiffs’ factual allegations are almost identical to those in *OPM Leasing Services*:

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

44. Plaintiff is informed and believes, and on that basis alleges that such transfers were undertaken in an effort to avoid the adverse financial consequences of Plaintiff’s pending claims, as well as those of other creditor.

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

...

47. On or about August 14, 2014, and spanning three months thereafter during the course of proceedings initiated to enforce and collect upon the judgment in the First Case, Defendant LAS VEGAS LAND PARTNERS, LLC first provided tax returns and detailed financial information which revealed to Nype, for the first time, that it had transferred its beneficial interest as to numerous real estate parcels, as well as many millions of dollars, to the entity defendants and/or Liberman and Mitchell, during ongoing pendency of the first case.

1 (See Plaintiffs' Complaint at pages 12 – 13.) The remainder of the allegations in Plaintiffs'  
2 fraudulent conveyance claim contain no facts and merely repeat the wording of the fraudulent  
3 transfer statute. Additionally, Plaintiffs' allegations are based on information and belief. The  
4 Court in *OPM Leasing Services* held that "allegations of fraud based solely on information and  
5 belief usually do not satisfy the degree of particularity required by Rule 9(b)." *Id.* at 204.

6 Plaintiffs argue that they should not be required to adhere to the heightened pleading  
7 requirements of NRCP 9(b) because "the specific factual data necessary to prove the claim lies  
8 within the unique province of the defendants." (See Plaintiffs' Opposition at page 13, lines 19  
9 – 20.) *Rocker v. KPMG LLP*, 122 Nev. 1185, 148 P.3d 703 (2006) provides the requirements  
10 for the "relaxed pleading standard" advocated by Plaintiffs:  
11

12 In addition to requiring that the plaintiff state facts supporting a strong inference  
13 of fraud, we add the additional requirements that the plaintiff must aver that this  
14 relaxed standard is appropriate and show in his complaint that he cannot plead  
15 with more particularity because the required information is in the defendant's  
16 possession. If the district court finds that the relaxed standard is appropriate, it  
17 should allow the plaintiff time to conduct the necessary discovery. Thereafter,  
18 the plaintiff can move to amend his complaint to plead allegations of fraud with  
19 particularity in compliance with NRCP 9(b). Correspondingly, the defendant  
20 may renew its motion to dismiss under NRCP 9(b) if the plaintiff's amended  
21 complaint still does not meet NRCP 9(b)'s particularity requirements.

22 *Id.* at 709. "When applying this relaxed standard, the federal courts require the plaintiff to  
23 allege more than suspicious circumstances. 'Where pleading is permitted on information and  
24 belief, a complaint must adduce specific facts supporting a strong inference of fraud or it will  
25 not satisfy even a relaxed pleading standard.'" *Id.* at 708 – 709 (quoting *Neubronner v. Milken*,  
26 6 F.3d 666, 672 (9<sup>th</sup> Cir. 1993)). Unlike in the *Rocker* case, in this case, Plaintiffs have not  
27 stated facts supporting a strong inference of fraud. Additionally, in *Rocker*, the plaintiff alleged  
28 fraud against a specific company. In this case, Plaintiffs have filed claims against sixteen  
defendants, without providing factual allegations on the involvement of each defendant in the  
alleged fraudulent conveyances.

## STATUTE OF LIMITATIONS

### **A. The Expiration of the Statute of Limitations for Fraudulent Transfers is Not Determined by the Date of the Debtor's Insolvency**

In their Opposition, Plaintiffs argue that the four-year statute of limitations for fraudulent transfers did not commence running until Plaintiffs discovered or reasonably should have discovered the operative facts. (See Plaintiffs' Opposition at page 12, lines 22 – 25.) Plaintiffs' position appears to be that the statute of limitations should be tolled until Plaintiffs learned of LVLP's alleged insolvency in September 2015. (See Plaintiffs' Opposition at page 15, lines 8 – 12.) Plaintiffs do not provide any legal authority in support of their position, however. Instead, the plain language of NRS 112.230(1)(a) specifically states that the statute of limitations expires "4 years after the transfer was made or the obligation was incurred." NRS 112.230(1)(a) further allows for the statute of limitations to be tolled for an additional "1 year after the transfer or obligation was or could reasonably have been discovered by the

1 claimant.” The statute of limitations does not state that it expires four years after the debtor’s  
2 insolvency. The statute of limitations does not state that it expires one year after the debtor’s  
3 insolvency is discovered by the claimant. The statute of limitations specifically states that the  
4 statute is triggered when the transfer is made, or when the transfer reasonably could have been  
5 discovered by the claimant.

6 **B. Even if the Statute of Limitations is Tolloed, Plaintiffs’ Fraudulent Transfer**  
7 **Claim Should be Dismissed**

8 Plaintiffs cite NRS 112.230(1)(a) for their position that the statute of limitations was  
9 tolled to one year after the alleged fraudulent transfers were or could reasonably have been  
10 discovered. Defendants neglect to address the fact that NRS 112.230(1)(a) only applies to  
11 claims under NRS 112.180(1)(a). The statute of limitations for claims under NRS  
12 112.180(1)(b) does not allow for the statute of limitations to be tolled. *See* NRS 112.230(1)(b).

13 From the fact that Plaintiffs do not even address NRS 112.230(1)(b) in their Opposition,  
14 it can be inferred that Plaintiffs are only seeking recovery under NRS 112.180(1)(a), not NRS  
15 112.180(1)(b). If Plaintiffs do intend to seek recovery under NRS 112.180(1)(b), the statute  
16 of limitations on those claims may have expired. Since Plaintiffs still have not provided the  
17 date(s) of the alleged fraudulent transfer(s), Defendants are not able to determine whether the  
18 statute of limitations has run on such claims. Therefore, if the Court allows Plaintiffs’ claim  
19 for fraudulent conveyance to proceed, the Court should rule that the claim may only proceed  
20 under NRS 112.180(1)(a) and not NRS 112.180(1)(b).

21 As for the procedure regarding tolling of the statute of limitations, it is well-settled law  
22 that the public recording of real estate deeds constitutes constructive notice of a transaction to  
23 all persons, regardless of whether they were parties to the transaction or uninvolved third  
24 parties. NRS 111.315; NRS 111.320; *see also Wagner v. Chevron U.S.A., Inc.*, Order of  
25 Affirmance, 281 P.3d 1228 (Nev. 2009); *see also Bemis v. Estate of Bemis*, 114 Nev. 1021,  
26  
27  
28



1 1026 n.2, 967 P.2d 437, 441 n.2 (1998). Therefore, depending upon when the deeds involved  
2 in the alleged fraudulent transfers were recorded, the statute of limitations may have already  
3 expired. Plaintiffs should be required to provide enough information on the fraudulent  
4 transfers for this to be determined or their claim should be dismissed.

5 In their Opposition, Plaintiffs cite *Bemis* for their position that whether or not they  
6 knew or should have known of the facts necessary to assert their claims is a matter to be  
7 determined by the trier of fact. (See Plaintiffs' Opposition at page 14, lines 19 – 21.) In *Bemis*,  
8 the Court stated:  
9

10 In a discovery based cause of action, a plaintiff must use due diligence in  
11 determining the existence of a cause of action. Whether plaintiffs exercised  
12 reasonable diligence in discovering their causes of action "is a question of fact  
13 to be determined by the jury or trial court after a full hearing." Dismissal on  
14 statute of limitations grounds is only appropriate "when uncontroverted  
15 evidence irrefutably demonstrates plaintiff discovered or should have  
16 discovered" the facts giving rise to the cause of action.

17 *Bemis*, 967 P.2d at 440 (citations omitted). There is no question of reasonable diligence when  
18 a real estate deed has been recorded because it is definitive constructive notice. That leaves  
19 only the question of reasonable diligence in discovering the transfer of other property by  
20 Defendants. Plaintiffs, however, failed in their Complaint and Opposition to provide any  
21 identifying information for the alleged fraudulent transfers. Therefore, there is no question of  
22 reasonable diligence that needs to go to the trial court. As the Nevada Supreme Court held in  
23 *Bemis*: "A court can dismiss a complaint for failure to state a claim upon which relief can be  
24 granted if the action is barred by the statute of limitations." *Id.* at 439.

## 25 VI.

### 26 ALTER EGO

#### 27 A. Under Delaware Law, Plaintiffs' Alter Ego Claim Should be Dismissed

28 In their Opposition, Plaintiffs correctly state that the law under which each limited  
liability company was organized governs the liability of its managers and members. NRS

1 86.543(1) states: "The laws of the state, pursuant to which a foreign limited-liability company  
2 is organized, govern its organization, internal affairs and the liability of its managers and  
3 members." The corporate veil which Plaintiffs desire to pierce is that of Las Vegas Land  
4 Partners, LLC, which was organized under the laws of Delaware. The Limited Liability Act  
5 of the Delaware Code provides:

6 § 18-303 Liability to third parties.

7 (a) Except as otherwise provided by this chapter, the debts, obligations and  
8 liabilities of a limited liability company, whether arising in contract, tort or  
9 otherwise, shall be solely the debts, obligations and liabilities of the limited  
10 liability company, and no member or manager of a limited liability company  
11 shall be obligated personally for any such debt, obligation or liability of the  
12 limited liability company solely by reason of being a member or acting as a  
13 manager of the limited liability company.

14 (b) Notwithstanding the provisions of subsection (a) of this section, under a  
15 limited liability company agreement or under another agreement, a member or  
16 manager may agree to be obligated personally for any or all of the debts,  
17 obligations and liabilities of the limited liability company.

18 Under Delaware law, as well as under Nevada law, the members and managers of a limited  
19 liability company are not personally obligated for the debts of the company, unless the member  
20 or manager agrees to be personally obligated. It is undisputed that there is no agreement under  
21 which the other defendants agreed to be personally obligated for the debts of LVLP.

22 Plaintiffs' next argument is that alter ego is a common law doctrine of equity that does  
23 not need to be codified before it can be applied to limited liability companies. Plaintiffs have  
24 not provided a citation for any Delaware case where the corporate veil of a limited liability  
25 company has been pierced in Delaware. Instead, Defendants have located numerous cases in  
26 which alter ego claims were dismissed against both corporations and limited liability  
27 companies. Likewise, Plaintiffs' alter ego claim against Defendants should be dismissed when  
28 Delaware law is applied.

1 First, the Delaware courts have consistently held that the “Delaware Court of Chancery  
2 has sole jurisdiction over actions to ‘pierce the corporate veil.’” *See Marketing Products*  
3 *Management, LLC v. Health and Beauty Direct.com, Inc.*, C.A. No. 02C-04-256 CLS, at \*9  
4 (Del. Super Jan. 28, 2004). If Delaware law is applied, Plaintiffs’ alter ego claim against  
5 Defendants should be dismissed since jurisdiction for such a claim only lies with the Delaware  
6 Court of Chancery.

7 Second, under Delaware law:

8  
9 “To state a ‘veil-piercing claim,’ the plaintiff must plead facts supporting an  
10 inference that the corporation, through its alter-ego, has created a sham entity  
11 designed to defraud investors and creditors.” Specific facts a court may  
12 consider when being asked to disregard the corporate form include: “(1)  
13 whether the company was adequately capitalized for the undertaking; (2)  
14 whether the company was solvent; (3) whether corporate formalities were  
15 observed; (4) whether the dominant shareholder siphoned company funds; and  
16 (5) whether, in general, the company simply functioned as a façade for the  
17 dominant shareholder.” The decision to disregard the corporate entity  
“generally results not from a single factor, but rather some combination of them,  
and ‘an overall element of injustice or unfairness must always be present, as  
well.’” Most importantly, “because Delaware public policy does not lightly  
disregard the separate legal existence of corporations, a plaintiff must do more  
than plead that one corporation is the alter ego of another in a conclusory  
fashion in order for the Court to disregard their separate legal existence.”

18 *Doberstein v. G-P Industries, Inc.*, Memorandum Opinion, C.A. No. 9995-VCP, at \*9 – 10  
19 (Del. Ch. Oct. 30, 2015). In *Taberna Preferred Funding II, Ltd. v. Advance Realty Group*  
20 *LLC*, 5 N.Y.S.3d 330 (N.Y. Sup. Ct. 2014), a case quoted by Plaintiffs in their Opposition, the  
21 New York Supreme Court dismissed the alter ego claim of the plaintiff and explained:

22 Here, while the challenged transfers are alleged to have been made to defraud  
23 the Taberna Funds, there is an absence of any factual support for the notion that  
24 the companies are generally alter egos, as opposed to them having engaged in  
25 a one-time improper set of transfers. Moreover, there are no facts pled to  
warrant an application of alter-ego liability to the individual defendants.

26 *Id.* The New York Court quoted the following Delaware law in its decision:

27 [P]ersuading a Delaware court to pierce the corporate veil is a difficult task.  
28 Absent compelling cause, a court will not disregard the corporate form or  
otherwise disturb the legal attributes, such as limited liability, of a corporation.

1 Although the legal test for doing so cannot be reduced to a single formula that  
2 is neither over – nor under-inclusive, our courts have only been persuaded to  
3 pierce the corporate veil after substantial consideration of the shareholder-  
owner’s disregard of the separate corporate fiction and the degree of injustice  
impressed on the litigants by recognition of the corporate entity.

4 *Id.* (quoting *Midland Interiors, Inc. v. Burleigh*, 2006 WL 4782237, at \*3 (Del. Ch. 2003)).

5 Plaintiffs’ Complaint clearly does not meet the requirements of an alter-ego claim  
6 under Delaware law. It alleges in pertinent part:

7 6. LAS VEGAS LAND PARTNER, LLC, MITCHELL, and LIBERMAN,  
8 created the various entity Defendants, MEYER PROPERTY, LTD.; ZOE  
9 PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE  
10 WORK, LLC; LIVE WORK MANAGER, LLC, AQUARIUS OWNER, LLC;  
11 LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIEBERMAN  
HOLDINGS, LLC; 305 LAS VEGAS LLC; LIVE WORKS TIC  
12 SUCCESSOR, LLC; and CASINO COOLIDGE LLC, on information and  
13 belief, and used multiple sophisticated counsel for purposes of secreting,  
14 hiding, and conveying away valuable assets that were available to satisfy  
creditors such as Plaintiffs as alleged more specifically hereinafter (hereinafter  
referred to as the “Asset Protection Scheme”).

15 . . .

16 8. Upon information and belief, LAS VEGAS LAND PARTNERS, LLC  
17 is the nominal holder of equity interests in the entity defendants, and takes its  
18 direction from DAVID J. MITCHELL and BARNET LIBERMAN, in  
managing and operating the asset protection entities, which exist merely to help  
19 Defendants, LAS VEGAS LAND PARTNERS, LLC, DAVID J. MITCHELL  
and BARNET LIBERMAN protect the assets of LAS VEGAS LAND  
PARTNERS, LLC from judgment creditors such as Plaintiffs.

20 9. Plaintiff is informed and believes, that the Entity Defendants are the  
21 recipients of fraudulent transfers of real property, monies, and other valuable  
assets hereinafter alleged.

22 10. Upon information and belief, part of the Asset Protection Scheme  
23 contemplated that the majority of the purported equity interests in the asset  
24 protection entities referred to in Paragraph 6 hereinabove be held in the name  
of LAS VEGAS LAND PARTNERS, LLC, or an associated entity, all of which  
25 were and are in reality controlled by DAVID J. MITCHELL and BARNET  
LIBERMAN.

26 (See Plaintiffs’ Complaint at pages 2 - 3.)

27 19. Upon information and belief, Plaintiff is informed and believes and  
28 thereon alleges that at all times herein mentioned Defendants, LIBERMAN

1 AND MITCHELL were and are the alter ego of LAS VEGAS LAND  
2 PARTNERS, LLC, that said Defendant did and still does dominate, influence  
3 and control of LAS VEGAS LAND PARTNERS, LLC, that there existed and  
4 still exists a unity of ownership between them; that the individuality and  
5 separateness of each entity was and remains non-existent; that each such entity  
6 was and remains a mere shell and naked framework which LIBERMAN and  
7 MITCHELL used and still use to conduct their business affairs; that each such  
8 entity is and remains inadequately capitalized; and that an injustice and fraud  
9 upon Plaintiff will result if the theoretical separateness of LAS VEGAS LAND  
10 PARTNERS, LLC entity is not disregarded and the said Defendant held liable  
11 for all relief being caught herein.

12 (See Plaintiffs' Complaint at page 5.) Paragraphs 20 – 32 of the Complaint mirror paragraph  
13 19 and allege that Las Vegas Land Partners, LLC, Liberman, and Mitchell are the alter ego for  
14 each of the Defendants. Paragraph 73 further mirrors paragraph 19 and alleges that all of  
15 Defendants are the alter egos of one another. (See Plaintiffs' Complaint at page 17.) Finally,  
16 paragraph 74 alleges as follows:

17 74. Upon information and belief, to the extent that one or more of the  
18 Defendant entities is nominally owned or operated by or through LAS VEGAS  
19 LAND PARTNERS, LIBERMAN, or MITCHELL with respect to one or more  
20 of the Defendant entities, which entities as a practical matter exist with  
21 functional unity of ownership in said Defendants, LAS VEGAS LAND  
22 PARTNERS, LIBERMAN or MITCHELL, the true and factual individuality  
23 and separateness of each such entity was and remains non-existent; each such  
24 entity was and remains a mere shell and naked framework, which Defendants  
25 LAS VEGAS LAND PARTNERS, LIBERMAN or MITCHELL utilize, though  
26 the office of said Defendants LAS VEGAS LAND PARTNERS, LIBERMAN  
27 or MITCHELL and/or nominees and others to conduct their business affairs.  
28 Each such entity is, upon information and belief, merely another nominal  
manifestation of the business and financial affairs of Defendants, LAS VEGAS  
LAND PARTNERS, LIBERMAN, or MITCHELL, and to recognize any such  
separate entity would work as separate and distinct from Defendants, LAS  
VEGAS LAND PARTNERS, LIBERMAN or MITCHELL, an injustice and  
fraud upon Plaintiff, to the extent the theoretical or putative separateness of  
such entity is not disregarded and said nominal Defendants held liable for all  
the relief being sought herein.

(See Plaintiffs' Complaint at pages 17 – 18.)

Plaintiffs' allegations in the Complaint do not provide any factual information in  
support of their alter ego claim. Delaware law requires a plaintiff to "do more than plead that  
one corporation is the alter ego of another in a conclusory fashion." *Doberstein*, C.A. No.

1 9995-VCP, at \*10. “[T]he plaintiff must plead facts supporting an inference that the  
2 corporation, through its alter-ego, has created a sham entity designed to defraud investors and  
3 creditors.” *Id.* at \*9. Clearly, Plaintiffs have failed to meet the pleading standard for an alter  
4 ego claim under Delaware law; therefore, Plaintiffs’ Fifth Claim for Relief for Alter Ego should  
5 be dismissed.

6 **B. Under Nevada Law, Plaintiffs’ Alter Ego Claim Should be Dismissed**

7  
8 Even if the Court chooses to apply Nevada law, Plaintiffs’ alter ego claim should be  
9 dismissed. As discussed in detail in Defendants’ Motion to Dismiss, the Nevada Supreme  
10 Court has never held that the alter ego doctrine applies to limited liability companies. In fact,  
11 the Nevada legislature chose to codify the alter ego doctrine for corporations and also chose  
12 not to codify it for limited liability companies. In their Opposition, Defendants argue that even  
13 though the alter ego doctrine has not been codified for limited liability companies, the common  
14 law alter ego doctrine set forth in *Frank McCleary Cattle Co. v. Sewell*, 73 Nev. 279, 317 P.2d  
15 957 (1957), should be applied to limited liability companies. *Frank McCleary Cattle Co.* is  
16 distinguishable from this case because it involved the piercing of the corporate veil of a  
17 corporation, not a limited liability company. It is undisputed that the Nevada Supreme Court  
18 has never held that the corporate alter ego doctrine applies to limited liability companies. The  
19 cases cited by Plaintiffs in their Opposition do not hold that the corporate alter ego doctrine  
20 applies to limited liability companies.  
21

22 In the unpublished Ninth Circuit Court of Appeals case, *Volvo Const. Equip. Rents,*  
23 *Inc. v. NRL Rentals, LLC*, Memorandum, No. 13-15498 (9<sup>th</sup> Cir. June 11, 2015), the Court  
24 cited the corporate alter ego statute, NRS 78.747(1), but found that Texas law rather than  
25 Nevada law should be applied. The Court then held that the plaintiff was not entitled to  
26 judgment under an alter ego theory. In a footnote, the Court also noted that NRS 78.747(1)  
27  
28

1 does not refer to LLCs or their members, but the Court and all parties assumed that the  
2 provision would be applied to LLC members. *Id.*

3 In their Opposition, Plaintiffs also cite *Webb v. Shull*, 270 P.3d 1266 (Nev. 2012) for  
4 their position that corporate laws for piercing the corporate veil apply to limited liability  
5 companies. In *Webb*, however, the Nevada Supreme Court declined to decide whether the alter  
6 ego doctrine applies to limited liability companies. Instead, the Court remanded the case to  
7 the district court to explain its reasoning for denying alter ego status. *Id.* at 1271.

8  
9 In *In re Giampietro*, 317 B.R. 841, 846 (D.Nev. 2004), the Bankruptcy Court found it  
10 highly likely that the Nevada courts would extend the alter ego doctrine to members of limited  
11 liability companies. Despite this finding, however, the Bankruptcy Court noted that “the  
12 corporate cloak is not lightly thrown aside.” *Id.* at 851 (quoting *Baer v. Amos J. Walker, Inc.*,  
13 85 Nev. 219, 220, 452 P.2d 916, 916 (1969)). The Bankruptcy Court did not pierce the  
14 corporate veil of the LLC in that case, finding that the separate existence would not sanction  
15 fraud or promote injustice. *Id.* at 857 – 58. For the corporate veil to be pierced in Nevada, not  
16 only must the corporation be inadequately capitalized and interchangeable with its owners, the  
17 aggrieved party must show a “causal connection between the lack of financing and the inability  
18 to pay the aggrieved party, or how it sanctioned a fraud or promoted an injustice.” *Id.* at 854  
19 (quoting *North Arlington Med. Bldg., Inc. v. Sanchez Const. Co.*, 86 Nev. 515, 471 P.2d 240  
20 (1970)).  
21

22 In conclusion, even if this Court extends the Nevada corporate alter ego doctrine to the  
23 limited liability companies in this case, Plaintiffs still have failed to state a claim upon which  
24 relief can be granted. Plaintiffs have failed to plead facts in support of their alter ego claim,  
25 rather than merely reciting the elements of an alter ego claim. Plaintiffs’ bare allegation that  
26 all Defendants are alter egos of one another is not enough to survive dismissal. Therefore,  
27 Plaintiffs’ Fifth Claim for Relief for Alter Ego should be dismissed.  
28

**VII.**

**CONCLUSION**

Based on the foregoing, Defendants respectfully request that the Court grant their Motion to Dismiss. Plaintiffs failed to plead sufficient facts in their Complaint to support all the elements of their claims. Plaintiffs failed to give Defendants notice of their claims by specifically identifying what wrong was committed by each individual defendant. Instead, Plaintiffs only generally alleged that all sixteen defendants are the alter egos of one another, and that they transferred unidentified property among themselves.

Plaintiffs have further failed to make a prima facie case for personal jurisdiction over each individual defendant. Plaintiffs bear the burden of proving jurisdiction over each defendant now and prior to trial. Plaintiffs' unsupported allegation that Defendants are all the alter ego of one another is not sufficient to confer jurisdiction on this Court. The fact is that a majority of the defendants are Delaware LLCs and Delaware law should be applied; therefore, this case should not proceed in Nevada.

Additionally, in all likelihood, the statute of limitations has expired on Plaintiffs' claims, particularly Plaintiffs' fraudulent conveyance claim. Since Plaintiffs have failed to provide any factual details on the alleged fraudulent conveyances, Defendants have not been able to determine the expiration of the statute of limitations. This fact alone demonstrates that Plaintiffs have failed to provide sufficient information on their claims to proceed with this action against Defendants.

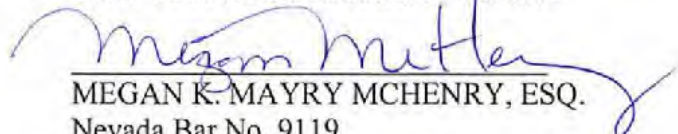
Finally, Plaintiffs' alter ego claim fails under both Delaware and Nevada law. Even assuming that the corporate alter ego doctrine can be applied to limited liability companies, which neither state has determined, Plaintiffs have failed to provide any facts to support their alter ego claim. Plaintiffs' mere recitation of the statute and allegation that all of the defendants are the alter ego of one another is not enough to survive dismissal.



1 If the Court decides to allow any of Plaintiffs' claims to proceed in this case,  
2 Defendants request that the Court hold an evidentiary hearing as soon as possible, at which  
3 Plaintiffs must prove personal jurisdiction over each defendant individually.

4 Dated this 6<sup>th</sup> day of July, 2017.

5 LAW OFFICE OF HAYES & WELSH

6 

7 MEGAN K. MAYRY MCHENRY, ESQ.

8 Nevada Bar No. 9119

9 199 N. Arroyo Grande Blvd., Suite 200

10 Henderson, NV 89074

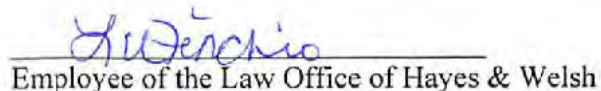
11 *Attorneys for Defendants*

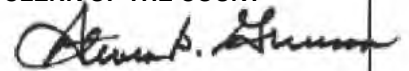
12 **CERTIFICATE OF SERVICE**

13 Pursuant to NRCP 5(b), and EDCR 8.05, I hereby certify that on the 6<sup>th</sup> day of  
14 July, 2017, I served a true and correct copy of the foregoing DEFENDANTS' REPLY TO  
15 PLAINTIFFS' OPPOSITION TO MOTION TO DISMISS PLAINTIFFS' COMPLAINT PURSUANT  
16 TO NRS 86.548(2), NRCP 12(b)(2) AND 12(b)(5) through the Court's electronic filing and service  
17 system to:

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

24 HARRY PAUL MARQUIS, ESQ.  
25 Harry Paul Marquis, Chartered  
26 400 South 4<sup>th</sup> Street, Ste. 300  
27 Las Vegas, NV 89101  
28 [harry@marquislaw.net](mailto:harry@marquislaw.net)  
*Attorneys for Defendants 305 Las Vegas, LLC  
and Barnet Liberman*

  
Employee of the Law Office of Hayes & Welsh



BCO

DISTRICT COURT  
CLARK COUNTY, NEVADA

RUSSELL NYPE, et al.,	)	CASE NO. A-16-740689-B
	)	DEPT NO. XV
Plaintiff(s),	)	
	)	
v.	)	
	)	
DAVID MITCHELL, et al.,	)	
	)	
Defendant(s),	)	

**BUSINESS COURT ORDER**

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

IT IS HEREBY ORDERED:

**I. MANDATORY RULE 16 CONFERENCE**

A. A mandatory Rule 16 conference with the Court and counsel/parties in proper person will be held on **August 28, 2017, at 10:30 a.m.**, unless before then the record shows that this case is in the Court-Annexed Arbitration Program.

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

- (1) trial or lead counsel for all parties; and
- (2) parties may attend. If counsel feels that the requirement of attendance of the parties is beneficial, please contact the department to schedule a conference call with the Judge for a determination. The conference call must be scheduled at least two days prior to the conference.

1 C. 5 days prior to the scheduled Mandatory Rule 16 Conference, parties shall exchange  
2 their 16.1 Initial Disclosures and file a notice of compliance with the Court.

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

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

25 E. Parties desiring a settlement conference before another judge shall so notify the court  
26 at the setting.  
27  
28

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

3 **II. PRETRIAL MOTIONS**

4 A. Any requests for injunctive relief must be made with notice to the opposing party  
5 unless extraordinary circumstances exist. All parties shall advise the Court in writing if there is an  
6 agreement to consolidate the trial on the merits with the preliminary injunction hearing pursuant to  
7 NRCP 65(a)(2).

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

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

14 **III. DISCOVERY**

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

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

20 C. A party objecting to a written discovery request must, in the original objection,  
21 specifically detail the reasons that support the objection, and include affidavits or other evidence for  
22 any factual assertions upon which an objection is based. The responding party must also state  
23 whether any documents or categories of documents are being withheld, and if so, which of the  
24 objections form the basis to withhold otherwise responsive documents or categories of documents.

25 D. Documents produced in compliance with NRCP 16.1 or in response to a written  
26 discovery request, must be consecutively Bates stamped or numbered and accompanied by an index  
27 with a reasonably specific description of the documents.  
28

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

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

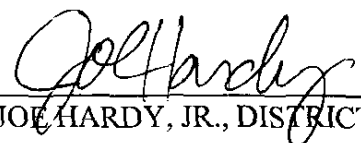
5 (2) state the basis for refusing to produce the documents(s).

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

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

17 Failure to comply with any provision of this Pretrial Order may result in the imposition of  
18 sanctions.

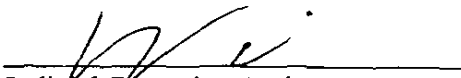
19 DATED this 18<sup>th</sup> day of July, 2017.

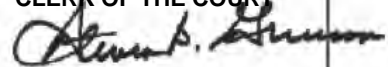
20  
21  
22   
23 JOE HARDY, JR., DISTRICT COURT  
24  
25  
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27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date e-filed, the foregoing was e-served, e-mailed, mailed or a copy of the above document was placed in the attorney's folder in the Clerk's Office, or mailed to the following:

John Muije, Esq.     [jmuije@mujielawoffice.com](mailto:jmuije@mujielawoffice.com)  
Garry Hayes, Esq.   [ghayes@lvtlaw.com](mailto:ghayes@lvtlaw.com)

  
Judicial Executive Assistant



NEOJ  
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@mujelawoffice.com](mailto:jmuije@mujelawoffice.com)  
*Attorneys for Plaintiffs*

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Entity Defendants.

CASE NO: A-16-740689-B

DEPT NO: XV

DATE OF HEARING: July 13, 2017

TIME OF HEARING: 9:00 a.m.

**NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS'**  
**MOTION TO DISMISS PLAINTIFFS' COMPLAINT**

TO: DEFENDANT, LAS VEGAS LAND PARTNERS, LLC;

TO: GARRY L. HAYES, ESQ., of the Law Offices of HAYES & WELSH, their Attorneys of  
Record:



1  
2 TO: DEFENDANTS, BARNET LIBERMAN AND 305 LAS VEGAS, LLC; and

3 TO: HARRY PAUL MARQUIS, ESQ., of the Law Offices of HARRY PAUL MARQUIS,  
4 CHTD, their attorneys of record

5 **PLEASE TAKE NOTICE** that an **ORDER DENYING DEFENDANTS' MOTION TO**  
6 **DISMISS PLAINTIFFS' COMPLAINT**, was entered with the Court on the 4th day of August,  
7 2017, a copy of which is attached hereto as Exhibit "1".

8 DATED this 9<sup>th</sup> day of August, 2017.

9  
10 JOHN W. MUIJE & ASSOCIATES

11 By: 

12 JOHN W. MUIJE, ESQ.

13 Nevada Bar No. 2419

14 1840 East Sahara Avenue, #106

15 Las Vegas, Nevada 89104

16 Telephone: 702-386-7002

17 Facsimile: 702- 386-9135

18 E-Mail: [jmuije@muijelawoffice.com](mailto:jmuije@muijelawoffice.com)

19 Attorneys for Plaintiffs  
20  
21  
22  
23  
24  
25  
26  
27  
28



**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of JOHN W. MUIJE & ASSOCIATES, and that on the 9<sup>TH</sup> day of August, 2017, I caused to be served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER DENYING DEFENDANTS' MOTION TO DISMISS PLAINTIFFS' COMPLAINT**, in the following manner:

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

Garry L. Hayes, Esq.  
**HAYES & WELSH**  
199 Arroyo Grande, #200  
Henderson, Nevada 89074  
Telephone: (702) 509-9555  
Facsimile: (702) 434-3739  
E-Mail: [ghayes@lvlaw.com](mailto:ghayes@lvlaw.com)  
*Attorneys fo Defendant*  
*Las Vegas Land Partners, LLC*

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

*Fern M. Vifman*

An employee of JOHN W. MUIJE & ASSOCIATES

# **EXHIBIT “1”**

ORIGINAL

Electronically Filed  
8/7/2017 10:39 AM  
Steven D. Grierson  
CLERK OF THE COURT

*Steven D. Grierson*

**ORDER**

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 Plaintiffs*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

**PLEASE NOTE  
DEPARTMENT CHANGE**

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

*Plaintiffs,*

*vs.*

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

*Entity Defendants.*

CASE NO: A-16-740689-C

DEPT NO: ~~XXVIII~~ *15*

Date of Hearing: July 13, 2017

Time of Hearing: 9:00 a.m.

**ORDER DENYING DEFENDANTS' MOTION TO  
DISMISS PLAINTIFFS' COMPLAINT**

This matter came on for hearing upon Defendants' Motion to Dismiss Plaintiffs' Complaint,  
Plaintiff represented by JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE &  
ASSOCIATES, Defendants, BARNET LIBERMAN and 305 Las Vegas, LLC represented by

AUG 03 2017



1 HARRY P. MARQUIS, ESQ., the residual defendants represented by MEGAN K. MAYRY  
2 McHENRY, ESQ., of the Law Firm of HAYES & WELSH, the Court having heard the  
3 representations and argument of counsel and having reviewed the pleadings and papers on file  
4 herein, and good cause appearing;

5  
6 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Court evaluates the  
7 pending motion under the standards of NRCp 12(b)(5), and accordingly, it is required to accept all  
8 of the factual allegations set forth in the complaint as true, which the Court does;

9  
10 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court considers  
11 it inappropriate to convert the pending Motion to Dismiss to a Motion for Summary Judgment,  
12 insofar as discovery has not even commenced in this case;

13  
14 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court finds that  
15 the Plaintiffs have made a *prima facie* case as to jurisdiction at this time, that the Court will afford  
16 Defendants an evidentiary hearing shortly before trial, to be followed promptly after an evaluation  
17 of the evidence on jurisdiction, by the actual trial;

18  
19 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that even accepting all of  
20 Plaintiffs' factual allegations as true, the Court finds that the complaint as currently stated does not  
21 sufficiently give numerous defendants actual notice as to the specifics of what is being alleged  
22 regarding each such defendant, and therefore an amendment would be appropriate and will be  
23 required;

24  
25 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that under Nevada  
26 jurisprudence, leave to amend is freely given, and that an amendment so as to allow the plaintiffs to  
27 set forth its claims with greater specificity is appropriate and proper at this time.  
28

**IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs shall have through and including August 21, 2017 within which to file its First Amended Complaint, and that failure to timely file such First Amended Complaint will result in a dismissal of Plaintiffs' claims, without prejudice;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court will convene a 16.1 Early Case Conference, at Court, on August 28, 2017 at the hour of 10:30 a.m., the details and parameters of which are set forth more fully in a separate Order issued by the Court.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

DISTRICT COURT JUDGE

Submitted by:

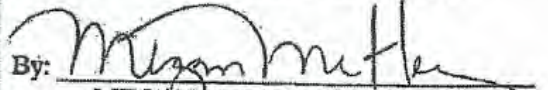
JOHN W. MUIJE & ASSOCIATES

By: /s/John W. Muje, Esq.

JOHN W. MUIJE, ESQ.  
Nevada Bar No. 2419  
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TO FORM AND CONTENT

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BARNET LIBERMAN AND  
305 Las Vegas, LLC



IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court will convene a 16.1 Early Case Conference, at Court, on August 28, 2017 at the hour of 10:30 a.m., the details and parameters of which are set forth more fully in a separate Order issued by the Court.

DATED this 4th day of August, 2017.

  
DISTRICT COURT JUDGE

Submitted by:

JOHN W. MUIJE & ASSOCIATES

By: /s/ John W. Muje, Esq.

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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; AQUARIAS OWNER, LLC; LVLP  
25 HOLDINGS, LLC; MITCHELL HOLDINGS,  
26 LLC; LIEBERMAN HOLDINGS, LLC; 305 LAS  
27 VEGAS LLC; LIVE WORKS TIC SUCCESSOR,  
28 LLC; FC/LIVE WORK VEGAS, LLC; CASINO  
COLLIDGE, LLC; DOES I through III, and ROE  
CORPORATIONS I through III, inclusive,

Entity Defendants.

CASE NO: A-16-740689-B

DEPT. NO: XV

AMENDED COMPLAINT FOR:

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

ARBITRATION EXEMPT  
(EQUITABLE RELIEF)

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



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

3 **GENERAL FACTUAL ALLEGATIONS**

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

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

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

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

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

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

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

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

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

15. Leah Property, LLC is a Delaware limited liability that first registered to do business in Southern Nevada in approximately February, 2005, and continued to be active and operate in the Southern Nevada area through and including February, 2015.
16. On information and belief, Leah Property LLC is owned, managed, and operated by Liberman, at all relevant times.
17. In that context, various real property and ownership equity transfers took place between LVLP and/or Leah Property, LLC, during the operative time, and on information and belief, financial distributions and transactions occurred between Leah Property, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents.
18. In that context, various real property and ownership equity transfers took place between LVLP and/or Live Work, LLC, during the operative time, and on information and belief, financial distributions and transactions occurred between Leah Property, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents.
19. Live Work LLC is a Delaware limited liability company who first became active in Southern Nevada in or about April, 2015, and in fact was a plaintiff in the original underlying lawsuit with LVLP versus the plaintiffs herein. Live Work, LLC, on information and belief, continued to be active and operating in Southern Nevada through and including approximately April, 2012.
20. On information and belief, Live Work, LLC was owned, operated, and managed by Liberman, Mitchell, LVLP, Live Work Manager, LLC, and/or Mitchell Holdings, and was an active participant in various real property transactions involving non-party Forest City Enterprises.

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

never disclosed in publicly available records or documents.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 ...

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

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

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

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

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

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

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

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

dollars of networth on its tax returns, and has been forced to pay its attorneys in both the prior litigation and the present litigation through personal checks and credit cards of Mitchell and/or Liberman, or through affiliate entities.

89. Much of the newly received financial data also discloses that corporate filing fees for numerous of the defendants herein had been paid, *ad hoc*, from LVLP bank accounts, interchangeably, despite said entities nominally maintaining or claiming separate legal status.
90. Plaintiffs RUSSELL L. NYPE and the REVENUE PLUS, LLC (hereinafter collectively referred to as "Nype") were Defendants in a case originally initiated by current Defendants, LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC and ZOE PROPERTIES, LLC in the Eighth Judicial District Court in Clark County, Nevada under Case No. A551073, which case commenced on or about November 2, 2007 (hereinafter the "First Case").
91. Nype counterclaimed in that case with regard to his prior business dealings with LAS VEGAS LAND PARTNERS, LLC, its associate entities, and its principals, BARNET LIBERMAN (hereinafter "Liberman") and DAVID J. MITCHELL (hereinafter "Mitchell"), seeking compensation which he had been promised and which he had earned during the course of the parties ongoing business dealings regarding the development of numerous Las Vegas real estate holdings.
92. On information and belief, during the pendency of those proceedings, and after defaulting on their obligations to Nype, Liberman and Mitchell undertook the process of creating various affiliated and associate entities, including but not limited to several of the asset protection entities alleged hereinabove, utilizing sophisticated corporate and asset protection counsel.
93. After years of protracted litigation, Nype ultimately obtained a judgment against LAS VEGAS LAND PARTNERS, LLC on or about April 10, 2015 in the principal amount of \$2,608,797.50.



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

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

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

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

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

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

103. Upon information and belief, Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**

1 LLC were and are the alter ego of **LIVE WORK, LLC**, that said Defendant did and  
2 still does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**,  
3 that there existed and still exists a unity of ownership between them; that the  
4 individuality and separateness of each entity was and remains non-existent; that each  
5 such entity was and remains a mere shell and naked framework which **LIVE WORK,**  
6 **LLC** used and still use to conduct their business affairs; that each such entity is and  
7 remains inadequately capitalized; and that an injustice and fraud upon

8  
9 104. Plaintiff will result if the theoretical separateness of **LIVE WORK, LLC** if entity is  
10 not disregarded and the said Defendant held liable for all relief being caught herein.

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

23 106. Upon information and belief, Plaintiff is informed and believes and thereon alleges  
24 that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**  
25 **LLC**, was and are the alter ego of **AQUARIUS OWNER, LLC**, that said Defendant  
26 did and still does dominate, influence and control of **LAS VEGAS LAND**  
27 **PARTNERS, LLC**, that there existed and still exists a unity of ownership between  
28 them; that the individuality and separateness of each entity was and remains non-

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

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

19           108. Upon information and belief, Plaintiff is informed and believes and thereon alleges  
20           that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**  
21           **LLC**, were and are the alter ego of **MITCHELL HOLDINGS, LLC**, that said  
22           Defendant did and still does dominate, influence and control of **LAS VEGAS LAND**  
23           **PARTNERS, LLC**, that there existed and still exists a unity of ownership between  
24           them; that the individuality and separateness of each entity was and remains non-  
25           existent; that each such entity was and remains a mere shell and naked framework  
26           which **MITCHELL HOLDINGS, LLC** used and still use to conduct their business  
27           affairs; that each such entity is and remains inadequately capitalized; and that an  
28           injustice and fraud upon Plaintiff will result if the theoretical separateness

**MITCHELL HOLDINGS, LLC** entity is not disregarded and the said Defendant held liable for all relief being caught herein.

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

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

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

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

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

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

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

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

**FIRST CLAIM FOR RELIEF**

**(Constructive Trust)**

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



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

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

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

**SECOND CLAIM FOR RELIEF**

**(Fraudulent Conveyance)**

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

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

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

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

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

127. As a result of the aforementioned acts of Defendants, Plaintiff is entitled to a

- 1 Judgment against them, jointly and severally, in an amount in excess of \$10,000.00.
- 2
- 3 128. On or about August 14, 2015, during the course of proceedings initiated to enforce
- 4 and collect upon the judgment in the First Case, Defendant LAS VEGAS LAND
- 5 PARTNERS, LLC first provided tax returns and detail financial information which
- 6 revealed to Nype, for the first time, that it had transferred its beneficial interest in
- 7 numerous real estate parcels, and in the equity of its affiliates, as well as many
- 8 millions of dollars, to the entity defendants and/or Liberman and Mitchell, during the
- 9 ongoing pendency of the first case. In making such transfers, Defendants LAS
- 10 VEGAS LAND PARTNERS, LLC, MITCHELL and LIBERMAN have acted with
- 11 the actual intent to hinder delay and to defraud their creditors, including Nype, but
- 12 fraudulently transferring assets to insiders and the entity defendants.
- 13 129. Nype lacks an adequate remedy at law because, unless the relief sought in this
- 14 complaint is granted, LAS VEGAS LAND PARTNERS, LLC with the aid of
- 15 the other Defendants will have succeeded in fraudulently transferring its assets to
- 16 insiders and/or related entities, depriving Nype of the opportunity to collect upon the
- 17 judgment, and we see what is due and owing from LAS VEGAS LAND PARTNERS,
- 18 LLC.
- 19 130. Nype has an high probability of success on the merits in this action.
- 20 131. The aforesaid transfer of assets to insiders and/or the entity defendants was made with
- 21 actual intent to hinder, delay or defraud creditors, most significantly Nype, and these
- 22 transfers therefore constitute fraudulent transfers in violation of NRS 112.180.
- 23 132. LAS VEGAS LAND PARTNERS, LLC did not receive reasonably equivalent value
- 24 for the transfers herein alleged.
- 25 133. Defendant, LAS VEGAS LAND PARTNERS, LLC intended to incur or reasonably
- 26 should have believed they would incur debts beyond its ability to pay the same as they
- 27 become due, and thus the transfers at issue are far from transfers in violation of
- 28 Nevada law.

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

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

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

### **THIRD CLAIM FOR RELIEF**

#### **(Civil Conspiracy)**

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

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

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

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

- 1 140. The purpose of the unlawful, concerted actions of Defendants was intended to, or  
2 would likely result in direct harm to Plaintiff.  
3  
4 141. As a direct and proximate result of the aforesaid civil conspiracy, undertaken  
5 between the Defendants, Plaintiff has been damaged in an amount in excess of  
6 \$10,000.00.  
7  
8 142. As alleged hereinabove, upon information and belief, Defendants' conduct was  
9 willful, knowing, intentional, and malicious, as a matter of law, entitling Plaintiff to  
10 recover exemplary damages in an amount in excess of \$10,000.00.  
11  
12 143. That it has been necessary for Plaintiff to retain the services of an attorney to  
13 prosecute this action, and Plaintiff is therefore entitled to reasonable attorneys' fees.

14 **FOURTH CLAIM FOR RELIEF**

15 **(Declaratory Relief)**

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

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

**FIFTH CLAIM FOR RELIEF**

**(Alter Ego)**

148. Plaintiff incorporates by references Paragraphs 1 through 147 As though fully set forth herein.
149. Plaintiff is informed and believes and thereon alleges that at all times herein mentioned, Defendants, DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE WORK MANAGER, LLC; AQUARIAS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIEBERMAN HOLDINGS, LLC; 305 LAS VEGAS LLC; LIVE WORKS TIC SUCCESSOR, LLC; FC/LIVE WORK VEGAS, LLC, CASINO COOLIDGE, LLC, and each of them, were and remain the alter-egos of each other; that said Defendants did and still do dominate, influence and control each other; that there existed and still exists a unity of ownership between them; that the individuality and separateness of each entity was and remains non-existent; that each such entity was and remains a mere shell and naked framework which the other Defendants used and still use to conduct their business affairs; that each such entity is and remains inadequately capitalized; and that an injustice and fraud upon Plaintiff will result if the theoretical separateness of the Defendant entities is not disregarded and each such Defendant held liable for all relief being sought herein.
150. Upon information and belief, to the extent that one or more of the Defendant entities is nominally owned or operated by or through LAS VEGAS LAND PARTNERS, LIBERMAN or MITCHELL with respect to one or more of the Defendant entities, which entities as a practical matter exist with functional unity of ownership in said Defendants, LAS VEGAS LAND PARTNERS, LIBERMAN or

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

151. As a matter of both statutory common law, and prior declarations of the Eighth Judicial District Court, it is appropriate that the Court further determine and declare that all of the aforesaid entities be held to be the Alter Egos of Defendants LAS VEGAS LAND PARTNERS, LIBERMAN or MITCHELL, and that therefore the various Defendants named herein can and should be jointly and severely liable to the Plaintiff with regard to all claims asserted.
152. That it has been necessary for the Plaintiff to retain the services of an attorney to prosecute this action and plaintiff is therefore entitled to reasonable attorneys fees.

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

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

PARTNERS, LLC for the benefit of Plaintiff;

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

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

DATED this 21<sup>st</sup> day of August, 2017.

JOHN W. MUIJE & ASSOCIATES

By: 

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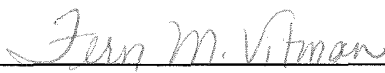
**CERTIFICATE OF SERVICE**

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

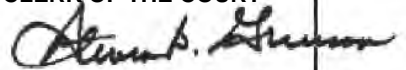
- ☐ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or
- ☒ by electronically filing with the Clerk of the Court via the Odyssey E-File and Serve System;
- ☐ by placing a copy of the same for mailing in the United States mail,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

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Micah S. Echols, Esq.  
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*Attorneys for Plaintiffs/Counter-Defendant*

  
An employee of JOHN W. MUIJE & ASSOCIATES

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1 ANAC  
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3 Nevada State Bar No. 1540  
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5 Nevada State Bar No. 9119  
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12 *Attorneys for Defendants*

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

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

14 Plaintiffs,

15 v.

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

28 Defendants.

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

24 ANSWER TO AMENDED COMPLAINT

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

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

1 LLC; LIVE WORKS TIC SUCCESSOR, LLC; and CASINO COOLIDGE LLC, through  
2 their attorneys of record, the Law Office of Hayes & Welsh, and in answer to Plaintiffs'  
3 Amended Complaint (hereafter the "Complaint") on file herein, denies, admits and alleges as  
4 follows:  
5

6 **GENERAL FACTUAL ALLEGATIONS**

7 1. Answering paragraph 1 of the Complaint, Defendants are without  
8 sufficient information to enable them to answer the allegations contained therein, and  
9 therefore deny the same.  
10

11 2. Answering paragraph 2 of the Complaint, Defendants admit the allegations  
12 contained therein.

13 3. Answering paragraph 3 of the Complaint, Defendants are without  
14 sufficient information to enable them to answer the allegations contained therein, and  
15 therefore deny the same.  
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17 4. Answering paragraph 4 of the Complaint, Defendants deny the allegations  
18 contained therein.

19 5. Answering paragraph 5 of the Complaint, Defendants admit the allegations  
20 contained therein.

21 6. Answering paragraphs 6-8 of the Complaint, Defendants deny the allegations  
22 contained therein.

23 7. Answering paragraph 9 of the Complaint, Defendants are without  
24 sufficient information to enable them to answer the allegations contained therein, and  
25 therefore deny the same.  
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1           8.       Answering paragraph 10 of the Complaint, Defendants deny the allegations  
2 contained therein.

3           9.       Answering paragraphs 11-12 of the Complaint, Defendants are without  
4 sufficient information to enable them to answer the allegations contained therein, and  
5 therefore deny the same.  
6

7           10.      Answering paragraph 13 of the Complaint, Defendants deny the  
8 allegations contained therein.

9           11.      Answering paragraph 14 of the Complaint, Defendants are without  
10 sufficient information to enable them to answer the allegations contained therein, and  
11 therefore deny the same.  
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13           12.      Answering paragraph 15 of the Complaint, Defendants admit the  
14 allegations contained therein.

15           13.      Answering paragraph 16 of the Complaint, Defendants are without  
16 sufficient information to enable them to answer the allegations contained therein, and  
17 therefore deny the same.

18           14.      Answering paragraphs 17-22 of the Complaint, Defendants deny the  
19 allegations contained therein.  
20

21           15.      Answering paragraph 23 of the Complaint, Defendants admit the allegations  
22 contained therein.

23           16.      Answering paragraphs 24-25 of the Complaint, Defendants deny the  
24 allegations contained therein.

25           17.      Answering paragraph 26 of the Complaint, Defendants admit the allegations  
26 contained therein.  
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1           18.     Answering paragraphs 27-29 of the Complaint, Defendants deny the  
2 allegations contained therein.

3           19.     Answering paragraphs 30-33 of the Complaint, Defendants deny the  
4 allegations contained therein.

5           20.     Answering paragraph 34 of the Complaint, Defendants admit the allegations  
6 contained therein.

7           21.     Answering paragraphs 35-37 of the Complaint, Defendants deny the  
8 allegations contained therein.

9           22.     Answering paragraphs 36-37 of the Complaint, Defendants deny the  
10 allegations contained therein.

11           23.     Answering paragraph 38 of the Complaint, Defendants are without  
12 sufficient information to enable them to answer the allegations contained therein, and  
13 therefore deny the same.

14           24.     Answering paragraph 39, Defendants are without sufficient information to  
15 enable them to answer the allegations contained therein, and therefore deny the same.

16           25.     Answering paragraphs 40-48, Defendants deny the allegations contained  
17 therein.

18           26.     Answering paragraphs 49-50, Defendants are without sufficient  
19 information to enable them to answer the allegations contained therein, and therefore  
20 deny the same.

21           27.     Answering paragraph 51, Defendants deny the allegations contained therein.

22           28.     Answering paragraphs 52-61, Defendants deny the allegations contained  
23 therein.

24           29.     Answering paragraph 62, Defendants admit the allegations contained therein.  
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1           30.     Answering paragraphs 63-68, Defendants deny the allegations contained  
2     therein.

3           31.     Answering paragraph 69, Defendants are without sufficient information to  
4     enable them to answer the allegations contained therein, and therefore deny the same.

5           32.     Answering paragraph 70, Defendants admit the allegations contained therein.

6           33.     Answering paragraph 71, Defendants are without sufficient  
7     information to enable them to answer the allegations contained therein, and therefore deny  
8     the same.

9           34.     Answering paragraphs 72-85, Defendants deny the allegations contained  
10    therein.

11           35.     Answering paragraph 86, Defendants are without sufficient information to  
12    enable them to answer the allegations contained therein, and therefore deny the same.

13           36.     Answering paragraphs 87-89, Defendants deny the allegations contained  
14    therein.

15           37.     Answering paragraph 90, Defendants admit the allegations contained therein.

16           38.     Answering paragraph 91, Defendants deny the allegations contained therein.

17           39.     Answering paragraph 92, Defendants deny the allegations contained therein.

18           40.     Answering paragraph 93, Defendants admit the allegations contained therein.

19           41.     Answering paragraphs 94-103, Defendants deny the allegations contained  
20    therein.

21           42.     Answering paragraph 104, Defendants are without sufficient information  
22    to enable them to answer the allegations contained therein, and therefore deny the same.

23           43.     Answering paragraphs 105-114, Defendants deny the allegations contained  
24    therein.

**FIRST CLAIM FOR RELIEF  
(Constructive Trust)**

44. Answering paragraph 115 incorporating the preceding paragraphs of the Complaint, Defendants incorporate paragraphs 1-43 of their Answer as though fully set forth herein.

45. Answering paragraphs 116-121 of the Complaint, Defendants deny the allegations contained therein.

**SECOND CLAIM FOR RELIEF  
(Fraudulent Conveyance)**

46. Answering paragraph 122 incorporating the preceding paragraphs of the Complaint, Defendants incorporate paragraphs 1-45 of their Answer as though fully set forth herein.

47. Answering paragraphs 123-135 of the Complaint, Defendants deny the allegations contained therein.

**THIRD CLAIM FOR RELIEF  
(Civil Conspiracy)**

48. Answering paragraph 136 incorporating the preceding paragraphs of the Complaint, Defendants incorporate paragraphs 1-47 of their Answer as though fully set forth herein.

49. Answering paragraphs 137-143 of the Complaint, Defendants deny the allegations contained therein.

**FOURTH CLAIM FOR RELIEF  
(Declaratory Relief)**

50. Answering paragraph 144 incorporating the preceding paragraphs of the Complaint, Defendants incorporate paragraphs 1-49 of their Answer as though fully set forth herein.

1           51.     Answering paragraphs 145-147 of the Complaint, Defendants deny the  
2 allegations contained therein.

3                                   **FIFTH CLAIM FOR RELIEF**  
4                                   **(Alter Ego)**

5           52.     Answering paragraph 148 incorporating the preceding paragraphs of the  
6 Complaint, Defendants incorporate paragraphs 1-51 of their Answer as though fully set forth  
7 herein.

8           53.     Answering paragraphs 149-152 of the Complaint, Defendants deny the  
9 allegations contained therein.

10          54.     Defendants deny that Plaintiffs are entitled to any of the relief they seek.

11                                   **AFFIRMATIVE DEFENSES**

12          1.     Plaintiffs have failed to state a claim upon which relief can be granted.

13          2.     No legal and binding agreements were ever entered into between Plaintiffs  
14 and these answering Defendants.

15          3.     Plaintiffs' claims are barred under the doctrine of unclean hands.

16          4.     Plaintiffs' claims are barred by the doctrine of fraud.

17          5.     Plaintiffs' claims are barred under the doctrine of waiver.

18          6.     Any damages to Plaintiffs are the result of third parties over whom these  
19 answering Defendants had no control.

20          7.     Any damages incurred by Plaintiffs are a result of its own conduct.

21          8.     Any damages incurred by Plaintiffs are barred by the doctrine of accord and  
22 satisfaction.

23          9.     Plaintiffs' claims are barred by the applicable statutes of repose.

24          10.    Plaintiffs' claims are barred by the applicable statutes of limitations.



- 1           11.     Plaintiffs' claims are barred by the doctrine of estoppel.
- 2           12.     Plaintiffs have failed to join all necessary and indispensable parties to this
- 3 lawsuit.
- 4           13.     Plaintiffs have knowingly and intentionally released the Defendants from the
- 5 claims at issue.
- 6           14.     Plaintiffs' claims must be denied for lack of consideration.
- 7           15.     The damages incurred by Defendants as a result of Plaintiffs' actions are
- 8 greater than any damages incurred by Plaintiffs.
- 9           16.     Plaintiffs have failed to exercise reasonable care and diligence to avoid loss
- 10 and to minimize and/or mitigate any damages that Plaintiffs have suffered.
- 11           17.     Plaintiffs failed to give timely and reasonable notice of their claims.
- 12           18.     Plaintiffs' claims are barred by the doctrine of laches.
- 13           19.     Plaintiffs' claims are barred by the statute of frauds.
- 14           20.     Plaintiffs' claims are barred by the parol evidence rule.
- 15           21.     Any duty of performance of Defendants is excused by reason of a breach of
- 16 condition precedent by Plaintiffs.
- 17           22.     Any duty of performance of Defendants is excused by reason of a breach of
- 18 condition subsequent by Plaintiffs.
- 19           23.     Plaintiffs' claims are barred by Plaintiffs' own breach of contract between the
- 20 parties.
- 21           24.     Prior to the commencement of this action, Defendants duly performed,
- 22 satisfied and discharged all duties and obligations that they may have owed to Plaintiffs.
- 23           25.     All or some Defendants are not subject to the personal jurisdiction of this
- 24 Court.
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1           26.     This Court does not have subject matter jurisdiction over Plaintiffs' claims.

2           27.     Jurisdiction over Plaintiffs' allegations and causes of action are outside  
3 Nevada.

4           28.     Some of Plaintiffs' claims are derivative and duplicative of other claims.

5           29.     Plaintiffs have failed to incur any damages as result of any actionable conduct  
6 by Defendants.

7           30.     Plaintiffs have failed to meet the applicable pleading standards for their  
8 claims.

9           31.     Plaintiffs' causes of action may be rendered moot as a result of a pending  
10 appeal.

11           32.     Any transfers of property or money alleged by Plaintiffs were made in good  
12 faith and for reasonably equivalent value.

13           33.     All transfers of property or money alleged by Plaintiffs were made without  
14 intent to hinder, delay or defraud.

15           34.     Plaintiffs are barred from commencing or maintaining this action in Nevada  
16 pursuant to NRS Chapter 86.

17           35.     Pursuant to NRCP 11, as amended, all possible affirmative defenses may not  
18 have been alleged herein insofar as sufficient facts were not available after reasonable  
19 inquiry upon the filing of Defendants' Answer to the First Amended Complaint, and  
20 therefore, Defendants reserve the right to amend their Answer to allege additional affirmative  
21 defenses, if subsequent investigation so warrants.

22           WHEREFORE, Defendants pray as follows:


23           1.     That Plaintiffs' claims be denied;

24           2.     That the Court award Defendants their costs;  
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3. That the Court award Defendants all of their reasonable attorneys' fees; and
4. For such other and further relief as the Court deems just and proper.

DATED this 5 day of September, 2017.

LAW OFFICE OF HAYES & WELSH

  
GARRY L. HAYES, ESQ.  
Nevada State Bar No. 1540  
199 N. Arroyo Grande Blvd., Ste. 200  
Henderson, NV 89074  
*Attorney for Defendants*

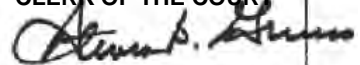
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), and EDCR 8.05, I hereby certify that on the 5<sup>th</sup> day of September, 2017, I served a true and correct copy of the foregoing ANSWER TO AMENDED COMPLAINT through the Court's electronic filing and service system to:

JOHN W. MUIJE, ESQ.  
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Las Vegas, NV 89104  
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[harry@marquislaw.net](mailto:harry@marquislaw.net)  
*Attorneys for Defendants 305 Las Vegas, LLC  
and Barnet Liberman*

  
\_\_\_\_\_  
Employee of the Law Office of Hayes & Welsh



1 ANS

2 HARRY PAUL MARQUIS, ESQ.

3 Nevada Bar No. 001252

4 **HARRY PAUL MARQUIS, CHTD.**

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6 Las Vegas, Nevada 89101

7 Telephone (702) 382-6700

8 Facsimile (702) 384-0715

9 Email: [harry@marquislaw.net](mailto:harry@marquislaw.net)

10 *Attorney for Defendants*

11 *305 Las Vegas, LLC and*

12 *Barnet Liberman*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 RUSSELL L. NYPE; REVENUE PLUS, LLC,  
16 DOES I through X; DOES I through X; DOE  
17 CORPORATIONS I through X; and DOES  
18 PARTNERSI-IIPS I through X,

19 Plaintiffs,

20 vs.

21 DAVID J. MITCHELL; BARNET LIBERMAN;  
22 LAS VEGAS LAND PARTNERS, LLC; MEYER  
23 PROPERTY, LTD.; ZOE PROPERTY, LLC;  
24 LEAH PROPERTY, LLC; WINK ONE, LLC;  
25 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. XV

**ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

COMES NOW, Defendants 305 LAS VEGAS LLC, a Nevada limited liability company,  
and BARNET LIBERMAN, an individual, by and through their attorney of record, HARRY PAUL

1 MARQUIS, ESQ. of the firm HARRY PAUL MARQUIS, CHARTERED, and hereby submits its  
2 Answer to Plaintiff's Amended Complaint and hereby admits, denies and alleges as follows:

3  
4 **GENERAL ALLEGATIONS**

5 1. Answering Paragraph 3, 5, 15, 23, 26, 34, 38, 62, 70, 90 and 93 of Plaintiff's Amended  
6 Complaint, these answering Defendants admit the allegations contained therein.

7 2. Answering Paragraphs 1, 2, 6, 7, 8, 9, 11, 12, 14, 16, 17, 18, 19, 20, 21, 22, 24, 25,  
8 27, 28, 29, 30, 31, 32, 33, 39, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 57, 63, 64, 69, 71, 86, 87  
9 and 91 of Plaintiff's Amended Complaint, these answering Defendants are without sufficient  
10 knowledge and information upon which to form a belief as to the truth of the allegations contained  
11 therein, and therefore denies the same.

12 3. Answering Paragraph 4, 10, 13, 36, 37, 40, 41, 42, 55, 56, 58, 59, 60, 61, 65, 66, 67,  
13 68, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 88, 89, 92, 94, 95, 96, 97, 98, 99, 100, 101,  
14 102, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113 and 114 of Plaintiff's Amended  
15 Complaint, these answering Defendants deny each and every allegation contained therein.

16 4. Answering Paragraph 35 of Plaintiff's Amended Complaint, these answering  
17 Defendants admit that Barnet Liberman is a Manager. As to all of the remaining allegations  
18 contained in Paragraph 35 of Plaintiff's Amended Complaint, these answering Defendants are  
19 without sufficient knowledge and information upon which to form a belief as to the truth of the  
20 allegations contained therein, and therefore denies the same.

21 **FIRST CLAIM FOR RELIEF**  
22 **(Constructive Trust)**

23 6. Answering Paragraph 115 of Plaintiff's Amended Complaint, these answering  
24 Defendants repeat and re-allege their answers to Paragraphs 1 through 114 of Plaintiff's Amended  
25 Complaint as though fully set forth herein and incorporates the same by this reference.

1           7.       Answering Paragraphs 116, 117, 118, 119, 120 and 121 of Plaintiff's Amended  
2 Complaint, these answering Defendants deny each and every allegation contained therein.

3                               **SECOND CLAIM FOR RELIEF**

4                               **(Fraudulent Conveyance)**

5           8.       Answering Paragraph 122 of Plaintiff's Amended Complaint, these answering  
6 Defendants repeat and re-allege their answers to Paragraphs 1 through 121 of Plaintiff's Amended  
7 Complaint as though fully set forth herein and incorporates the same by this reference.

8           9.       Answering Paragraphs 123, 124, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134  
9 and 135 of Plaintiff's Amended Complaint, these answering Defendants deny each and every  
10 allegation contained therein.

11                               **THIRD CLAIM FOR RELIEF**

12                               **(Civil Conspiracy)**

13          10.       Answering Paragraph 136 of Plaintiff's Amended Complaint, these answering  
14 Defendants repeat and re-allege their answers to Paragraphs 1 through 135 of Plaintiff's Amended  
15 Complaint as though fully set forth herein and incorporates the same by this reference.

16          11.       Answering Paragraphs 137, 138, 139, 140, 141, 142 and 143 of Plaintiff's Amended  
17 Complaint, these answering Defendants deny each and every allegation contained therein.

18                               **FOURTH CLAIM FOR RELIEF**

19                               **(Declaratory Relief)**

20          12.       Answering Paragraph 144 of Plaintiff's Amended Complaint, these answering  
21 Defendants repeat and re-allege their answers to Paragraphs 1 through 143 of Plaintiff's Amended  
22 Complaint as though fully set forth herein and incorporates the same by this reference.

23          13.       Answering Paragraphs 145, 146 and 147 of Plaintiff's Amended Complaint, these  
24 answering Defendants deny each and every allegation contained therein.  
25

**FIFTH CLAIM FOR RELIEF**  
**(Alter Ego)**

14. Answering Paragraph 148 of Plaintiff's Amended Complaint, these answering Defendants repeat and re-allege their answers to Paragraphs 1 through 121 of Plaintiff's Amended Complaint as though fully set forth herein and incorporates the same by this reference.

15. Answering Paragraphs 149, 150, 151 and 152 of Plaintiff's Amended Complaint, these answering Defendants deny each and every allegation contained therein.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint is barred by the doctrine of waiver.

**THIRD AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint is barred by the doctrine of estoppel.

**FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint is barred by the doctrine of unclean hands.

**FIFTH AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint is barred by the doctrine of laches.

**SIXTH AFFIRMATIVE DEFENSE**

Any damages alleged by Plaintiffs, if any, are the result of Plaintiffs own conduct.

**SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint is barred by the statute of frauds.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint is barred by the applicable statute of limitations.



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**NINTH AFFIRMATIVE DEFENSE**

If Defendants failed to perform any obligation owed to Plaintiff, which they have expressly denied, there existed a valid excuse for such non-performance.

**TENTH AFFIRMATIVE DEFENSE**

Defendants acted in good faith in all dealings with Plaintiff.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to mitigate their damages, if any.

**TWELFTH AFFIRMATIVE DEFENSE**

Plaintiff’s Amended Complaint is barred as no legal and binding agreements exist between Plaintiffs and these answering Defendants.

**THIRTEENTH AFFIRMATIVE DEFENSE**

If Defendants failed to perform any obligation owed to Plaintiff, which they expressly denied, such non-performance was excused by a failure of a condition precedent to such performance.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff’s Amended Complaint is barred by Plaintiff’s prior breach of any alleged contract.

**FIFTEENTH AFFIRMATIVE DEFENSE**

Any damages alleged by Plaintiff, if any, should be set off against these answering Defendant’s damages.

**SIXTEENTH AFFIRMATIVE DEFENSE**

The incidents alleged in Plaintiff’s Amended Complaint, and any and all damages allegedly resulting therefrom, were proximately caused in whole or in part, or were contributed to by the actions, negligence or other conduct of the Plaintiff, which actions, negligence or other conduct causally contributed to the incidents referred to in the Amended Complaint and any damages resulting therefrom, in greater degree than any conduct or negligence, which are specifically denied, of this answering Defendant.

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**SEVENTEENTH AFFIRMATIVE DEFENSE**

The damages alleged by Plaintiffs, if any, were caused in whole or in part by the negligence or otherwise actionable conduct of a third party or third parties over which Defendants had no control.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint is barred by the applicable statute of repose.

**NINETEENTH AFFIRMATIVE DEFENSE**

The incidents referred to in Plaintiff's Amended Complaint, and any and all damages allegedly resulting therefrom, were proximately caused in whole or in part, or were contributed to by the fraud, intentional misrepresentation, negligent misrepresentation, or concealment of the Plaintiff, and therefore Plaintiff is not entitled to any relief from these answering Defendants.

**TWENTIETH AFFIRMATIVE DEFENSE**

The damages alleged by Plaintiff, if any, were not caused by any conduct or inaction of these answering Defendant.

**TWENTY FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint is barred due to a lack of consideration.

**TWENTY SECOND AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint is barred due to a lack of a meeting of the minds.

**TWENTY THIRD AFFIRMATIVE DEFENSE**

This answering Defendant 305 Las Vegas, LLC was operated as a separate and distinct entity.

**TWENTY FOURTH AFFIRMATIVE DEFENSE**

Plaintiff's Amended Complaint is barred since Plaintiffs did not suffer any damages.

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**TWENTY FIFTH AFFIRMATIVE DEFENSE**

Answering Defendants hereby incorporate by reference those affirmative defenses enumerated in NRCP 8 as though fully set forth herein. Such defenses are herein incorporated by reference for the specific purpose of not waiving the same.

**TWENTY SIXTH AFFIRMATIVE DEFENSE**

Any damages alleged to be incurred by Plaintiffs are barred by the doctrine of accord and satisfaction.

**TWENTY SEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the doctrine of fraud.

**TWENTY EIGHTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to join all necessary and indispensable parties to this lawsuit.

**TWENTY NINTH AFFIRMATIVE DEFENSE**

Plaintiffs have knowingly and intentionally released the Defendants from the claims at issue.

**THIRTIETH AFFIRMATIVE DEFENSE**

The damages incurred by Defendants as a result of Plaintiffs' actions are greater than any damages incurred by Plaintiffs.

**THIRY FIRST AFFIRMATIVE DEFENSE**

Plaintiffs failed to give timely and reasonable notice of their claims.

**THIRTY SECOND AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by the parol evidence rule.

**THIRTY THIRD AFFIRMATIVE DEFENSE**

If Defendants failed to perform any obligation owed to Plaintiff, which they expressly denied, such non-performance was excused by a failure of a condition subsequent to such performance.

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**THIRTY FOURTH AFFIRMATIVE DEFENSE**

Prior to the commencement of this action, Defendants duly performed, satisfied and discharged all duties and obligations that they may have owed to Plaintiffs.

**THIRTY FIFTH AFFIRMATIVE DEFENSE**

All or some Defendants are not subject to the personal jurisdiction of this Court.

**THIRTY SIXTH AFFIRMATIVE DEFENSE**

This Court does not have subject matter jurisdiction over Plaintiff's claims.

**THIRTY SEVENTH AFFIRMATIVE DEFENSE**

Jurisdiction over Plaintiff's allegations and causes of action are outside Nevada.

**THIRTY EIGHTH AFFIRMATIVE DEFENSE**

Some of Plaintiff's claims are derivative and duplicate of other claims.

**THIRTY NINTH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to incur any damages as a result of any actionable conduct by Defendants.

**FORTIETH AFFIRMATIVE DEFENSE**

Plaintiffs have failed to meet the applicable pleading standards for their claims.

**FORTY FIRST AFFIRMATIVE DEFENSE**

Plaintiff's cause of action may be rendered moot as a result of a pending appeal.

**FORTY SECOND AFFIRMATIVE DEFENSE**

Any transfer of property or money alleged by Plaintiffs were made in good faith and for a reasonably equivalent value,

**FORTY THIRD AFFIRMATIVE DEFENSE**

All transfers of property or money alleged by Plaintiffs were made without intent to hinder, delay or defraud.

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1 **FORTY FOURTH AFFIRMATIVE DEFENSE**

2 Plaintiffs are barred from commencing or maintaining this action in Nevada pursuant to NRS  
3 Chapter 86.

4 **FORTY FIFTH AFFIRMATIVE DEFENSE**


5 Pursuant to the provisions of Nevada Rule of Civil Procedure 11, at the time of the filing of  
6 this Answer to Amended Complaint, all possible affirmative defenses may not have been alleged in  
7 as much as insufficient facts and relevant information may not have been available after reasonable  
8 inquiry, and therefore, this answering Defendant reserves the right to amend this Answer to Amended  
9 Complaint to allege additional affirmative defenses if subsequent investigation so warrants.

10 **WHEREFORE**, the answering Defendants pray for Judgment as follows:

- 11 1. That Plaintiff take nothing by way of his Amended Complaint on file herein;  
12 2. For reasonable attorney's fees and costs of suit; and  
13 3. For such other and further relief as the Court deems just and proper in the  
14 premises.

15 DATED this 8<sup>th</sup> day of September 2017.

16 **HARRY PAUL MARQUIS, CHTD.**

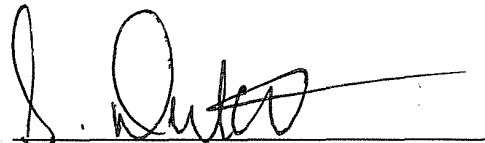
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25 Email: [harry@marquislaw.net](mailto:harry@marquislaw.net)  
*Attorney for Defendant*  
*305 Las Vegas, LLC and*  
*Barnet Liberman*

**CERTIFICATE OF MAILING**

I hereby certify that on the 8<sup>th</sup> day of September 2017, I served a true and correct copy of the *Answer to Plaintiff's Amended Complaint* electronically via the Court's ECF system upon all parties listed on the electronic service list, as follows

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*Leah Property LLC, Liberman Holdings LLC,*  
*Live Work LLC, Live Works Manager LLC,*  
*LVLP Holdings LLC, Meyer Property Ltd,*  
*David J. Mitchell and Mitchell Holdings LLC*



An employee of  
**HARRY PAUL MARQUIS, CHTD.**