

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID J. MITCHELL; LAS VEGAS
LAND PARTNERS, LLC; MEYER
PROPERTY LTD; ZOE PROPERTY,
LLC; LEAH PROPERTY, LLC;
WINK ONE, LLC; AQUARIUS
OWNER, LLC; LVLP HOLDINGS,
LLC; AND LIVE WORKS TIC
SUCCESSOR, LLC,

Appellants,

vs.

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

Respondents.

Case No. 80693

Electronically Filed
Oct 28 2021 05:25 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable ELIZABETH GONZALEZ, District Judge
District Court Case No. A-16-740689-B

**RESPONDENTS' APPENDIX – VOLUME 1
(BATES RANGE) RA 000001 – RA 000237**

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CHRONOLOGICAL TABLE OF CONTENTS TO
RESPONDENTS' APPENDIX

Date	Description	Volume/Bates No.
08/21/17	Amended Complaint	Volume 1, RA 1 – RA 34
03/27/19	Plaintiffs' Limited Opposition to the Mitchell Defendants' Motion to Withdraw as Counsel of Record	Volume 1, RA 35 – RA 121
04/22/19	Plaintiffs' Motion to Compel Defendants' Production of Documents on Order Shortening Time	Volume 1, RA 122 – RA 143
05/30/19	Notice of Entry of Order Compelling Discovery, Awarding Sanctions, and Briefly Extending Discovery for Limited Purposes and Continuing the Trial Date	Volume 1, RA 144 – RA 155
06/14/19	Plaintiffs' Motion for Sanctions Pursuant to NRCP 37(b) and Motion to Extend Time for Plaintiffs' Deadline for Supplemental Expert Report on Order Shortening Time	Volume 1, RA 156 – RA 227
07/02/19	Supplement in Support of Monetary Sanctions and Request for Incremental Sanctions	Volume 1, RA 228 – RA 237
08/30/19	Trial Brief Regarding Evidentiary Hearing – Discovery Sanctions	Volume 2, RA 238 – RA 314
09/20/19	Order Re: Discovery Sanctions	Volume 2, RA 315 – RA 323

09/23/19	Notice of Entry of Order Re: Discovery Sanctions	Volume 2, RA 324 – RA 336
10/07/19	Plaintiffs’ Opposition to Motion for Summary Judgment and Countermotion for Discovery Pursuant to NRCP 56(d)	Volume 2, RA 337 – RA 364
10/17/19	Plaintiffs’ Opposition to The Mitchell Defendants’ Statement of Compliance and Motion for Additional Time for Further Production and Countermotion for Case Concluding Sanctions	Volume 2, RA 365 – RA 429
11/17/19	Status Report Regarding The Mitchell Defendants’ Compliance with This Court’s Order Re: Discovery Sanctions	Volume 3, RA 430 – RA 434
12/12/19	Appendix to Plaintiffs’ Opposition to Defendants’ Motion to Dismiss Plaintiffs’ Amended Complaint Pursuant to NRCP (12(b)(2) and 12(b)(5), or in the Alternative Motion for Summary Judgment	Volume 3, RA 435 – RA 561
12/12/19	Plaintiffs’ Opposition to Defendants’ Motion to Dismiss Plaintiffs’ Amended Complaint Pursuant to NRCP (12(b)(2) and 12(b)(5), or in the Alternative Motion for Summary Judgment	Volume 3, RA 562 – RA 583
12/29/19	Defendants Barnet Liberman and Casino Coolidge, LLC’s Trial Brief	Volume 3, RA 584 – RA 594

TRIAL EXHIBITS

Date	Description	Volume/Bates No.
Undated	Plaintiffs' Trial Exhibit No. 4	Volume 4, RA 605 – RA 650
Undated	Plaintiffs' Trial Exhibit No. 6	Volume 4, RA 651 – RA 679
Undated	Plaintiffs' Trial Exhibit No. 7	Volume 4, RA 680 – RA 681
Undated	Plaintiffs' Trial Exhibit No. 8	Volume 4, RA 682 – RA 684
Undated	Plaintiffs' Trial Exhibit No. 11	Volume 4, RA 685 – RA 692
Undated	Plaintiffs' Trial Exhibit No. 16	Volume 4, RA 693 – RA 695
Undated	Plaintiffs' Trial Exhibit No. 22	Volume 4, RA 696
Undated	Plaintiffs' Trial Exhibit No. 24	Volume 4, RA 697
Undated	Plaintiffs' Trial Exhibit No. 25	Volume 4, RA 698 – RA 700
Undated	Plaintiffs' Trial Exhibit No. 28	Volume 4, RA 701
Undated	Plaintiffs' Trial Exhibit No. 39	Volume 4, RA 702 – RA 705
Undated	Plaintiffs' Trial Exhibit No. 41	Volume 4, RA 706 – RA 709

Undated	Plaintiffs' Trial Exhibit No. 42	Volume 4, RA 710 – RA 748
Undated	Plaintiffs' Trial Exhibit No. 47	Volume 5, RA 749 – RA 750
Undated	Plaintiffs' Trial Exhibit No. 48	Volume 5, RA 751 – RA 814
Undated	Plaintiffs' Trial Exhibit No. 10005	Volume 5, RA 815 – RA 826
Undated	Plaintiffs' Trial Exhibit No. 10006	Volume 5, RA 827 – RA 849
Undated	Plaintiffs' Trial Exhibit No. 10007	Volume 5, RA 850 – RA 859
Undated	Plaintiffs' Trial Exhibit No. 10008	Volume 5, RA 860 – RA 883
Undated	Plaintiffs' Trial Exhibit No. 10014	Volume 5, RA 884 – RA 887
Undated	Plaintiffs' Trial Exhibit No. 10015	Volume 5, RA 888 – RA 899
Undated	Plaintiffs' Trial Exhibit No. 10018	Volume 5, RA 900 – RA 914
Undated	Plaintiffs' Trial Exhibit No. 10022	Volume 5, RA 915 – RA 919
Undated	Plaintiffs' Trial Exhibit No. 10036	Volume 5, RA 920 – RA 923
Undated	Plaintiffs' Trial Exhibit No. 10037	Volume 5, RA 924 – RA 927

Undated	Plaintiffs' Trial Exhibit No. 10038	Volume 6, RA 928 – RA 1027
Undated	Plaintiffs' Trial Exhibit No. 10039	Volume 6, RA 1028 – RA 1077
Undated	Plaintiffs' Trial Exhibit No. 10042	Volume 6, RA 1078 – RA 1101
Undated	Plaintiffs' Trial Exhibit No. 10043 – Part 1	Volume 7, RA 1102 – RA 1350
Undated	Plaintiffs' Trial Exhibit No. 10043 – Part 2	Volume 8, RA 1351 – RA 1580
Undated	Plaintiffs' Trial Exhibit No. 10043 – Part 3	Volume 9, RA 1581 – RA 1671
Undated	Plaintiffs' Trial Exhibit No. 10044 – Part 1	Volume 10, RA 1672 – RA 1917
Undated	Plaintiffs' Trial Exhibit No. 10044 – Part 2	Volume 11, RA 1918 – RA 2162
Undated	Plaintiffs' Trial Exhibit No. 10045 – Part 1	Volume 12, RA 2163 – RA 2405
Undated	Plaintiffs' Trial Exhibit No. 10045 – Part 2	Volume 13, RA 2406 – RA 2652
Undated	Plaintiffs' Trial Exhibit No. 10045 – Part 3	Volume 14, RA 2653 – RA 2894
Undated	Plaintiffs' Trial Exhibit No. 10045 – Part 4	Volume 15, RA 2895 – RA 2905
Undated	Plaintiffs' Trial Exhibit No. 10046 – Part 1	Volume 16, RA 2906 – RA 3145

Undated	Plaintiffs' Trial Exhibit No. 10046 – Part 2	Volume 17, RA 3146 – RA 3394
Undated	Plaintiffs' Trial Exhibit No. 10046 – Part 3	Volume 18, RA 3395 – RA 3644
Undated	Plaintiffs' Trial Exhibit No. 10046 – Part 4	Volume 19, RA 3645 – RA 3749
Undated	Plaintiffs' Trial Exhibit No. 20001	Volume 20, RA 3750 – RA 3753
Undated	Plaintiffs' Trial Exhibit No. 20003	Volume 20, RA 3754 – RA 3767
Undated	Plaintiffs' Trial Exhibit No. 20004	Volume 20, RA 3768 – RA 3776
Undated	Plaintiffs' Trial Exhibit No. 20005	Volume 20, RA 3777 – RA 3800
Undated	Plaintiffs' Trial Exhibit No. 20006	Volume 20, RA 3801 – RA 3819
Undated	Plaintiffs' Trial Exhibit No. 20007	Volume 21, RA 3820 – RA 3826
Undated	Plaintiffs' Trial Exhibit No. 20008	Volume 21, RA 3827 – RA 3829
Undated	Plaintiffs' Trial Exhibit No. 20009	Volume 21, RA 3830 – RA 3834
Undated	Plaintiffs' Trial Exhibit No. 20010	Volume 21, RA 3835 – RA 3839
Undated	Plaintiffs' Trial Exhibit No. 20011	Volume 21, RA 3840 – RA 3841

Undated	Plaintiffs' Trial Exhibit No. 20012	Volume 21, RA 3842 – RA 3882
Undated	Plaintiffs' Trial Exhibit No. 20013	Volume 21, RA 3883
Undated	Plaintiffs' Trial Exhibit No. 20014	Volume 21, RA 3884 – RA 3995
Undated	Plaintiffs' Trial Exhibit No. 20015	Volume 21, RA 3996 – RA 4035
Undated	Plaintiffs' Trial Exhibit No. 20016	Volume 21, RA 4036 – RA 4041
Undated	Plaintiffs' Trial Exhibit No. 20017	Volume 21, RA 4042 – RA 4046
Undated	Plaintiffs' Trial Exhibit No. 20018	Volume 21, RA 4047 – RA 4055
Undated	Plaintiffs' Trial Exhibit No. 20019	Volume 21, RA 4056 – RA 4057
Undated	Plaintiffs' Trial Exhibit No. 20020	Volume 22, RA 4058 – RA 4122
Undated	Plaintiffs' Trial Exhibit No. 20022	Volume 22, RA 4123 – RA 4124
Undated	Plaintiffs' Trial Exhibit No. 20023	Volume 22, RA 4125 – RA 4144
Undated	Plaintiffs' Trial Exhibit No. 20025	Volume 22, RA 4145 – RA 4147
Undated	Plaintiffs' Trial Exhibit No. 20029	Volume 22, RA 4148 – RA 4149

Undated	Plaintiffs' Trial Exhibit No. 20030	Volume 22, RA 4150 – RA 4151
Undated	Plaintiffs' Trial Exhibit No. 20031	Volume 22, RA 4152 – RA 4153
Undated	Plaintiffs' Trial Exhibit No. 20032	Volume 22, RA 4154 – RA 4155
Undated	Plaintiffs' Trial Exhibit No. 20033	Volume 22, RA 4156 – RA 4174
Undated	Plaintiffs' Trial Exhibit No. 20034	Volume 22, RA 4175 – RA 4205
Undated	Plaintiffs' Trial Exhibit No. 20035	Volume 22, RA 4206 – RA 4263
Undated	Plaintiffs' Trial Exhibit No. 20036	Volume 22, RA 4264 – RA 4285
Undated	Plaintiffs' Trial Exhibit No. 20037	Volume 22, RA 4286 – RA 4293
Undated	Plaintiffs' Trial Exhibit No. 20038	Volume 22, RA 4294 – RA 4308
Undated	Plaintiffs' Trial Exhibit No. 20039	Volume 23, RA 4309
Undated	Plaintiffs' Trial Exhibit No. 20040	Volume 23, RA 4310 – RA 4318
Undated	Plaintiffs' Trial Exhibit No. 20041	Volume 23, RA 4319 – RA 4320
Undated	Plaintiffs' Trial Exhibit No. 20042	Volume 23, RA 4321 – RA 4322

Undated	Plaintiffs' Trial Exhibit No. 20043	Volume 23, RA 4323 – RA 4324
Undated	Plaintiffs' Trial Exhibit No. 20044	Volume 23, RA 4325 – RA 4330
Undated	Plaintiffs' Trial Exhibit No. 20047	Volume 23, RA 4331 – RA 4334
Undated	Plaintiffs' Trial Exhibit No. 20052	Volume 23, RA 4335 – RA 4345
Undated	Plaintiffs' Trial Exhibit No. 30009	Volume 23, RA 4346 – RA 4354
Undated	Plaintiffs' Trial Exhibit No. 30011	Volume 23, RA 4355 – RA 4358
Undated	Plaintiffs' Trial Exhibit No. 30012	Volume 23, RA 4359 – RA 4373
Undated	Plaintiffs' Trial Exhibit No. 30013	Volume 23, RA 4374 – RA 4389
Undated	Plaintiffs' Trial Exhibit No. 30014	Volume 23, RA 4390 – RA 4409
Undated	Plaintiffs' Trial Exhibit No. 30015	Volume 23, RA 4410 – RA 4434
Undated	Plaintiffs' Trial Exhibit No. 30041	Volume 23, RA 4435
Undated	Plaintiffs' Trial Exhibit No. 30042	Volume 23, RA 4436
Undated	Plaintiffs' Trial Exhibit No. 30043	Volume 23, RA 4437
Undated	Plaintiffs' Trial Exhibit No. 30044	Volume 23, RA 4438

Undated	Plaintiffs' Trial Exhibit No. 30050	Volume 23, RA 4439
Undated	Plaintiffs' Trial Exhibit No. 30051	Volume 23, RA 4440
Undated	Plaintiffs' Trial Exhibit No. 30052	Volume 23, RA 4441
Undated	Plaintiffs' Trial Exhibit No. 30053	Volume 23, RA 4442 – RA 4447
Undated	Plaintiffs' Trial Exhibit No. 30055	Volume 23, RA 4448 – RA 4449
Undated	Plaintiffs' Trial Exhibit No. 30058	Volume 23, RA 4450
Undated	Plaintiffs' Trial Exhibit No. 30059	Volume 23, RA 4451
Undated	Plaintiffs' Trial Exhibit No. 30071	Volume 23, RA 4452 – RA 4456
Undated	Plaintiffs' Trial Exhibit No. 30077	Volume 23, RA 4457
Undated	Plaintiffs' Trial Exhibit No. 30078	Volume 23, RA 4458
Undated	Plaintiffs' Trial Exhibit No. 30079	Volume 23, RA 4459
Undated	Plaintiffs' Trial Exhibit No. 30089	Volume 24, RA 4460 – RA 4512
Undated	Plaintiffs' Trial Exhibit No. 30090	Volume 24, RA 4513 – RA 4573
Undated	Plaintiffs' Trial Exhibit No. 30091	Volume 24, RA 4474 – RA 4638
Undated	Plaintiffs' Trial Exhibit No. 30092	Volume 25, RA 4639
Undated	Plaintiffs' Trial Exhibit No. 30094	Volume 25, RA 4640 – RA 4653

Undated	Plaintiffs' Trial Exhibit No. 30096	Volume 25, RA 4654 – RA 4658
Undated	Plaintiffs' Trial Exhibit No. 30097 – Part 1	Volume 26, RA 4659 – RA 4908
Undated	Plaintiffs' Trial Exhibit No. 30097 – Part 2	Volume 27, RA 4909 – RA 5158
Undated	Plaintiffs' Trial Exhibit No. 30097 – Part 3	Volume 28, RA 5159 – RA 5408
Undated	Plaintiffs' Trial Exhibit No. 30097 – Part 4	Volume 29, RA 5409 – RA 5658
Undated	Plaintiffs' Trial Exhibit No. 30097 – Part 5	Volume 30, RA 5659 – RA 5842
Undated	Plaintiffs' Trial Exhibit No. 30098 – Part 1	Volume 31, RA 5843 – RA 6092
Undated	Plaintiffs' Trial Exhibit No. 30098 – Part 2	Volume 32, RA 6093 – RA 6338
Undated	Plaintiffs' Trial Exhibit No. 30098 – Part 3	Volume 33, RA 6339 – RA 6588
Undated	Plaintiffs' Trial Exhibit No. 30098 – Part 4	Volume 34, RA 6589 – RA 6838
Undated	Plaintiffs' Trial Exhibit No. 30098 – Part 5	Volume 35, RA 6839 – RA 6995
Undated	Plaintiffs' Trial Exhibit No. 30101	Volume 36, RA 6996 – RA 7003
Undated	Plaintiffs' Trial Exhibit No. 30102	Volume 36, RA 7004 – RA 7010

Undated	Plaintiffs' Trial Exhibit No. 30103	Volume 36, RA 7011
Undated	Plaintiffs' Trial Exhibit No. 30104	Volume 36, RA 7012 – RA 7018
Undated	Plaintiffs' Trial Exhibit No. 30105	Volume 36, RA 7019 – RA 7026
Undated	Plaintiffs' Trial Exhibit No. 30106	Volume 36, RA 7027 – RA 7034
Undated	Plaintiffs' Trial Exhibit No. 30107	Volume 36, RA 7035
Undated	Plaintiffs' Trial Exhibit No. 40003	Volume 36, RA 7036
Undated	Plaintiffs' Trial Exhibit No. 40004	Volume 36, RA 7037 – RA 7038
Undated	Plaintiffs' Trial Exhibit No. 40008	Volume 36, RA 7039
Undated	Plaintiffs' Trial Exhibit No. 40009	Volume 36, RA 7040 – RA 7161
Undated	Plaintiffs' Trial Exhibit No. 40010	Volume 37, RA 7162 – RA 7254
Undated	Plaintiffs' Trial Exhibit No. 40014	Volume 37, RA 7255 – RA 7303
Undated	Plaintiffs' Trial Exhibit No. 40017	Volume 37, RA 7304
Undated	Plaintiffs' Trial Exhibit No. 40018	Volume 37, RA 7305 – RA 7308

Undated	Plaintiffs' Trial Exhibit No. 40019	Volume 37, RA 7309 – RA 7313
Undated	Plaintiffs' Trial Exhibit No. 40020	Volume 37, RA 7314 – RA 7320
Undated	Plaintiffs' Trial Exhibit No. 40021	Volume 37, RA 7321 – RA 7325
Undated	Plaintiffs' Trial Exhibit No. 40022	Volume 37, RA 7326 – RA 7330
Undated	Plaintiffs' Trial Exhibit No. 40023	Volume 37, RA 7331 – RA 7337
Undated	Plaintiffs' Trial Exhibit No. 40024	Volume 37, RA 7338 – RA 7341
Undated	Plaintiffs' Trial Exhibit No. 40025	Volume 37, RA 7342 – RA 7353
Undated	Plaintiffs' Trial Exhibit No. 40026	Volume 37, RA 7354 – RA 7357
Undated	Plaintiffs' Trial Exhibit No. 40027	Volume 37, RA 7358 – RA 7395
Undated	Plaintiffs' Trial Exhibit No. 40028	Volume 37, RA 7396 – RA 7399
Undated	Plaintiffs' Trial Exhibit No. 40029	Volume 37, RA 7400 – RA 7404
Undated	Plaintiffs' Trial Exhibit No. 40030	Volume 37, RA 7405 – RA 7409
Undated	Plaintiffs' Trial Exhibit No. 40031	Volume 38, RA 7410 – RA 7468

Undated	Plaintiffs' Trial Exhibit No. 40032	Volume 38, RA 7469 – RA 7472
Undated	Plaintiffs' Trial Exhibit No. 40033	Volume 38, RA 7473 – RA 7477
Undated	Plaintiffs' Trial Exhibit No. 40034	Volume 38, RA 7478 – RA 7483
Undated	Plaintiffs' Trial Exhibit No. 40035	Volume 38, RA 7484 – RA 7489
Undated	Plaintiffs' Trial Exhibit No. 40036	Volume 38, RA 7490 – RA 7495
Undated	Plaintiffs' Trial Exhibit No. 40037	Volume 38, RA 7496 – RA 7501
Undated	Plaintiffs' Trial Exhibit No. 40038	Volume 38, RA 7502 – RA 7508
Undated	Plaintiffs' Trial Exhibit No. 40039	Volume 38, RA 7509 – RA 7514
Undated	Plaintiffs' Trial Exhibit No. 40045	Volume 38, RA 7515 – RA 7531
Undated	Plaintiffs' Trial Exhibit No. 50003	Volume 39, RA 7532 – RA 7591
Undated	Plaintiffs' Trial Exhibit No. 50004	Volume 39, RA 7592 – RA 7608

Undated	Plaintiffs' Trial Exhibit No. 50005	Volume 39, RA 7609 – RA 7610
Undated	Plaintiffs' Trial Exhibit No. 50009	Volume 39, RA 7611 – RA 7630
Undated	Plaintiffs' Trial Exhibit No. 50010	Volume 39, RA 7631 – RA 7665
Undated	Plaintiffs' Trial Exhibit No. 50011	Volume 39, RA 7666 – RA 7676
Undated	Plaintiffs' Trial Exhibit No. 50012	Volume 39, RA 7677 – RA 7686
Undated	Plaintiffs' Trial Exhibit No. 50013	Volume 39, RA 7687 – RA 7702
Undated	Plaintiffs' Trial Exhibit No. 50014	Volume 39, RA 7703 – RA 7725
Undated	Plaintiffs' Trial Exhibit No. 50015	Volume 39, RA 7726 – RA 7751
Undated	Plaintiffs' Trial Exhibit No. 50016	Volume 39, RA 7752 – RA 7772
Undated	Plaintiffs' Trial Exhibit No. 50017	Volume 40, RA 7773 – RA 7794
Undated	Plaintiffs' Trial Exhibit No. 50018	Volume 40, RA 7795 – RA 7816
Undated	Plaintiffs' Trial Exhibit No. 50019	Volume 40, RA 7817 – RA 7840
Undated	Plaintiffs' Trial Exhibit No. 50020	Volume 40, RA 7841 – RA 7870

Undated	Plaintiffs' Trial Exhibit No. 50021	Volume 40, RA 7871 – RA 7892
Undated	Plaintiffs' Trial Exhibit No. 50022	Volume 40, RA 7893 – RA 7914
Undated	Plaintiffs' Trial Exhibit No. 50023	Volume 40, RA 7915 – RA 7935
Undated	Plaintiffs' Trial Exhibit No. 50024	Volume 40, RA 7936 – RA 7967
Undated	Plaintiffs' Trial Exhibit No. 50025 – Part 1	Volume 41, RA 7968 – RA 8092
Undated	Plaintiffs' Trial Exhibit No. 50025 – Part 2	Volume 42, RA 8093 – RA 8236
Undated	Plaintiffs' Trial Exhibit No. 50027 – Part 1	Volume 43, RA 8237 – RA 8386
Undated	Plaintiffs' Trial Exhibit No. 50027 Part 2	Volume 44, RA 8387 – RA 8574
Undated	Plaintiffs' Trial Exhibit No. 50028 – Part 1	Volume 45, RA 8575 – RA 8774
Undated	Plaintiffs' Trial Exhibit No. 50028 – Part 2	Volume 46, RA 8775 – RA 8855
Undated	Plaintiffs' Trial Exhibit No. 50034	Volume 46, RA 8856 – RA 8864
Undated	Plaintiffs' Trial Exhibit No. 50035	Volume 46, RA 8865 – RA 8870
Undated	Plaintiffs' Trial Exhibit No. 50036	Volume 46, RA 8871 – RA 8873

Undated	Plaintiffs' Trial Exhibit No. 60007	Volume 46, RA 8874
Undated	Plaintiffs' Trial Exhibit No. 60008	Volume 46, RA 8875
Undated	Plaintiffs' Trial Exhibit No. 60009	Volume 46, RA 8876
Undated	Plaintiffs' Trial Exhibit No. 60010	Volume 46, RA 8877 – RA 8888
Undated	Plaintiffs' Trial Exhibit No. 60011	Volume 46, RA 8889 – RA 8893
Undated	Plaintiffs' Trial Exhibit No. 60012	Volume 46, RA 8894 – RA 8973
Undated	Plaintiffs' Trial Exhibit No. 60014	Volume 47, RA 8974 – RA 8976
Undated	Plaintiffs' Trial Exhibit No. 60015	Volume 47, RA 8977 – RA 8979
Undated	Plaintiffs' Trial Exhibit No. 60016	Volume 47, RA 8990 – RA 8982
Undated	Plaintiffs' Trial Exhibit No. 60025	Volume 47, RA 8983
Undated	Plaintiffs' Trial Exhibit No. 60026	Volume 47, RA 8984
Undated	Plaintiffs' Trial Exhibit No. 60027	Volume 47, RA 8985
Undated	Plaintiffs' Trial Exhibit No. 60028	Volume 47, RA 8986
Undated	Plaintiffs' Trial Exhibit No. 60032	Volume 47, RA 8987 – RA 8990
Undated	Plaintiffs' Trial Exhibit No. 60033	Volume 47, RA 8991 – RA 8997

Undated	Plaintiffs' Trial Exhibit No. 60034	Volume 47, RA 8998 – RA 9004
Undated	Plaintiffs' Trial Exhibit No. 60035	Volume 47, RA 9005 – RA 9008
Undated	Plaintiffs' Trial Exhibit No. 60036	Volume 47, RA 9009 – RA 9013
Undated	Plaintiffs' Trial Exhibit No. 60037	Volume 47, RA 9014 – RA 9020
Undated	Plaintiffs' Trial Exhibit No. 60038	Volume 47, RA 9021 – RA 9025
Undated	Plaintiffs' Trial Exhibit No. 60045	Volume 47, RA 9026 – RA 9198
Undated	Plaintiffs' Trial Exhibit No. 60046	Volume 47, RA 9199 – RA 9200
Undated	Plaintiffs' Trial Exhibit No. 60047	Volume 47, RA 9201 – RA 9204
Undated	Plaintiffs' Trial Exhibit No. 60048	Volume 47, RA 9205
Undated	Plaintiffs' Trial Exhibit No. 60049	Volume 47, RA 9206 – RA 9209
Undated	Plaintiffs' Trial Exhibit No. 60050	Volume 47, RA 9210 – RA 9219
Undated	Plaintiffs' Trial Exhibit No. 60051	Volume 48, RA 9220 – RA 9243
Undated	Plaintiffs' Trial Exhibit No. 60052	Volume 48, RA 9244 – RA 9269

Undated	Plaintiffs' Trial Exhibit No. 60054	Volume 48, RA 9270 – RA 9273
Undated	Plaintiffs' Trial Exhibit No. 60057	Volume 48, RA 9274 – RA 9283
Undated	Plaintiffs' Trial Exhibit No. 60058	Volume 48, RA 9284 – RA 9296
Undated	Plaintiffs' Trial Exhibit No. 60060	Volume 48, RA 9297 – RA 9298
Undated	Plaintiffs' Trial Exhibit No. 60061	Volume 48, RA 9299 – RA 9303
Undated	Plaintiffs' Trial Exhibit No. 60062	Volume 48, RA 9304 – RA 9310
Undated	Plaintiffs' Trial Exhibit No. 60064	Volume 48, RA 9311 – RA 9314
Undated	Plaintiffs' Trial Exhibit No. 60065	Volume 48, RA 9315 – RA 9317
Undated	Plaintiffs' Trial Exhibit No. 60066	Volume 48, RA 9318 – RA 9322
Undated	Plaintiffs' Trial Exhibit No. 60068	Volume 48, RA 9323 – RA 9324
Undated	Plaintiffs' Trial Exhibit No. 60069	Volume 48, RA 9325 – RA 9331
Undated	Plaintiffs' Trial Exhibit No. 70001	Volume 48, RA 9332 – RA 9333
Undated	Plaintiffs' Trial Exhibit No. 70005	Volume 48, RA 9334 – RA 9337

Undated	Plaintiffs' Trial Exhibit No. 70008	Volume 48, RA 9338
Undated	Plaintiffs' Trial Exhibit No. 70010	Volume 48, RA 9339 – RA 9340
Undated	Plaintiffs' Trial Exhibit No. 70013	Volume 48, RA 9341 – RA 9372
Undated	Plaintiffs' Trial Exhibit No. 70014	Volume 48, RA 9373 – RA 9393
Undated	Plaintiffs' Trial Exhibit No. 70016	Volume 48, RA 9394 – RA 9409
Undated	Plaintiffs' Trial Exhibit No. 70017	Volume 48, RA 9310 – RA 9425
Undated	Plaintiffs' Trial Exhibit No. 70022	Volume 48, RA 9426 – RA 9449
Undated	Plaintiffs' Trial Exhibit No. 70024	Volume 48, RA 9450 – RA 9452
Undated	Plaintiffs' Trial Exhibit No. 70027	Volume 48, RA 9453
Undated	Plaintiffs' Trial Exhibit No. 70051	Volume 48, RA 9454 – RA 9456
Undated	Plaintiffs' Trial Exhibit No. 70057	Volume 48, RA 9457 – RA 9460
Undated	Plaintiffs' Trial Exhibit No. 70058	Volume 48, RA 9461 – RA 9463
Undated	Plaintiffs' Trial Exhibit No. 70059	Volume 48, RA 9464 – RA 9467
Undated	Plaintiffs' Trial Exhibit No. 70061	Volume 48, RA 9468

Undated	Plaintiffs' Trial Exhibit No. 70068	Volume 48, RA 9469
---------	--	--------------------

CHRONOLOGICAL TABLE OF CONTENTS
OF CONFIDENTIAL SEALED EXHIBITS

Date	Description	Volume/Bates No.
10/07/2019	Appendix to Plaintiffs' Opposition to Motion for Summary Judgment and Countermotion for Discovery Pursuant to NRCP 46(d), 100719 (Redacted)	Volume 49, RA 9470 – RA 9474
Undated	Plaintiffs' Trial Exhibit 5	Volume 49, RA 9475 – RA 9477
Undated	Plaintiffs' Trial Exhibit 13	Volume 49, RA 9478 – RA 9511
Undated	Plaintiffs' Trial Exhibit 14	Volume 49, RA 9512 – RA 9516
Undated	Plaintiffs' Trial Exhibit 15	Volume 49, RA 9517 – RA 9526
Undated	Plaintiffs' Trial Exhibit 29	Volume 49, RA 9527
Undated	Plaintiffs' Trial Exhibit 33	Volume 49, RA 9528
Undated	Plaintiffs' Trial Exhibit 36	Volume 49, RA 9529 – RA 9564
Undated	Plaintiffs' Trial Exhibit 37	Volume 49, RA 9565 – RA 9570
Undated	Plaintiffs' Trial Exhibit 46	Volume 49, RA 9571 – RA 9624
Undated	Plaintiffs' Trial Exhibit 49	Volume 49, RA 9625 – RA 9626

Undated	Plaintiffs' Trial Exhibit 50	Volume 49, RA 9627 – RA 9700
Undated	Plaintiffs' Trial Exhibit 51	Volume 50, RA 9701 – RA 9709
Undated	Plaintiffs' Trial Exhibit 53	Volume 50, RA 9710 – RA 9714
Undated	Plaintiffs' Trial Exhibit 54	Volume 50, RA 9715 – RA 9716
Undated	Plaintiffs' Trial Exhibit 55	Volume 50, RA 9717

Undated	Plaintiffs' Trial Exhibit 10001	Volume 50, RA 9718 – RA 9749
Undated	Plaintiffs' Trial Exhibit 10009	Volume 50, RA 9750 – RA 9769
Undated	Plaintiffs' Trial Exhibit 10010	Volume 50, RA 9770 – RA 9805
Undated	Plaintiffs' Trial Exhibit 10011	Volume 50, RA 9806 – RA 9826
Undated	Plaintiffs' Trial Exhibit 10012	Volume 50, RA 9827 – RA 9845
Undated	Plaintiffs' Trial Exhibit 10013	Volume 51, RA 9846 – RA 9879
Undated	Plaintiffs' Trial Exhibit 10016	Volume 51, RA 9880
Undated	Plaintiffs' Trial Exhibit 10017	Volume 51, RA 9881
Undated	Plaintiffs' Trial Exhibit 10019	Volume 51, RA 9882 – RA 9899
Undated	Plaintiffs' Trial Exhibit 10020	Volume 51, RA 9900 – RA 9905
Undated	Plaintiffs' Trial Exhibit 10021	Volume 51, RA 9906 – RA 9923
Undated	Plaintiffs' Trial Exhibit 10023	Volume 51, RA 9924 – RA 9947
Undated	Plaintiffs' Trial Exhibit 10024	Volume 51, RA 9948
Undated	Plaintiffs' Trial Exhibit 10025	Volume 51, RA 9949 – RA 9970

Undated	Plaintiffs' Trial Exhibit 10026	Volume 51, RA 9971 – RA 10016
Undated	Plaintiffs' Trial Exhibit 10027	Volume 52, RA 10017 – RA 10113
Undated	Plaintiffs' Trial Exhibit 10028	Volume 52, RA 10114 – RA 10192
Undated	Plaintiffs' Trial Exhibit 10029	Volume 52, RA 10193 – RA 10210
Undated	Plaintiffs' Trial Exhibit 10030	Volume 52, RA 10211 – RA 10232
Undated	Plaintiffs' Trial Exhibit 10031	Volume 53, RA 10233 – RA 10404
Undated	Plaintiffs' Trial Exhibit 10032	Volume 54, RA 10405 – RA 10428
Undated	Plaintiffs' Trial Exhibit 10033	Volume 54, RA 10429 – RA 10451
Undated	Plaintiffs' Trial Exhibit 10034	Volume 54, RA 10452 – RA 10471
Undated	Plaintiffs' Trial Exhibit 10035	Volume 54, RA 10472 – RA 10503
Undated	Plaintiffs' Trial Exhibit 10047	Volume 54, RA 10504 – RA 10547
Undated	Plaintiffs' Trial Exhibit 10048	Volume 54, RA 10548 – RA 10595
Undated	Plaintiffs' Trial Exhibit 10049	Volume 55, RA 10596 – RA 10646

Undated	Plaintiffs' Trial Exhibit 10050	Volume 55, RA 10647 – RA 10708
Undated	Plaintiffs' Trial Exhibit 10051	Volume 55, RA 10709 – RA 10709
Undated	Plaintiffs' Trial Exhibit 10052	Volume 55, RA 10716 – RA 10772
Undated	Plaintiffs' Trial Exhibit 20002 – Part 1	Volume 56, RA 10773 – RA 10972
Undated	Plaintiffs' Trial Exhibit 20002 – Part 2	Volume 57, RA 10973 – RA 11163
Undated	Plaintiffs' Trial Exhibit 20021	Volume 57, RA 11164 – RA 11187
Undated	Plaintiffs' Trial Exhibit 20027	Volume 58, RA 11188 – RA 11191
Undated	Plaintiffs' Trial Exhibit 20028	Volume 58, RA 11192 – RA 11195
Undated	Plaintiffs' Trial Exhibit 20045	Volume 58, RA 11196 – RA 11209
Undated	Plaintiffs' Trial Exhibit 20046	Volume 58, RA 11210 – RA 11232
Undated	Plaintiffs' Trial Exhibit 20053	Volume 58, RA 11233
Undated	Plaintiffs' Trial Exhibit 30001	Volume 58, RA 11234
Undated	Plaintiffs' Trial Exhibit 30003	Volume 58, RA 11235 – RA 11245
Undated	Plaintiffs' Trial Exhibit 30016	Volume 58, RA 11246 – RA 11282

Undated	Plaintiffs' Trial Exhibit 30017	Volume 58, RA 11283 – RA 11293
Undated	Plaintiffs' Trial Exhibit 30018	Volume 59, RA 11294 – RA 11296
Undated	Plaintiffs' Trial Exhibit 30019	Volume 59, RA 11297 – RA 11398
Undated	Plaintiffs' Trial Exhibit 30020	Volume 59, RA 11399 – RA 11416
Undated	Plaintiffs' Trial Exhibit 30021	Volume 59, RA 11417 – RA 11437
Undated	Plaintiffs' Trial Exhibit 30022	Volume 59, RA 11438 – RA 11454
Undated	Plaintiffs' Trial Exhibit 30023	Volume 59, RA 11455 – RA 11470
Undated	Plaintiffs' Trial Exhibit 30024	Volume 59, RA 11455 – RA 11470
Undated	Plaintiffs' Trial Exhibit 30025	Volume 59, RA 11471 – RA 11483
Undated	Plaintiffs' Trial Exhibit 30026	Volume 59, RA 11484 – RA 11489
Undated	Plaintiffs' Trial Exhibit 30027	Volume 60, RA 11490 – RA 11499
Undated	Plaintiffs' Trial Exhibit 30028	Volume 60, RA 11500 – RA 11534
Undated	Plaintiffs' Trial Exhibit 30029	Volume 60, RA 11535 – RA 11562

Undated	Plaintiffs' Trial Exhibit 30030	Volume 60, RA 11563 – RA 11587
Undated	Plaintiffs' Trial Exhibit 30032	Volume 60, RA 11588 – RA 11603
Undated	Plaintiffs' Trial Exhibit 30033	Volume 60, RA 11604 – RA 11618
Undated	Plaintiffs' Trial Exhibit 30034	Volume 60, RA 11619 – RA 11624
Undated	Plaintiffs' Trial Exhibit 30037	Volume 60, RA 11625 – RA 11635
Undated	Plaintiffs' Trial Exhibit 30038	Volume 60, RA 11636 – RA 11639
Undated	Plaintiffs' Trial Exhibit 30039	Volume 60, RA 11640 – RA 11646
Undated	Plaintiffs' Trial Exhibit 30045	Volume 60, RA 11647
Undated	Plaintiffs' Trial Exhibit 30046	Volume 60, RA 11648
Undated	Plaintiffs' Trial Exhibit 30047	Volume 60, RA 11649
Undated	Plaintiffs' Trial Exhibit 30048	Volume 60, RA 11650
Undated	Plaintiffs' Trial Exhibit 30049	Volume 60, RA 11651 – RA 11654
Undated	Plaintiffs' Trial Exhibit 30060	Volume 60, RA 11655 – RA 11661
Undated	Plaintiffs' Trial Exhibit 30061	Volume 60, RA 11662 – RA 11665
Undated	Plaintiffs' Trial Exhibit 30064	Volume 61, RA 11666 – RA 11669

Undated	Plaintiffs' Trial Exhibit 30065	Volume 61, RA 11670 – RA 11673
Undated	Plaintiffs' Trial Exhibit 30068	Volume 61, RA 11674 – RA 11677
Undated	Plaintiffs' Trial Exhibit 30069	Volume 61, RA 11678 – RA 11698
Undated	Plaintiffs' Trial Exhibit 30076	Volume 61, RA 11699
Undated	Plaintiffs' Trial Exhibit 30088	Volume 61, RA 11700 – RA 11702
Undated	Plaintiffs' Trial Exhibit 30099	Volume 61, RA 11703 – RA 11704
Undated	Plaintiffs' Trial Exhibit 30100	Volume 61, RA 11704 – RA 11705
Undated	Plaintiffs' Trial Exhibit 30112	Volume 61, RA 11706 – RA 11720
Undated	Plaintiffs' Trial Exhibit 30113	Volume 61, RA 11721 – RA 11734
Undated	Plaintiffs' Trial Exhibit 40011	Volume 61, RA 11735 – RA 11736
Undated	Plaintiffs' Trial Exhibit 40012	Volume 61, RA 11737 – RA 11738
Undated	Plaintiffs' Trial Exhibit 40013	Volume 61, RA 11739 – RA 11740
Undated	Plaintiffs' Trial Exhibit 40015	Volume 61, RA 11741 – RA 11747
Undated	Plaintiffs' Trial Exhibit 40016	Volume 61, RA 11748 – RA 11789

Undated	Plaintiffs' Trial Exhibit 40044	Volume 61, RA 11790
Undated	Plaintiffs' Trial Exhibit 40053	Volume 61, RA 11791
Undated	Plaintiffs' Trial Exhibit 50026	Volume 62, RA 11792 – RA 12065
Undated	Plaintiffs' Trial Exhibit 50029	Volume 62, RA 12066 – RA 12077
Undated	Plaintiffs' Trial Exhibit 50030	Volume 62, RA 12078 – RA 12087
Undated	Plaintiffs' Trial Exhibit 50031	Volume 62, RA 12088 – RA 12132
Undated	Plaintiffs' Trial Exhibit 50032	Volume 62, RA 12133 – RA 12145
Undated	Plaintiffs' Trial Exhibit 50033	Volume 62, RA 12146 – RA 12153
Undated	Plaintiffs' Trial Exhibit 50039	Volume 62, RA 12154 – RA 12183
Undated	Plaintiffs' Trial Exhibit 50041	Volume 63, RA 12184 – RA 12264
Undated	Plaintiffs' Trial Exhibit 60003	Volume 63, RA 12265 – RA 12266
Undated	Plaintiffs' Trial Exhibit 60017	Volume 63, RA 12267 – RA 12269
Undated	Plaintiffs' Trial Exhibit 60018	Volume 63, RA 12270 – RA 12272
Undated	Plaintiffs' Trial Exhibit 60041	Volume 63, RA 12273 – RA 12283

Undated	Plaintiffs' Trial Exhibit 60042	Volume 63, RA 12284
Undated	Plaintiffs' Trial Exhibit 60043	Volume 63, RA 12285 – RA 12289
Undated	Plaintiffs' Trial Exhibit 60044 – Part 1	Volume 64, RA 12290 – RA 12533
Undated	Plaintiffs' Trial Exhibit 60044 – Part 2	Volume 65, RA 12534 – RA 12634
Undated	Plaintiffs' Trial Exhibit 60063	Volume 65, RA 12635 – RA 12646
Undated	Plaintiffs' Trial Exhibit 70002	Volume 65, RA 12647 – RA 12649
Undated	Plaintiffs' Trial Exhibit 70004	Volume 65, RA 12650
Undated	Plaintiffs' Trial Exhibit 70006	Volume 65, RA 12651 – RA 12671
Undated	Plaintiffs' Trial Exhibit 70007	Volume 65, RA 12672 – RA 12674
Undated	Plaintiffs' Trial Exhibit 70011	Volume 65, RA 12675 – RA 12683
Undated	Plaintiffs' Trial Exhibit 70012	Volume 65, RA 12684 – RA 12687
Undated	Plaintiffs' Trial Exhibit 70018	Volume 65, RA 12688
Undated	Plaintiffs' Trial Exhibit 70019	Volume 65, RA 12689
Undated	Plaintiffs' Trial Exhibit 70020	Volume 65, RA 12690
Undated	Plaintiffs' Trial Exhibit 70025	Volume 65, RA 12691 – RA 12714

Undated	Plaintiffs' Trial Exhibit 70026	Volume 65, RA 12715 – RA 12733
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DATED this 28th day of October 2021.

JOHN W. MUIJE & ASSOCIATES

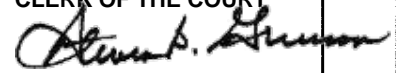
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, I have caused a true and correct copy of the foregoing RESPONDENTS' APPENDIX – VOLUME 1 to be served by electronic service by the Supreme Court of Nevada Electronic Filing System to the following:

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/s/ Melanie Bruner
As an agent for and on behalf of
JOHN W. MUIJE & Associates



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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Entity Defendants.

CASE NO: A-16-740689-B

DEPT. NO: XV

AMENDED COMPLAINT FOR:

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

ARBITRATION EXEMPT
(EQUITABLE RELIEF)

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

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

3 **GENERAL FACTUAL ALLEGATIONS**

- 4 1. Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC (hereinafter "NYPE"),
5 a New York Limited Liability Company.
- 6 2. Defendant, DAVID J. MITCHELL (hereinafter "Mitchell"), is an adult resident of
7 New York.
- 8 3. Defendant, BARNETT LIBERMAN (hereinafter "Liberman"), is an adult resident of
9 New York.
- 10 4. LAS Vegas Land Partners (hereinafter "LVLP") is a Delaware limited liability
11 company registered to do business in Nevada, but currently in default status.
- 12 5. Aquarius Owner, LLC is or was a Delaware limited liability company registered to
13 do business in the State of Nevada in November, 2004, and maintained its
14 registration through and including approximately November, 2009.
- 15 6. On information and belief, Aquarius Owner LLC was owned and directed by
16 Mitchell, Liberman, and/or LVLP.
- 17 7. In that context, various real property and ownership equity transfers took place
18 between LVLP and/or Aquarius Owner, LLC, during the operative time, and on
19 information and belief, financial distributions and transactions occurred between
20 Aquarius Owner LLC and its principals on a recurring basis, most of which were
21 never disclosed in publicly available records or documents.
- 22 8. In that context, various real property transfers and ownership equity took place
23 between LVLP and/or Aquarius Owner, LLC during the operative time, and on
24 information and belief, financial distributions and transactions occurred between
25 Aquarius, LLC and its principals on a recurring basis, most of which were never
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disclosed in publicly available records or documents, is a Delaware limited liability that first registered to do business in Nevada in approximately February, 2011, and continues to operate and do business, in good standing, through and including this date. FC/LW Vegas is or was a Delaware limited liability company registered to do business in the State of Nevada in February 2011 which has maintained registration through the present.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 1 never disclosed in publicly available records or documents.
- 2 26. Zoe Property, LLC is a Delaware Limited Liability Company that first registered and
- 3 became active in Southern Nevada in or about November 2004, and in fact was one
- 4 of the original plaintiffs along with Live Work, LLC and LVLP versus the plaintiffs
- 5 herein. On information and belief, Zoe Property, LLC operated and continued to be
- 6 active in Southern Nevada through approximately November, 2007.
- 7 27. Zoe Property, LLC was owned, operated and managed by, on information and belief,
- 8 by Liberman, Mitchell, and/or LVLP.
- 9 28. In that context, various real property and ownership equity transfers took place
- 10 between LVLP and/or Zoe Property, LLC, during the operative time, and on
- 11 information and belief, financial distributions and transactions occurred between Zoe
- 12 Property, LLC and its principals on a recurring basis, most of which were never
- 13 disclosed in publicly available records or documents.
- 14 29. In that context, various real property and ownership equity transfers took place
- 15 between LVLP and/or Zoe Property, LLC, during the operative time, and on
- 16 information and belief, financial distributions and transactions occurred between Zoe
- 17 Property, LLC and its principals on a recurring basis, most of which were never
- 18 disclosed in publicly available records or documents.
- 19 30. Wink One, LLC is a Delaware limited liability company that registered to do business
- 20 in the State of Nevada in approximately April, 2008, and remained active, according
- 21 to Secretary of State records, through and including approximately April, 2009. Wink
- 22 One, LLC, on information and belief, was owned, operated and managed by
- 23 Liberman, Mitchell, and/or LVLP.
- 24 31. Wink One, LLC was owned, operated and managed by, on information and belief, by
- 25 Liberman, Mitchell, and/or LVLP.
- 26 32. In that context, various real property and ownership equity transfers took place
- 27 between LVLP and/or Wink One, LLC, during the operative time, and on information
- 28 and belief, financial distributions and transactions occurred between Wink One, LLC

- 1 and its principals on a recurring basis, most of which were never disclosed in publicly
2 available records or documents.
- 3 33. In that context, various real property and ownership equity transfers took place
4 between LVLP and/or Wink One, LLC, during the operative time, and on information
5 and belief, financial distributions and transactions occurred between Wink One, LLC
6 and its principals on a recurring basis, most of which were never disclosed in publicly
7 available records or documents.
- 8 34. Casino Coolidge, LLC is a Delaware limited liability company that first registered to
9 do business in Southern Nevada in or about October, 2014.
- 10 35. On information and belief, Casino Coolidge, LLC is owned, operated and managed
11 by Liberman, Mitchell, LVLP, and/or LVLP..
- 12 36. In that context, various real property and ownership equity transfers took place
13 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on
14 information and belief, financial distributions and transactions occurred between
15 Casino Coolidge, LLC and its principals on a recurring basis, most of which were
16 never disclosed in publicly available records or documents and continues to operate
17 and be active in Southern Nevada through the present.
- 18 37. In that context, various real property and ownership equity transfers took place
19 between LVLP and/or Casino Coolidge, LLC, during the operative time, and on
20 information and belief, financial distributions and transactions occurred between
21 Casino Coolidge, LLC and its principals on a recurring basis, most of which were
22 never disclosed in publicly available records or documents.
- 23 38. 305 Las Vegas. LLC is a Delaware limited liability company that first registered and
24 qualified to do business in Southern Nevada in approximately April, 2007, and
25 remains active and doing business in Southern Nevada through the present.
- 26 39. On information and belief, 305 Las Vegas, LLC was originally owned, operated and
27 managed by Liberman, Mitchell, and/or LVLP.
- 28 40. In that context, various real property and ownership equity transfers took place

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

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

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

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

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

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

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

46. On information and belief, Mitchell Holdings, LLC is a Delaware limited liability company that never qualified to do business within the State of Nevada, but was used by Defendant Mitchell for purposes of owning Mitchell's equity or beneficial interest in various other defendants, and fuddling money back and forth between such entities, in a matter that would not be detectable or readily discoverable by Plaintiffs or other creditors.
47. In that context, various real property and ownership equity transfers took place between LVLP and/or Mitchell Holdings, LLC during the operative time, and on information and belief, financial distributions and transactions occurred between Mitchell Holdings, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents, is a Delaware limited liability that first registered to do business in Nevada in approximately February, 2011, and continues to operate and do business, in good standing, through and including this date.
48. In that context, various real property transfers and ownership equity took place between LVLP and/or Mitchell Holdings, LLC during the operative time, and on information and belief, financial distributions and transactions occurred between Mitchell Holdings, LLC and its principals on a recurring basis, most of which were never disclosed in publicly available records or documents, is a Delaware limited liability that first registered to do business in Nevada in approximately February,

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

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

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

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

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

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

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

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

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

23 56. LVLP, LLC, Mitchell, and Liberman, created the various Entity Defendants, LAS
24 VEGAS LAND PARTNERS, LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY,
25 LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK, LLC; LIVE
26 WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC;
27 MITCHELL HOLDINGS, LLC; LIEBERMAN HOLDINGS, LLC; 305 LAS VEGAS,
28 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

- 1 dollars of networth on its tax returns, and has been forced to pay its attorneys in both
2 the prior litigation and the present litigation through personal checks and credit cards
3 of Mitchell and/or Liberman, or through affiliate entities.
4
5 89. Much of the newly received financial data also discloses that corporate filing fees for
6 numerous of the defendants herein had been paid, *ad hoc*, from LVLP bank accounts,
7 interchangeably, despite said entities nominally maintaining or claiming separate legal
8 status.
9
10 90. Plaintiffs RUSSELL L. NYPE and the REVENUE PLUS, LLC (hereinafter
11 collectively referred to as "Nype") were Defendants in a case originally initiated by
12 current Defendants, LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC and
13 ZOE PROPERTIES, LLC in the Eighth Judicial District Court in Clark County,
14 Nevada under Case No. A551073, which case commenced on or about November 2,
15 2007 (hereinafter the "First Case").
16
17 91. Nype counterclaimed in that case with regard to his prior business dealings with LAS
18 VEGAS LAND PARTNERS, LLC, its associate entities, and its principals, BARNET
19 LIBERMAN (hereinafter "Liberman") and DAVID J. MITCHELL (hereinafter
20 "Mitchell"), seeking compensation which he had been promised and which he had
21 earned during the course of the parties ongoing business dealings regarding the
22 development of numerous Las Vegas real estate holdings.
23
24 92. On information and belief, during the pendency of those proceedings, and after
25 defaulting on their obligations to Nype, Liberman and Mitchell undertook the process
26 of creating various affiliated and associate entities, including but not limited to several
27 of the asset protection entities alleged hereinabove, utilizing sophisticated corporate
28 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

which LAS VEGAS LAND PARTNERS, 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.

99. Upon information and belief, Plaintiff is informed and believes and thereon alleges that at all times herein mentioned Defendants, **MEYER PROPERTY, LLC** was and is the alter ego of MEYER PROPERTY, LLC, that said Defendants did and still do dominate, influence and control of MEYER 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 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 MEYER PROPERTY, LLC entity is not disregarded and the said Defendant held liable for all relief being caught herein.

100. 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 ZOE PROPERTY, LLC, that said Defendants did and still do dominate, influence and control of ZOE 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 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

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

- 1 LLC were and are the alter ego of **LIVE WORK, LLC**, that said Defendant did and
2 still does dominate, influence and control of **LAS VEGAS LAND PARTNERS, LLC**,
3 that there existed and still exists a unity of ownership between them; that the
4 individuality and separateness of each entity was and remains non-existent; that each
5 such entity was and remains a mere shell and naked framework which **LIVE WORK,**
6 **LLC** used and still use to conduct their business affairs; that each such entity is and
7 remains inadequately capitalized; and that an injustice and fraud upon
8
9 104. Plaintiff will result if the theoretical separateness of **LIVE WORK, LLC** if entity is
10 not disregarded and the said Defendant held liable for all relief being caught herein.
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12 105. Upon information and belief, Plaintiff is informed and believes and thereon alleges
13 that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**
14 **LLC** were and are the alter ego of **LIVE WORK MANAGER, LLC**, that said
15 Defendant did and still does dominate, influence and control of **LAS VEGAS LAND**
16 **PARTNERS, LLC**, that there existed and still exists a unity of ownership between
17 them; that the individuality and separateness of each entity was and remains non-
18 existent; that each such entity was and remains a mere shell and naked framework
19 which **LIVE WORK MANAGER, LLC** used and still use to conduct their business
20 affairs; that each such entity is and remains inadequately capitalized; and that an
21 injustice and fraud upon Plaintiff will result if the theoretical separateness of **LIVE**
22 **WORK MANAGER, LLC** entity is not disregarded and the said Defendant held
23 liable for all relief being caught herein.
24
25 106. Upon information and belief, Plaintiff is informed and believes and thereon alleges
26 that at all times herein mentioned Defendants, **LAS VEGAS LAND PARTNERS,**
27 **LLC**, was and are the alter ego of **AQUARIUS OWNER, LLC**, that said Defendant
28 did and still does dominate, influence and control of **LAS VEGAS LAND**
PARTNERS, LLC, that there existed and still exists a unity of ownership between
them; that the individuality and separateness of each entity was and remains non-

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CLAIM FOR RELIEF

(Constructive Trust)

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

- 1 119. All of the foregoing facts make it just and equitable that this court impose and
2 declare a constructive trust upon the subject property interests, and any proceeds
3 therefrom, in favor of Plaintiffs.
4
5 120. The court can and should declare a lien against the subject properties, order the
6 sale thereof, and/or order the payment of all rents or monies received from the subject
7 property to Plaintiffs herein.
8
9 121. It has been necessary for Plaintiff to retain the services of an attorney to prosecute
10 this action and Plaintiff is therefore entitled to an award of reasonable attorneys' fees

SECOND CLAIM FOR RELIEF

(Fraudulent Conveyance)

- 11 122. Plaintiff incorporates by reference paragraphs 1 through 121 as though fully set forth.
12
13 123. Plaintiff is informed and believes, and on that basis alleges that Defendants have
14 taken numerous actions to avoid satisfying Plaintiff's claims against LAS VEGAS
15 LAND PARTNERS, LLC.
16
17 124. Plaintiff alleges on information and belief that in order to avoid potential execution
18 against real estate interests, *inter alia*, Defendants, LAS VEGAS LAND PARTNERS,
19 LLC took steps to hypothecate and transfer said property interests and cash to the
20 other Defendants herein.
21
22 125. Plaintiff is informed and believes, and on that basis alleges that such transfers by
23 Defendants were undertaken in an effort to avoid the adverse financial consequences
24 of Plaintiff's pending claims, as well as those of other creditors.
25
26 126. Plaintiff is informed and believes, and on that basis alleges that the aforementioned
27 transfers were gratuitous, or for inadequate or disguised consideration, made without
28 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.

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

FIFTH CLAIM FOR RELIEF

(Alter Ego)

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

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

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

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

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

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

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10. For reasonable attorneys' fees for the prosecution of this suit; and
11. For such other and further relief as the Court may deem just and proper.
DATED this 21st day of August, 2017.

JOHN W. MUIJE & ASSOCIATES

By: 

JOHN W. MUIJE, ESQ.
Nevada Bar No. 2419
1840 E. Sahara Ave #106
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Telephone: (702) 386-7002
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Attorneys for Plaintiffs

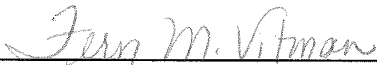
CERTIFICATE OF SERVICE

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

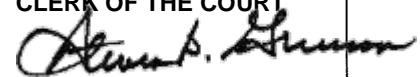
- ☐ by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or
- ☒ by electronically filing with the Clerk of the Court via the Odyssey E-File and Serve System;
- ☐ by placing a copy of the same for mailing in the United States mail,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

Garry L. Hayes, Esq.
HAYES & WELSH
199 Arroyo Grande, #200
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Attorneys for Plaintiffs/Counter-Defendant


An employee of JOHN W. MUIJE & ASSOCIATES

R:\J Files\Nype vs Las Vegas Land Parnters,J3792H\2016---05 - Alter Ego SUIT\Pleadings\8.21.17 First Amended Complaint.wpd



1 **OPPS**

2 JOHN W. MUIJE & ASSOCIATES

3 JOHN W. MUIJE, ESQ.

4 Nevada Bar No: 2419

5 1840 East Sahara Avenue, Suite 106

6 Las Vegas, NV 89104

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10 *Attorneys for Plaintiffs*

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs.

vs.

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

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: April 12, 2019

Time of Hearing: In Chambers

**PLAINTIFFS' LIMITED OPPOSITION TO THE MITCHELL DEFENDANTS' MOTION
TO WITHDRAW AS COUNSEL OF RECORD**

Plaintiffs Russell L. Nype and Revenue Plus, LLC (collectively, "Plaintiffs") hereby file
this limited opposition ("Opposition") to the *Motion to Withdraw* filed on March 13, 2019, by the
Law Office of Hayes & Welsh ("Hayes & Welsh"), current counsel of record for Defendants

1 David J. Mitchell ("Mr. Mitchell"), Las Vegas Land Partners, LLC, Meyer Property, Ltd., Zoe
2 Property, LLC, Leah Property, LLC, Wink One, LLC, Live Work, LLC, Live Work Manager,
3 LLC, Aquarius Owner, LLC, LVLP Holdings, LLC, Mitchell Holdings, LLC, Live Works TIC,
4 and Successor, LLC (collectively, the "Mitchell Defendants").

5 This Opposition is based upon the Memorandum of Points and Authorities below, the
6 papers and pleadings attached hereto and on file herein, and any oral argument the Court may
7 consider.

8 DATED this 27th day of March, 2019.

9 JOHN W. MUIJE & ASSOCIATES

10
11
12 By: _____

JOHN W. MUIJE, ESQ.

Nevada Bar No: 2419

1840 East Sahara Avenue, Suite 106

Las Vegas, NV 89104

Telephone No: (702) 386-7002

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Email: jmuije@muijelawoffice.com

Attorneys for Plaintiffs

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18 **MEMORANDUM OF POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 Plaintiffs do not, completely, oppose the Court granting Hayes & Welsh's withdrawal.
22 Instead, the circumstances require that certain limitations and conditions be imposed on any
23 withdrawal. These circumstances include a history of delay tactics and the Mitchell Defendants'
24 repeated failure to timely produce documents responsive to Plaintiffs' discovery requests.
25 Accordingly, because discovery is scheduled to close on May 1, 2019, and trial is set to begin on
26 August 5, 2019, this Court should issue appropriate orders ensuring that the withdrawal of
27 counsel does not result (1) in any further unjust delay of these proceedings or (2) in a further
28 delay in obtaining the Mitchell Defendants' full compliance with their discovery obligations.

II.

ARGUMENT

A. **This Court Should Ensure That Defendants Are Not Able To Use Their Refusal To Pay Their Counsel To Unjustly Delay These Proceedings.**

1. **Defendants' *modus operandi* of requesting valuable services and then refusing to pay for them.**

Hayes & Welsh requests this Court's permission to withdraw as the Mitchell Defendants' counsel, on the basis that: (1) the Mitchell Defendants have failed to pay for the legal services Hayes & Welsh provided to them; (2) the Mitchell Defendants still have not paid as agreed despite promising payment for several months; and (3) continued representation of the Mitchell Defendants without regular payment will work a severe hardship on Hayes & Welsh, and has strained the relationship between Hayes & Welsh and the Mitchell Defendants. (See Mot. Withdraw at 3.)

Plaintiffs are not surprised by the Mitchell Defendants' conduct, as Plaintiffs know full well their extensive history of requesting valuable services from people and then refusing to pay for those services after they'd been provided.

Indeed, this instant case stems from a 2015, multi-million-dollar judgment (the "Judgment") Plaintiffs obtained against one of the Mitchell Defendants, Defendant Las Vegas Land Partners, LLC¹ ("LVLP"), for services Plaintiffs provided to LVLP—in 2006—but which LVLP refused to pay for. (See Ex. 1, "Decl. of John Muije, Esq." ¶ 4.) The Judgment was entered in Case No. A-07-551073 (the "2007 Case") after nearly 8 years of unbelievably expensive litigation. Id. " ¶ 5. During that litigation, LVLP and its co-plaintiffs (who are also co-defendants in this action), Livework, LLC, and Zoe Properties, LLC (collectively with LVLP, the "LVLP Parties"), refused to pay their counsel's attorneys' fees at least 2 times, forcing respective counsel to withdraw and the LVLP Parties to retain new counsel. (See Ex. 2 (copies of motions to withdraw).) As demonstrated by Hayes & Welsh's Motion to Withdraw, the Mitchell

¹ Defendant Mr. Mitchell is a 50% owner of LVLP.

1 Defendants are up to their old conduct of refusing to pay for valuable services they'd requested—
2 forcing Hayes & Welsh to seek withdrawal. Unsurprisingly, the remaining defendants in this
3 case, including 305 Las Vegas, LLC and Casino Coolidge, LLC, and Barnet Liberman ("Mr.
4 Liberman")² and his related entities (collectively with the Mtichell Defendants and LVLP, the
5 "Defendants") have also failed to pay for their legal services—forcing their counsel, Harry Paul
6 Marquis, Chartered, to also seek this Court's permission to withdraw. (See Ex. 3 (Marquis Mot.
7 Withdraw).)

8 Accordingly, while Plaintiffs empathize with Hayes & Welsh—and truly understand the
9 impact caused by Mr. Mitchell's and his entities' *modus operandi* of refusing to pay for valuable
10 services after those services had been provided—Mr. Mitchell and his entities also have an
11 extensive history of engaging in conduct designed to delay litigation proceedings.

12 For example, in the companion Motion to Withdraw by Harry Marquis, Esq. ("Marquis")
13 (representing the other 50% owner and two entities), Marquis specifically indicates that his
14 billings are almost \$19,000 in arrears. Hayes & Welsh, who have been doing the bulk of the
15 work, do **not** quantify the amount owed, noting only that they are "many month's in arrears."

16 Yet, given the volume of "incomplete" documentation already produced (the Mitchell
17 Defendants' confidential index totals 42 pages listing approximately 2000 separate documents
18 which total, on information and belief, over 30,000 pages to date), it is worth noting that there are
19 conspicuously absent large gaps therein, such as the many thousands of email pages Liberman
20 has acknowledged, and hundreds of pages of itemized joint venture accounting back up and
21 detail.
22

23 It boggles the imagination to think that Defendants could even find or retain new counsel
24 on the eve of discovery closure and trial, who would consent to become involved for anything
25 less than several multiples of the outstanding unpaid fees!
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² Mr. Liberman is the other 50% owner of LVLP. (See Ex. 1, ¶ 2.)

2. A partial history of the LVLP Parties' delay tactics in the 2007 Case

After being remanded from appeal on or about September 26, 2013, the court in the 2007 Case originally reset the trial for April 21, 2014. (See Ex. 4 (10/24/13 Minutes).) Despite the case having been remanded in September 2013, the LVLP Parties waited 4 months, until late January 2014, before even attempting to retain Gibbs Giden Locher Turner Senet & Wittbrodt LLP ("Gibbs Giden") as their new trial counsel.³ See *id.*; (see also Ex. 5, "03/18/14 Minutes".) After noting "the grounds for the delay were not reasonable," the Court still granted the LVLP Parties' first motion to continue trial, allowing a 30-day continuance. See *id.*

Thereafter, as a result of the LVLP Parties' failure to pay Gibbs Giden "in the six figure range," the LVLP Parties' second set of trial counsel was forced to withdraw from 2007 Case. (See Ex. 6, "08/15/14 Order," at 2:15-17.) After being retained as the LVLP Parties' third set of trial counsel, Kolesar & Leatham, Chtd. ("Kolesar"), immediately sought a substantial trial continuance—which resulted in the delay of the trial start from September 2014, to October 2014. (See Ex. 7 (excerpt of docket from the 2007 Case); Ex. 8 (8/26/14 Minutes).) Thereafter, the LVLP Parties also refused to pay Kolesar for its legal services, forcing Kolesar to withdraw from the 2007 case in March of 2016. (See Ex. 2.)

If this Court grants the Defendants' motions to withdraw, their new counsel will—undoubtedly—immediately seek substantial extensions of the discovery deadlines and a lengthy continuance of the trial date. Indeed, Defendants failed to disclose a rebuttal expert—which was due Monday March 25, 2019—and Plaintiffs have no doubt that any new counsel for Defendants will seek to reopen this now-passed deadline. (See Ex. 1, ¶ 6.) This Court should not, however, permit Defendants to use their refusals to pay their counsel to further unjustly delay this proceeding.⁴

³ The LVLP Parties' original trial counsel was Santoro, Driggs, Walch, Kearney, Holley & Thompson, which did not continue representing the LVLP Parties after the initial appeal—likely due to a failure to be paid for their services.

⁴ As partially set forth herein (and as will be more fully detailed in a forthcoming motion), Defendants have engaged in numerous discovery failures and untimely disclosures that necessitate a short extension of the discovery cutoff. In the immediate future, Plaintiffs intend to

Accordingly, Plaintiffs respectfully request that, if the Court is inclined to grant any of Defendants' counsels' motions to withdraw, it further issue an order that it will **not** (1) reopen any now-passed discovery deadlines, (2) extend the close of discovery in such a way that would require a trial continuance, or (3) continue the current trial setting. The Court should also require that Defendants retain new trial counsel within 7 calendar days of the Court's decision on the pending motions to withdraw.

B. The Court Should Decline To Permit Hayes & Welsh To Withdraw Until After The Mitchell Defendants Produce Additional Discovery Documents That Should Have Been Produced Long Ago

In May of 2018, Plaintiffs served requests for production of documents on the Mitchell Defendants that, among other things, sought the production of email communications between the parties, amongst the various affiliated entities, and a limited number of identified relevant third parties. (See e.g., Ex. 9 at 10 - 11 (Requests 19 and 23 to Live Work, LLC).) The Mitchell Defendants responded to these document requests on July 10, 2018, but failed to produce any new responsive emails. (See e.g., Ex. 10 at 21-23, (Live Work, LLC's Responses to Request 19 and Request 23).) Thereafter, Mr. Mitchell and his counsel continuously asserted that the Mitchell Defendants had no additional documents responsive to these requests. (See Ex. 1, ¶ 7.)

Plaintiffs served substantively identical discovery requests on the Liberman Defendants, who also—for months—failed to produce important and relevant responsive documents. See *id.* ¶ 8. Despite Defendants' assertions that the documents did not exist, beginning on or about January 31, 2019, the Liberman Defendants finally began producing responsive emails and documents—producing approximately 1300 pages of chronologically organized documents covering the period of late 2007 through early 2009. See *id.* ¶ 9. The Liberman Defendants made a supplemental production on or about February 27, 2019, producing a second wave of chronologically organized documents and emails covering the remaining portion of 2009, and totaling over 1,100 pages. See *id.* ¶ 10. Many of these recently disclosed documents revealed

file a motion to compel and motion for a limited extension of the discovery cutoff. Plaintiffs intent and hope, however, is that the current trial date will remain.

1 that Mr. Mitchell was, indeed, a recipient of them, e.g., as a "cc" on the emails. See id. ¶ 11.
2 Accordingly, the Mitchell Defendants have either (1) intentionally failed to produce discoverable
3 documents or (2) destroyed such documents in violation of their evidence-preservation
4 obligations. See id. ¶ 12.

5 Importantly, the Liberman Defendants' counsel has indicated that his clients have
6 provided to him many thousands of pages of additional documents that need to be reviewed and
7 disclosed, which presumably cover the period of 2010 through the present. See id. ¶ 13. As the
8 Mitchell Defendants were recipients of many of the prior documents the Liberman Defendants
9 produced, Plaintiffs believe that the Mitchell Defendants likewise have a substantial amount of
10 documents that they must disclose (or that the Mitchell Defendants destroyed them). See id. ¶ 14.
11 Indeed, the consistent testimony of both Mr. Mitchell and Mr. Liberman has always been that Mr.
12 Mitchell is the "tax partner" in charge of maintaining financial records and assuring the filing of
13 proper tax returns. See id. ¶ 15.

14 In that regard, Plaintiffs are working to file, in the immediate future, a motion to compel
15 the Mitchell Defendants and the Liberman Defendants to produce these, and other, documents.
16 See id. ¶ 16. Should Hayes & Welsh be allowed to withdraw prior to the Mitchell Defendants'
17 full compliance with their discovery obligations, the process of new counsel for the Mitchell
18 Defendants "getting up to speed" on the matter will cause further unjust delay in this matter. See
19 id. ¶ 17. While Plaintiffs sympathize with Hayes & Welsh's situation, the rapidly approaching
20 discovery cut-off and trial date necessitate that Plaintiffs immediately obtain any additional
21 undisclosed documents from the Mitchell Defendants.

22 Thus, if this Court is inclined to grant Hayes & Welsh's Motion to Withdraw, Plaintiffs
23 request that Hayes & Welsh not be allowed to withdraw prior to the Mitchell Defendants' full
24 compliance with their discovery obligations. See id. ¶ 18.
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III.

CONCLUSION

This Court should not grant Hayes & Welsh's withdrawal without imposing certain limitations that are necessary to avoid (1) further unjust delay in this proceeding, and (2) the hiding of discoverable information.

Accordingly, Plaintiffs respectfully request that the Court exercise its discretion as follows:

1. Issue an order that the withdrawal of counsel—and subsequent retention of new counsel—will not be considered as a basis to
 - a. reopen any now-passed discovery deadlines,
 - b. extend the close of discovery in such a way that would require a trial continuance, or
 - c. continue the current trial setting;
2. Require that the Mitchell Defendants retain new trial counsel within 7 calendar days of the Court's decision on the pending motion to withdraw—or in the absence thereof to impose serious sanctions; and
3. Require that the Mitchell Defendants comply fully with their discovery obligations—including the submittal of appropriate compliance affidavits from clients and counsel—prior to the withdrawal of Hayes & Welsh.

DATED this 27th day of March, 2019

JOHN W. MUIJE & ASSOCIATES

By: _____

JOHN W. MUIJE, ESQ.

Nevada Bar No: 2419

1840 East Sahara Avenue, Suite 106

Las Vegas, NV 89104

Telephone No: (702) 386-7002

Facsimile No: (702) 386-9135

Email: jmuije@muijelawoffice.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 27th day of March, 2019, I caused the foregoing document, **PLAINTIFFS' LIMITED OPPOSITION TO THE MITCHELL DEFENDANTS' MOTION TO WITHDRAW AS COUNSEL OF RECORD**, to be served as follows:

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

HARRY PAUL MARQUIS, CHTD.

HAYES & WELSH

By: _____
Harry Paul Marquis, Esq.
Nevada Bar No. 001252
400 South Fourth Street, Suite 300
Las Vegas, Nevada 89101
Attorneys for Defendants
Barnet Liberman, 305
Las Vegas, LLC and Casino
Coolidge, LLC

By: _____
Garry L. Hayes, Esq.
Megan K. Mayry McHenry, Esq.
199 N. Arroyo Grande #200
Henderson, NV 89074
Attorney for Defendants
David J. Mitchell, Las Vegas
Land Partners, LLC, Meyer
Property, Ltd., Zoe Property, LLC
Leah Property, LLC, Wink One,
LLC, Live Work, LLC, Live Work
Manager, LLC, Aquarius Owner,
LLC, LVLP Holdings, LLC,
Mitchell Holdings, LLC, Live
Works TIC Successor, LLC

By: _____
An Employee of JOHN W. MUIJE & ASSOCIATES

EXHIBIT “1”

DECLARATION OF JOHN W. MUIJE, ESQ.

JOHN W. MUIJE, under penalty of perjury, hereby declares, deposes and says:

1. Unless stated otherwise, I have personal knowledge of the matters set forth in this Declaration and, if called as a witness, could and would competently testify thereto.

2. I am counsel of record for Plaintiffs Russell L. Nye and Revenue Plus, LLC.

3. I make this declaration in support of Plaintiffs' Limited Opposition to the Mitchell Defendants' Motion to Withdraw as Counsel of Record (the "Opposition").

4. This case stems from a 2015, multi-million-dollar judgment (the "Judgment") Plaintiffs obtained against one of the Mitchell Defendants,¹ Defendant Las Vegas Land Partners, LLC² ("LVLP"), for services Plaintiffs provided to LVLP—in 2006—but which LVLP refused to pay for.

5. The Judgement was entered in Case No. A-07-551073 (the "2007 Case") after nearly 8 years of unbelievably expensive litigation.

6. The Defendants herein failed to disclose a rebuttal expert—which was due Monday March 25, 2019—and Plaintiffs have no doubt that any new counsel for Defendants will seek to reopen this now-passed deadline.

7. Mr. Mitchell and his counsel have also continuously asserted that the Mitchell Defendants have no additional documents responsive to Plaintiff's discovery requests in this matter.

¹ Capitalized terms that have not been provided a meaning herein shall have the meaning ascribed to them in the Opposition.

² Defendant Barnet Liberman is a 50% owner of LVLP. Mr. Mitchell is the other 50% owner of LVLP.

8. Plaintiffs served substantively identical discovery requests on the Liberman Defendants, who also—for months—failed to produce important and relevant responsive documents.

9. Despite Defendants' assertions beginning on or about January 31, 2019, the Liberman Defendants finally began producing responsive emails and documents—producing approximately 1300 pages of chronologically organized documents covering the period of late 2007 through early 2009.

10. The Liberman Defendants made a supplemental production on or about February 27, 2019, producing a second wave of chronologically organized documents and emails covering the remaining portion of 2009, and totaling over 1,100 pages.

11. Many of these recently disclosed documents revealed that Mr. Mitchell was, indeed, a recipient of them, e.g., as a "cc" on the emails.

12. Accordingly, the Mitchell Defendants have either (1) intentionally failed to produce discoverable documents or (2) destroyed such documents in violation of their evidence-preservation obligations.

13. Importantly, the Liberman Defendants' counsel has indicated that his clients have provided to him many thousands of pages of additional documents that need to be reviewed and disclosed, which presumably cover the period of 2010 through the present.

14. As the Mitchell Defendants were recipients of many of the prior documents which the Liberman Defendants belatedly produced, Plaintiffs believe that the Mitchell Defendants likewise have a substantial amount of relevant documents that remain to be disclosed (or that the Mitchell Defendants destroyed them).

15. Indeed, the consistent testimony of both Mr. Mitchell and Mr. Liberman has always been that Mr. Mitchell is the “tax partner” in charge of maintaining financial records and assuring the filing of proper tax returns.

16. In that regard, Plaintiffs are working to file, in the immediate future, a motion to compel the Mitchell Defendants and the Liberman Defendants to produce these, and other relevant documents not heretofore produced.

17. Should Hayes & Welsh be allowed to withdraw prior to the Mitchell Defendants' full compliance with their discovery obligations, the process of new counsel for the Mitchell Defendants “getting up to speed” on the matter will cause further unjust delay in this matter.

18. Thus, if this Court is inclined to grant Hayes & Welsh's Motion to Withdraw, Plaintiffs request that Hayes & Welsh not be allowed to withdraw prior to the Mitchell Defendants' full compliance with their discovery obligations.

19. Attached to the Opposition as Exhibit 2 are true and correct copies of Gibbs Giden's and Kolesar's motions to withdraw filed in the 2007 case.

20. Attached to the Opposition as Exhibit 3 is a true and correct copy of Harry Paul Marquis, Chartered's motion to withdraw that is pending in this action.

21. Attached to the Opposition as Exhibit 4 is a true and correct copy of Court minutes dated October 24, 2013, from the 2007 case.

22. Attached to the Opposition as Exhibit 5 is a true and correct copy of Court minutes dated March 18, 2014, from the 2007 case.

23. Attached to the Opposition as Exhibit 6 is a true and correct copy of the August 15, 2014, Order granting Gibbs Giden's withdrawal.

24. Attached to the Opposition as Exhibit 7 is a true and correct copy of an excerpt of the docket report for the 2007 case.

25. Attached to the Opposition as Exhibit 8 is a true and correct copy of Court minutes dated August 26, 2014, from the 2007 case.

26. Attached to the Opposition as Exhibit 9 is a true and correct copy of excerpts of Plaintiffs' Request for Production of Documents to Defendant LIVE WORK, LLC.

27. Attached to the Opposition as Exhibit 10 is a true and correct copy of excerpts of Defendant LIVE WORK, LLC's responses to the above-referenced requests for production of documents.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

Executed this 27th day of March, 2019.



JOHN W. MUIJE, ESQ.

EXHIBIT "2"


CLERK OF THE COURT

1 MWCN
2 Richard E. Haskin, Esq.
3 Nevada State Bar # 11592
4 Timothy Elson, Esq.
5 Nevada State Bar # 11559
6 Victor Luke (*Pro Hac Vice*)
7 California State Bar # 235270
8 **GIBBS GIDEN LOCHER TURNER**
9 **SENET & WITTBRODT LLP**
10 7450 Arroyo Crossing Parkway, Suite 270
11 Las Vegas, Nevada 89113-4059
12 (702) 836-9800

13 Attorneys for Plaintiffs LAS VEGAS LAND
14 PARTNERS, LLC; LIVE WORK, LLC, and
15 ZOE PROPERTIES, LLC and
16 Counterdefendant LAS VEGAS LAND
17 PARTNERS, LLC

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

**FILE WITH
MASTER CALENDAR**

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

22 Plaintiff,

23 v.

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

28 Defendants.

CASE NO.: 07A551073
Dept.: XXVIII

**EMERGENCY MOTION ON AN ORDER
SHORTENING TIME TO WITHDRAW AS
COUNSEL OF RECORD FOR
PLAINTIFFS LAS VEGAS LAND
PARTNERS, LLC, LIVE WORK, LLC,
AND ZOE PROPERTIES, LLC AND
COUNTERDEFENDANT LAS VEGAS
LAND PARTNERS, LLC**

RUSSELL L. NYPE; REVENUE PLUS, LLC,

Counterclaimants,


v.

LAS VEGAS LAND PARTNERS, LLC; DOES I
through X; and ROE CORPORATIONS I through
X,

Counterdefendants.

///

///



1 **EMERGENCY MOTION ON AN ORDER SHORTENING TIME TO WITHDRAW**
2 **AS COUNSEL OF RECORD FOR PLAINTIFFS LAS VEGAS LAND PARTNERS, LLC,**
3 **LIVE WORK, LLC, AND ZOE PROPERTIES, LLC AND COUNTERDEFENDANT LAS**
4 **VEGAS LAND PARTNERS, LLC**

5 The law office of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt, LLP, attorneys of record
6 for Plaintiffs LAS VEGAS LAND PARTNERS, LLC; LIVE WORK, LLC and ZOE PROPERTIES,
7 LLC, and Counterdefendant LAS VEGAS LAND PARTNERS, LLC hereby moves this Court for an
8 Order authorizing it to withdraw as attorneys of record for the foregoing parties.

9 This motion is made based upon the pleadings and papers on file herein, the Declaration of
10 Richard E. Haskin, Esq. attached hereto, the affidavit of Timothy Elson, Esq., and such other and
11 further evidence as the Court may require at the hearing hereon.

12
13 DATED: August 12, 2014

Respectfully Submitted,

14 GIBBS GIDEN LOCHER TURNER
15 SENET & WITTBRODT LLP

16
17 By: 

18 Richard E. Haskin, Esq.
19 Nevada State Bar # 11592
20 Timothy Elson, Esq.
21 Nevada State Bar # 11559
22 7450 Arroyo Crossing Parkway, Suite 270
23 Las Vegas, Nevada 89113-4059
24 Attorneys for Plaintiffs LAS VEGAS LAND PARTNERS,
25 LLC; LIVE WORK, LLC; and ZOE PROPERTIES, LLC,
26 and Counterdefendant LAS VEGAS LAND PARTNERS,
27 LLC
28

ORDER SHORTENING TIME


IT IS HEREBY ORDERED that the hearing on EMERGENCY MOTION ON AN ORDER SHORTENING TIME TO WITHDRAW AS COUNSEL OF RECORD FOR PLAINTIFFS LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC, AND ZOE PROPERTIES, LLC AND COUNTERDEFENDANT LAS VEGAS LAND PARTNERS, LLC in the above-captioned case shall be held on the 14th day of August, 2014, at the hour of 930 a.m. The hearing shall take place before this Court, or as soon thereafter as counsel can be heard. clients must be noticed pursuant to EDCR 7.40 and EDCR 2.26

DATED this 12 day of Aug, 2014.


DISTRICT COURT JUDGE

Submitted by:

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP


Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy Elson, Esq.
Nevada State Bar # 11559
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
Attorneys for Plaintiffs LAS VEGAS LAND PARTNERS, LLC;
LIVE WORK, LLC; and ZOE PROPERTIES, LLC, and
Counterdefendant LAS VEGAS LAND PARTNERS, LLC

1 **AFFIDAVIT OF RICHARD E. HASKIN, ESQ., IN SUPPORT OF MOTION TO**
2 **WITHDRAW AS COUNSEL**

3 I, Richard E. Haskin, Esq., being first duly sworn, depose and state as follows:

4 1. I am an attorney and partner at GIBBS GIDEN LOCHER TURNER SENET &
5 WITTBRODT LLP ("GGLTSW"), and am duly licensed in the State of Nevada. I am competent to
6 testify to the matters set forth in this Affidavit, and will do so if called upon. GGLTSW is the
7 attorney of record representing LVLP in the subject lawsuit currently pending before Department
8 XXVIII of the Eighth Judicial District Court for the State of Nevada, Case Number 07A551073.

9 2. I make this Affidavit on behalf in support of GGLTSW's Motion to Withdraw as
10 Counsel for Plaintiffs LAS VEGAS LAND PARTNERS, LLC; LIVE WORK, LLC and ZOE
11 PROPERTIES, LLC, and Counterdefendant LAS VEGAS LAND PARTNERS, LLC (collectively
12 "Clients").

13 3. GGLTSW's Las Vegas consists of two attorneys, myself and my associate, Tim
14 Elson. Mr. Elson and I will be trial counsel for this action for Clients. The office will be left with
15 no billing attorneys working on paying matters if we try this action.

16 4. During the course of the above-captioned matter, Clients have failed to make timely
17 and complete payments for legal services provided by GGLTSW as had previously been agreed to.
18 The Client are now severely indebted to GGLTSW.

19 5. GGLTSW was retained by Clients in February 2014 and filed a Notice of Change of
20 Handling Attorney with this Court on February 27, 2014. When GGLTSW was retained and
21 commenced work on this case, discovery was closed and all expert designations were made.

22 6. Two experts were retained on behalf of Clients, Paul Huygens and Soozie Jones
23 Walker. Both are experienced and highly qualified experts in their respective fields. Both experts
24 will need to be compensated for their time preparing for and during trial.

25 7. Prior to the filing of the Motion to Withdraw, on July 17, 2014, all parties to this
26 action attended a private mediation before Steven Parsons. Despite the best efforts of counsel and
27 the parties, the action failed to settle. The matter is now set for trial for September 8, 2014. Counsel
28 have estimated a two week trial.

1 8. The various communications between GGLTSW and Clients have not resulted in
2 resolution regarding the Clients' non-payment.

3 9. Accordingly, GGLTSW wishes to formally withdraw from representation of Plaintiffs
4 LAS VEGAS LAND PARTNERS, LLC; LIVE WORK, LLC and ZOE PROPERTIES, LLC, and
5 Counterdefendant LAS VEGAS LAND PARTNERS, LLC in the above-captioned matter.

6 10. Pursuant to the requirements of Local Rule 7.40(b)(2)(i), Client's last known
7 addresses at which they may be served with notices of further proceedings in this matter is:

8 Attn: David Mitchell
9 801 Madison Avenue
 New York, New York 10065

10 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is
11 true and correct.

12 FURTHER, AFFIANT SAYETH NAUGHT:

13
14
15
16 _____
 RICHARD E. HASKIN, ESQ.

17 STATE OF NEVADA

18 COUNTY OF CLARK

19
20 Subscribed and sworn to (or affirmed) before me on this 10th day of August, 2014, by
21 Richard E. Haskin, proved to me on the basis of satisfactory evidence to be the person(s) who
22 appeared before me.



25 Signature

26 Shara Berry
27
28

1 AFFIDAVIT OF TIMOTHY ELSON, ESQ., IN SUPPORT OF MOTION TO WITHDRAW
2 AS COUNSEL

3 I, Timothy Elson, Esq., being first duly sworn, depose and state as follows:

4 1. I am an attorney and partner at GIBBS GIDEN LOCHER TURNER SENET &
5 WITTBRODT LLP ("GGLTSW"), and am duly licensed in the State of Nevada. I am competent to
6 testify to the matters set forth in this Affidavit, and will do so if called upon. GGLTSW is the
7 attorney of record representing LVLP in the subject lawsuit currently pending before Department
8 XXVIII of the Eighth Judicial District Court for the State of Nevada, Case Number 07A551073.

9 2. I make this Affidavit on behalf in support of GGLTSW's Motion to Withdraw as
10 Counsel for Plaintiffs LAS VEGAS LAND PARTNERS, LLC; LIVE WORK, LLC and ZOE
11 PROPERTIES, LLC, and Counterdefendant LAS VEGAS LAND PARTNERS, LLC (collectively
12 "Clients").

13 3. I agree with the facts as set forth in Mr. Haskin's Affidavit.

14 4. Pursuant to EDCR 2.26, I submit that there is good cause to hear this Motion on an
15 Order Shortening Time. An Order Shortening Time is necessary because of the upcoming trial and
16 trial deadlines, including, but not limited to, deadlines as set forth in this Court's Order Setting Civil
17 Bench Trial filed on June 26, 2014, and EDCR 2.67.

18 5. The Clients would benefit from a hearing at the soonest possible date so that they can
19 continue their efforts to obtain new counsel before the current trial setting of September 8, 2014.
20 This will help limit any potential prejudice to the Clients, and provide their new counsel as much
21 time as possible to prepare for the current trial setting of September 8, 2014.

22 6. Furthermore GGLSTW continues to incur attorneys' fees and costs as it continues to
23 comply with upcoming deadlines. These attorneys' fees and costs continue to increase the financial
24 burden on Mr. Haskin, Mr. Elson, and GGLSTW.

25 7. Setting this Motion on an Order Shortening Time will also help limit any potential
26 prejudice to Defendant and Counterdefendant RUSSELL NYPE and REVENUE PLUS, LLC, as it
27 will help preserve the current trial setting. In filing this Motion, GGLTSW does not wish to delay
28 the current trial setting of this matter.

8. GGLTSW respectfully requests that this matter be set for hearing at the earliest possible date. As it stands, a Pre-Trial Conference is set for August 14, 2014. A Calendar Call is set for August 28, 2014. If this matter cannot be set for a hearing at the Pre-Trial Conference, GGLTSW respectfully requests that it be set as soon thereafter as possible.

9. Without an Order Shortening Time, this Motion will be set in the ordinary course, and likely be set on this Court's calendar after the current trial setting of September 8, 2014.

10. GGLTSW extensively discussed the outstanding account balance with the Clients, attempting to work out other agreements. An impasse was reached earlier today, i.e., August 12, 2014. GGLTSW did not delay in anyway in addressing these issues or filing the instant Motion. As such, the circumstances discussed herein constitute good cause and justify shortening of time. This Motion was not filed in bad faith or for the purpose of causing embarrassment or harassment.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

FURTHER, AFFIANT SAYETH NAUGHT:

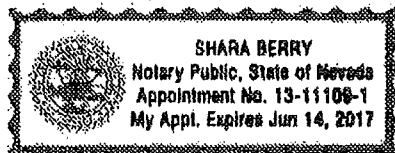
TIMOTHY ELSON, ESQ.

STATE OF NEVADA)

COUNTY OF CLARK)

Subscribed and sworn to (or affirmed) before me on this 12th day of August, 2014, by Timothy Elson, proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

(seal)



Signature

Shara Berry

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. THE MOTION TO WITHDRAW SHOULD BE GRANTED UNDER NRPC 1.16**

3 Nevada Rules of Professional Conduct 1.16 governs an attorneys' withdrawal from
4 representation of a client. Specifically, NRPC 1.16 (b)(5) and (6) allows an attorney to withdraw
5 from representation if:

6 (5) The client fails substantially to fulfill an obligation to the lawyer
7 regarding the lawyer's services and has been given reasonable warning
8 that the lawyer will withdraw unless the obligation is fulfilled;

9 (6) The representation will result in an unreasonable financial burden
10 on the lawyer or has been rendered unreasonably difficult by the client.

11 **II. THE CLIENTS HAVE FAILED TO FULFILL HIS OBLIGATIONS**

12 The above provisions supports the pending motion to withdraw as the law firm of Gibbs,
13 Giden, Locher, Turner, Senet & Wittbrodt LLP ("GGLTSW") has provided services in representing
14 Plaintiffs LAS VEGAS LAND PARTNERS, LLC; LIVE WORK, LLC and ZOE PROPERTIES,
15 LLC, and Counterdefendant LAS VEGAS LAND PARTNERS, LLC (collectively "Clients") in the
16 above referenced matter, and Clients have failed in their obligation to make payment for such
17 services. Additionally, counsel has attempted to contact Clients on a number of occasions in an
18 attempt to resolve the outstanding issues. However, Clients repeatedly failed to respond or make
19 payments. Due to the lack of payment, GGLTSW is unable to continue its representation in the
20 above referenced matter.

21 As set forth in the above executed Affidavit of Richard E. Haskin, Esq., counsel has
22 previously communicated with Clients on a repeated basis with regard to the necessity of making
23 payment arrangements for legal services provided. To date, no satisfactory assurance has been made
24 with regard to payment.

25 Courts have held that an attorney may withdraw from an action, even late in a proceeding,
26 where, due to non-payment from a client, the continued representation "will result in an
27 unreasonable financial burden on the lawyer..." In re Withdrawal of Attorney, 234 Mich.App. 421,
28 431-432 (1999); see also Bell & Marra, pllc v. Sullivan, 2000 MT 206, 300 Mont. 530, 6 P.3d 965
(2000), Smith v. R.J. Reynolds Tobacco Co., 267 N.J. Super. 62, 630 A.2d 820 (App. Div. 1993). In

1 all of the foregoing cases, the courts cited rules of professional conduct, almost identical to NRPC
 2 1.16 (b)(5) and (6), in finding that an attorney may withdraw due to non-payment by a client "if it
 3 can be accomplished without material adverse effect on the client, or, in the alternative, if the
 4 representation will result in an unreasonable financial burden on the lawyer." In re Withdrawal of
 5 Attorney, 234 Mich.App. at 432.

6 In In re Withdrawal of Attorney, the Michigan Court of Appeals overturned a lower court
 7 ruling and permitted a three person law firm to withdraw from an action on the eve of trial citing the
 8 financial burden of taking the action through trial when the client failed to pay for legal fees and
 9 costs. See generally In re Withdrawal of Attorney, 234 Mich.App. 421. Citing Smith, *supra*, the
 10 court found that "[t]he fact that no adequate replacement counsel could be found who was willing to
 11 pursue plaintiffs' case on a contingency basis was evidence that withdrawal would have material
 12 adverse effect on the interests of plaintiffs under RPC 1.16(b). That consideration by itself, however,
 13 would not preclude withdrawal based on RPC 1.16(b)(5) where continued representation would
 14 cause an unreasonable financial burden on plaintiffs' counsel." The court continued "[t]he Smith
 15 court recognized an attorney's duty to a client, but held that such representation must have
 16 reasonable limits: '[b]ecause attorneys are obligated by ethical standards to conduct the litigation in
 17 an appropriate fashion and to 'fully protect [their] client's interest,' ... there are limits to what can be
 18 reasonably expected of counsel when they anticipate no return for their clients or themselves.'" Id.
 19 Finally, the foregoing court permitted withdrawal on the eve of trial even where replacement counsel
 20 was not readily available because the court noted the anticipated costs and the burden and expense
 21 that would be carried by the attorneys through trial without payment.¹ Id. at 436.

22 In the present case, GGLTSW Las Vegas is a two person law firm. Haskin Aff., ¶3. Both
 23 attorneys in the firm will chair this litigation, leaving the firm without billing attorneys working on
 24

25 ¹ "In addition, unlike either of the New Jersey cases, this case does not involve a written contingent
 26 fee agreement. To the extent that intervening plaintiffs are relying on any contingent fee agreement,
 27 that agreement was made with Snow individually. Nor is this a case where, except for the Chiamp
 28 firm, there is no available substitute counsel. As noted previously, the Chiamp firm is the least
 experienced available counsel in both this area of practice and this particular lawsuit. In light of the
 genesis of this action, the anticipated cost, the other available counsel and, especially in light of the
 burden of expense already carried by the Chiamp firm, it is not reasonable to require the Chiamp
 firm to continue to represent intervening plaintiffs." In re Withdrawal of Attorney, 234 Mich.App.
 at 436.

1 other paying matters. Id. The Clients are already severely indebted to GGLTSW for unpaid fees.
2 Haskin Aff., ¶ 4. Once more, two (2) experts are retained in this case, and GGLTSW will likely *foot*
3 *the lofty bill* for trial preparation and their testimony. Id. at ¶ 6. The firm will also incur tens of
4 thousands of dollars in attorneys' fees stemming from trial preparation and a two week trial
5 requiring two attorneys, beyond what the Clients are already indebted to GGLTSW for unpaid fees
6 and costs..

7 Therefore Gibbs, Giden, Locher, Turner & Senet LLP respectfully request that this Court
8 enter an Order allowing it to withdraw from representation of Plaintiffs LAS VEGAS LAND
9 PARTNERS, LLC; LIVE WORK, LLC and ZOE PROPERTIES, LLC, and Counterdefendant LAS
10 VEGAS LAND PARTNERS, LLC.

11
12 DATED: August 12, 2014

Respectfully Submitted,

13 GIBBS GIDEN LOCHER TURNER
14 SENET & WITTBRODT LLP

15
16 By: 

17 Richard E. Haskin, Esq.
18 Nevada State Bar # 11592
19 Timothy P. Elson, Esq.
20 Nevada State Bar # 11559
21 7450 Arroyo Crossing Parkway, Suite 270
22 Las Vegas, Nevada 89113-4059
23 Attorneys for Plaintiff LAS VEGAS LAND PARTNERS,
24 LLC; LIVE WORK, LLC, and ZOE PROPERTIES, LLC
25 and Counterdefendant LAS VEGAS LAND PARTNERS,
26 LLC
27
28

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on August 13, 2014, she served a copy of the foregoing **EMERGENCY MOTION ON AN ORDER SHORTENING TIME TO WITHDRAW AS COUNSEL OF RECORD FOR PLAINTIFFS LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC, AND ZOE PROPERTIES, LLC AND COUNTERDEFENDANT LAS VEGAS LAND PARTNERS, LLC** by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

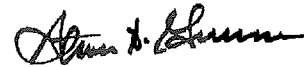
Joshua H. Reisman, Esq.
Robert R. Warns III, Esq.
REISMAN SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123

Attorneys for Defendants/Counterclaimants
RUSSELL L. NYPE and REVENUE PLUS, LLC

Tel: (702) 727-6258
Fax: (702) 446-6756
Email: jreisman@rsnvlaw.com
Email: rwarns@rsnvlaw.com
Email: kwood@rsnvlaw.com

Sharon Perry

An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP



CLERK OF THE COURT

1 MWCN
2 MATTHEW T. DUSHOFF, ESQ.
3 Nevada Bar No. 004975
4 JONATHAN D. BLUM, ESQ.
5 Nevada Bar No. 009515
6 **KOLESAR & LEATHAM**
7 400 South Rampart Boulevard, Suite 400
8 Las Vegas, Nevada 89145
9 Telephone: (702) 362-7800
10 Facsimile: (702) 362-9472
11 E-Mail: mdushoff@klnevada.com
12 jblum@klnevada.com

13 Attorneys for Plaintiffs
14 LAS VEGAS LAND PARTNERS, LLC;
15 LIVEWORK, LLC AND ZOE PROPERTIES,
16 LLC

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

19 * * *

20 LAS VEGAS LAND PARTNERS LLC;
21 LIVEWORK, LLC; and ZOE PROPERTIES,
22 LLC,

23 Plaintiffs,

24 vs.

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

Defendants.

CASE NO. 07A551073

DEPT NO. XXVIII

**MOTION TO WITHDRAW AS
COUNSEL OF RECORD FOR
PLAINTIFFS LAS VEGAS LAND
PARTNERS, LLC; LIVEWORK,
LLC AND ZOE PROPERTIES, LLC**

29 COMES NOW, the law firm of Kolesar & Leatham, and hereby submits its Motion to
30 Withdraw as Counsel of Record for Plaintiffs Las Vegas Land Partners, LLC; Livework, LLC
31 and Zoe Properties, LLC (collectively referred to as "Plaintiffs").

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36 ///

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

1 This Motion is made and based upon the following Memorandum of Points and
2 Authorities, the Declaration of Jonathan D. Blum, Esq. attached hereto, the papers and pleadings
3 on file herein and any oral argument the Court may choose to entertain.

4 DATED this 25 day of January, 2016.

5 KOLESAR & LEATHAM

6
7 By

MATTHEW T. DUSHOFF, ESQ.
Nevada Bar No. 004975
JONATHAN D. BLUM, ESQ.
Nevada Bar No. 009515
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

Attorneys for Plaintiffs
Las Vegas Land Partners LLC, Livework, LLC
and Zoe Properties, LLC

11
12
13
14 NOTICE OF MOTION

15 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for
16 hearing on the 02 day of MARCH, 2016, in Department XXVIII of the
17 above-entitled Court at the hour of CHAMBERS m., or as soon thereafter as counsel may be
18 heard.

19 DATED this 25 day of January, 2016.

20 KOLESAR & LEATHAM

21
22 By

MATTHEW T. DUSHOFF, ESQ.
Nevada Bar No. 004975
JONATHAN D. BLUM, ESQ.
Nevada Bar No. 009515
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

23 Attorneys for Plaintiffs
24 Las Vegas Land Partners LLC, Livework, LLC,
25 Zoe Properties, LLC and Counterdefendant, Las
26 Vegas Land Partners, LLC
27
28

DECLARATION OF JONATHAN D. BLUM, ESQ., IN SUPPORT
OF MOTION TO WITHDRAW AS COUNSEL OF RECORD

JONATHAN D. BLUM, ESQ., under penalty of perjury, hereby declares the following:

1. I am now, and at all times material herein mentioned was, over the age of 18 years, a resident of Clark County, Nevada, and competent to testify to the facts stated herein.

2. I have personal knowledge of the matters asserted herein except for those matters stated upon information and belief, which I believe to be true.

3. I am an attorney at law licensed to practice in the State of Nevada.

4. I am an attorney with Kolesar & Leatham, which was retained by Plaintiffs to represent them in the instant matter.

5. There has been an irreconcilable breakdown in communication between Kolesar & Leatham and the Plaintiffs, resulting in part from Plaintiffs' failure to pay amounts due to Kolesar & Leatham under the parties' retainer agreement.

6. Appellant has been given reasonable warning as to Kolesar & Leatham's intention to withdraw unless the payment obligations are met. The continued representation will result in an unreasonable financial burden on Kolesar & Leatham.

7. Kolesar & Leatham's withdrawal in this matter will not delay any trial or hearing in this matter.

8. There is one pending hearing in the District Court, related to Defendant's Memorandum of Costs, set for March 3, 2016, at 10 AM. Plaintiff requests that the hearing on this matter be set for that same time, in order to resolve the final issue pending in the District Court, as well as to allow Plaintiff time to retain new counsel.

9. Plaintiffs' current mailing address as last communicated to counsel is:

David Mitchell
801 Madison Avenue
New York, NY 10065
Telephone: 212-486-4444

///

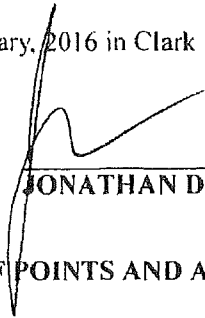
///

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

10. A copy of the instant Motion will be emailed and mailed to Plaintiffs via certified mail, return receipt requested, simultaneously with the filing of this Motion with the Court.

I declare under penalty of perjury that the foregoing is true and correct.

EXECUTED this 25 day of January, 2016 in Clark County, Nevada.


JONATHAN D. BLUM, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

- I. This Court has the authority to enter an order allowing Kolesar & Leatham to withdraw as attorneys of record for Plaintiffs

Nevada Supreme Court Rule 46 states as follows:

The attorney in an action or special proceeding may be changed at any time before judgment or final determination as follows:

1. Upon consent of the attorney, approved by the client.
2. Upon the order of the court or judge thereof on the application of the attorney or the client.

After judgment or final determination, an attorney may withdraw as attorney of record at any time upon the attorney's filing a withdrawal, with or without the client's consent.

EDCR 7.40(b)(2)(i) and (c) govern the withdrawal of an attorney of record, when withdrawal is initiated by the attorney's application, and states in relevant part:

(b) Counsel in any case may be changed only:

- (2) When no attorney has been retained to replace the attorney withdrawing, by order of the court, granted upon written motion, and

(i) If the application is made by the attorney, the attorney must include in an affidavit the address, or last known address, at which the client may be served with notice of further proceedings taken in the case in the event the application for withdrawal is granted, and the telephone number, or last known telephone number, at which the client may be reached and the attorney must serve a copy of the application upon the client

1 and all other parties to the action or their
2 attorneys ...

3 ***

4 (c) No application for withdrawal or substitution may be granted if
5 a delay of the trial or of the hearing of any matter in the case
6 would result.

7 Nevada Rule of Professional Conduct 1.16 states in relevant part:

8 [A] lawyer may withdraw from representing a client if:

9 ***

10 (5) The client fails substantially to fulfill an obligation to the
11 lawyer regarding the lawyer's services and has been given
12 reasonable warning that the lawyer will withdraw unless
13 the obligation is fulfilled;

14 (6) The representation will result in an unreasonable financial
15 burden on the lawyer or has been rendered unreasonably
16 difficult by the client....

17 Kolesar & Leatham requests permission to withdraw as counsel of record for Plaintiffs.

18 As set forth in the Declaration of Jonathan D. Blum, Esq., attached hereto, withdrawal is
19 warranted due to an irreconcilable breakdown in communications between Kolesar & Leatham
20 and the Plaintiffs, resulting in part from Plaintiffs' failure to pay amounts due to Kolesar &
21 Leatham under the parties' retainer agreement. Plaintiff has been given reasonable warning as to
22 Kolesar & Leatham's intention to withdraw unless the payment obligations are met. The
23 continued representation will result in an unreasonable financial burden on Kolesar & Leatham.
24 Further, Kolesar & Leatham's withdrawal will not result in the delay of trial or any hearing.

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KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

CONCLUSION

Based on the foregoing, withdrawal under the circumstances is justified and Kolesar & Leatham respectfully requests this Court grant its motion to withdraw as counsel of record for Plaintiffs. All further notices for Plaintiff should be sent to: David Mitchell, 801 Madison Avenue, New York, NY 10065

DATED this 25 day of January, 2016.

KOLESAR & LEATHAM

By

MATTHEW T. DUSHOFF, ESQ.
Nevada Bar No. 004975
JONATHAN D. BLUM, ESQ.
Nevada Bar No. 009515
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145

Attorneys for Plaintiffs
Las Vegas Land Partners LLC, Livework, LLC,
Zoe Properties, LLC

KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, Nevada 89145
Tel: (702) 362-7800 / Fax: (702) 362-9472

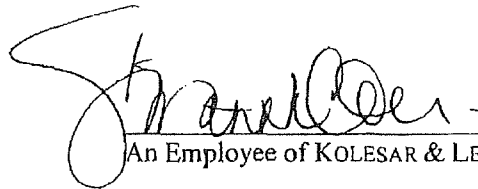
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Kolesar & Leatham, and that on the 24th day of January, 2016, I caused to be served a true and correct copy of foregoing **MOTION TO WITHDRAW AS COUNSEL OF RECORD FOR PLAINTIFFS LAS VEGAS LAND PARTNERS, LLC; LIVEWORK, LLC AND ZOE PROPERTIES, LLC**, in the following manner:

(ELECTRONIC SERVICE) Pursuant to Administrative Order 14-2, the above-referenced document was electronically filed on the date hereof and served through the Notice of Electronic Filing automatically generated by the Court's facilities to those parties listed on the Court's Master Service List.

(UNITED STATES MAIL) By depositing a copy of the above-referenced document for mailing in the United States Certified Mail, Return Receipt, first-class postage prepaid, at Las Vegas, Nevada, to the parties listed below at their last-known mailing addresses, on the date above written:

David Mitchell
801 Madison Avenue
New York, NY 10065



An Employee of KOLESAR & LEATHAM

EXHIBIT “3”



1 MWCN
2 GARRY L. HAYES, ESQ.
3 Nevada State Bar No. 1540
4 LAW OFFICE OF HAYES & WELSH
5 199 North Arroyo Grande Blvd., Suite 200
6 Henderson, Nevada 89074
7 Phone: 702-434-3444
8 Fax: 702-434-3739
9 k.bratton@hayesandwelsh.onmicrosoft.com

10 Attorneys for Plaintiff/Counter-defendant
11 *LAS VEGAS LAND PARTNERS, LLC*

12 DISTRICT COURT
13 CLARK COUNTY, NEVADA

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

17 Plaintiffs,

18 v.

19 RUSSELL L. NYPE; REVENUE PLUS, LLC;
20 DOES I-III; and ROE CORPORATIONS I-III,
21 inclusive,

22 Defendants.

23 RUSSELL L. NYPE; REVENUE PLUS, LLC,

24 Judgment Creditors/Counter-
25 Claimants,

26 v.

27 LAS VEGAS LAND PARTNERS, LLC,

28 Counter-defendant.

CASE NO. 07A551073
Dept. No.: XI (11)

**MOTION TO WITHDRAW AS COUNSEL
OF RECORD FOR PLAINTIFF/
COUNTER-DEFENDANT LAS VEGAS
LAND PARTNERS, LLC**

29 **NOTICE: You are required to file a written response to this Motion with the Clerk of**
30 **the Court and provide the undersigned with a copy of your response within ten (10)**
31 **judicial Court days of your receipt of this Motion. Failure to file a written response with**
32 **the Clerk of the Court within ten (10) judicial Court days of your receipt of this Motion**
33 **may result in the requested relief being granted by the Court to the undersigned without**
34 **hearing prior to the scheduled hearing date.**

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

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

1 COMES NOW, the LAW OFFICE OF HAYES & WELSH, and hereby respectfully
2 submits this Motion to Withdraw as Counsel of Record for Plaintiff/Counter-defendant *LAS*
3 *VEGAS LAND PARTNERS, LLC* (hereinafter referred to as the "Plaintiff/Counter-defendant") in
4 the above-captioned case.

5 This Motion is made and based upon the following Memorandum of Points and
6 Authorities, as well as the Affidavit of Garry L. Hayes, Esq., attached hereto as **Exhibit 1**.

7 DATED: March 13, 2019

LAW OFFICE OF HAYES & WELSH

8
9 By: 

10 GARRY L. HAYES, ESQ.
11 Nevada State Bar No. 1540
12 199 N. Arroyo Grande Blvd., Suite 200
13 Henderson, Nevada 89074
14 *Attorneys for Plaintiff/Counter-defendant*
15 *LAS VEGAS LAND PARTNERS, LLC*

16 **NOTICE OF MOTION**

17 PLEASE TAKE NOTICE that the hearing on the moving party's *Motion to Withdraw*
18 *as Counsel of Record for Plaintiff/Counter-defendant Las Vegas Land Partners, LLC* will be
19 held on _____, 2019, at _____, in Department 11 of the above-
20 noted Court at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, NV 89155.

21 DATED: March 13, 2019

LAW OFFICE OF HAYES & WELSH

22
23 By: 

24 GARRY L. HAYES, ESQ.
25 Nevada State Bar No. 1540
26 199 N. Arroyo Grande Blvd., Ste. 200
27 Henderson, Nevada 89074
28 *Attorneys for Plaintiff/Counter-defendant*
LAS VEGAS LAND PARTNERS, LLC

///

///

MEMORANDUM OF POINTS AND AUTHORITIES

Pursuant to EDCR 7.40(b)(2), an attorney may withdraw from a case by order of the court pursuant to a written motion. Said motion must include an affidavit of the movant, stating that there is good cause for such withdrawal, as well as providing the court with the last known address and telephone number of the client for whose case the attorney wishes to withdraw.

In addition, Nevada Rule of Professional Conduct 1.16(b)(1) provides that a lawyer may withdraw from representation, if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(b)(5) the client fails substantially to fulfill an obligation to the lawyer regarding the lawyer's services and has been given reasonable warning that the lawyer will withdraw unless the obligation is fulfilled;

(b)(6) the representation will result in an unreasonable financial burden on the lawyer or has been rendered unreasonably difficult by the client; or

(b)(7) other good cause to withdraw exists.

As set forth above in the Affidavit of Garry L. Hayes, Esq. (*See Exhibit 1*), Plaintiff/Counter-defendant *LAS VEGAS LAND PARTNERS, LLC* ("Plaintiff/Counter-defendant") has failed to pay the Law Office of Hayes & Welsh as agreed. Plaintiff/Counter-defendant is now many months in arrears and after promising payment for several months, Plaintiff/Counter-defendant still has not paid as agreed. Continued representation without regular payment will work a severe hardship on the Law Office of Hayes and Welsh and has strained the relationship between Client and Counsel.

Therefore, the Law Office of Hayes & Welsh respectfully requests that this Court grant permission to withdraw as counsel of record for Plaintiff/Counter-defendant at this time.

///

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///

///

1 Further communications to Plaintiff/Counter-defendant can be addressed to:

2 Las Vegas Land Partners, LLC
3 c/o David Mitchell
4 745 Fifth Ave., 5th Floor
5 New York, NY 10151
6 (212) 486-4444

7 DATED: March 13, 2019

LAW OFFICE OF HAYES & WELSH

8 By:  

9 GARRY L. HAYES, ESQ.
10 Nevada State Bar No. 1540
11 199 N. Arroyo Grande Blvd., Suite 200
12 Henderson, Nevada 89074
13 *Attorneys for Plaintiff/Counter-defendant*
14 *LAS VEGAS LAND PARTNERS, LLC*
15
16
17
18
19
20
21
22
23
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25
26
27
28

EXHIBIT 1

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 **AFFT**

2 **GARRY L. HAYES, ESQ.**

3 Nevada State Bar No. 1540

4 **LAW OFFICE OF HAYES & WELSH**

5 199 North Arroyo Grande Blvd., Suite 200

6 Henderson, Nevada 89074

7 Phone: 702-434-3444

8 Fax: 702-434-3739

9 k.bratton@hayesandwelsh.onmicrosoft.com

10 Attorneys for Plaintiff/Counter-defendant

11 ***LAS VEGAS LAND PARTNERS, LLC***

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 **LAS VEGAS LAND PARTNERS, LLC;**
15 **LIVE WORK, LLC; and ZOE PROPERTIES,**
16 **LLC,**

17 **Plaintiffs,**

18 **v.**

19 **RUSSELL L. NYPE; REVENUE PLUS, LLC;**
20 **DOES I-III; and ROE CORPORATIONS I-III,**
21 **inclusive,**

22 **Defendants.**

23 **RUSSELL L. NYPE; REVENUE PLUS, LLC,**

24 **Judgment Creditors/Counter-**
25 **Claimants,**

26 **v.**

27 **LAS VEGAS LAND PARTNERS, LLC,**

28 **Counter-defendant.**

CASE NO. 07A551073

Dept. No.: XI (11)

AFFIDAVIT OF GARRY L. HAYES, ESQ.
IN SUPPORT OF ORDER SHORTENING
TIME ON COUNSEL'S MOTION TO
WITHDRAW AS COUNSEL OF RECORD
FOR PLAINTIFF/ COUNTER-
DEFENDANT LAS VEGAS LAND
PARTNERS, LLC

29 **STATE OF NEVADA**

30 **COUNTY OF CLARK**

)
) ss.
)

31 **Garry L. Hayes, Esq., being first duly sworn, upon my oath aver that:**

LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
198 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3738

1 1. I am an attorney duly licensed to practice law in the state of Nevada and the
2 attorney of record for the Plaintiff/Counter-defendant *LAS VEGAS LAND PARTNERS, LLC*,
3 ("Plaintiff/Counter-defendant") and in that capacity, I have personal knowledge of the facts
4 contained within this Affidavit and am competent to testify herein.

5 2. On or around August 10, 2015, Plaintiff/Counter-defendant retained the services
6 of the Law Office of Hayes & Welsh to represent it in the present case. On August 10, 2015,
7 the Law Office of Hayes & Welsh began to represent Plaintiff/Counter-defendant in post-
8 judgment proceedings in this case.

9 3. The Order Shortening Time on Counsel's Motion to Withdraw is brought
10 because of currently pending discovery disputes between Counterclaimant, Plaintiff/Counter-
11 defendant, and a third party witness.

12 4. Plaintiff/Counter-defendant has failed to pay the Law Office of Hayes & Welsh
13 as agreed. Plaintiff/Counter-defendant is now many months in arrears and after promising
14 payment for several months, Plaintiff/Counter-defendant still has not paid as agreed. Continued
15 representation without regular payment will work a severe hardship on the Law Office of
16 Hayes and Welsh and has strained the relationship between Client and Counsel.

17 5. The last known address and telephone number for Plaintiff/Counter-defendant is
18 as follows:

19 Las Vegas Land Partners, LLC
20 c/o David Mitchell
21 745 Fifth Ave., 5th Floor
22 New York, NY 10151
23 (212) 486-4444

24 6. A filed copy of this Motion will be forwarded to Plaintiff/Counter-defendant via
25 certified mail, return receipt requested.

26 7. If granted, this withdrawal will not delay any trial, hearing or other matter in
27 this case.

28 ///

///

RA 000076

EXHIBIT “4”

07A551073

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Other Civil Filing

COURT MINUTES

October 24, 2013

07A551073 Las Vegas Land Partners LLC, Plaintiff(s)
vs.
Russell Nype, Defendant(s)

October 24, 2013

9:00 AM

Hearing

Order Scheduling Further
Proceedings: Remand From
The Supreme Court

HEARD BY: Israel, Ronald J.

COURTROOM: RJC Courtroom 15C

COURT CLERK: Kathy Klein

RECORDER: Judy Chappell

PARTIES

PRESENT: Reisman, Joshua H.

Attorney for Defendant Nype

JOURNAL ENTRIES

- Colloquy regarding re-setting trial. Mr. Reisman requested trial be set within the next 6 months, he had just come into this case and they would need to finish two expert depositions. COURT ORDERED, Case Re-Opened and Trial SET. The Judicial Executive Assistant (JEA) to issue a trial order. Court noted this is the oldest case in the stack. Counsel estimated two weeks for trial. Mr. Reisman noted the four pending motions were vacated and requested a new dispositive deadline date. Court advised Counsel to renotice the motions and the dispositive deadline date, 30 days before trial. Court directed Counsel to notify Plaintiff's Counsel.

03/27/14 9:30 AM PRE-TRIAL CONFERENCE

04/15/14 9:30 AM CALENDAR CALL

04/21/14 1:30 PM BENCH TRIAL

CLERK'S NOTE: Opposing Counsel arrived following the hearing and was given the details and dates given in the hearing.

PRINT DATE: 10/24/2013

Page 1 of 2

Minutes Date:

October 24, 2013

RA 000078

07A551073

EXHIBIT “5”

REGISTER OF ACTIONS

CASE No. 07A551073

Las Vegas Land Partners LLC, Plaintiff(s) vs. Russell Nype,
Defendant(s)

§
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§
§
§
§

Case Type: Other Civil Filing
Subtype: Other Civil Matters
Date Filed: 11/02/2007
Location: Department 11
Cross-Reference Case Number: A551073
Supreme Court No.: 59940
68819
70520

PARTY INFORMATION

Lead Attorneys

Counter Claimant Nype, Russell L

John W. Muije
Retained
7023867002(W)

Counter Claimant Revenue Plus LLC

John W. Muije
Retained
7023867002(W)

Counter Defendant Las Vegas Land Partners LLC

Garry L. Hayes
Retained
702-832-5592(W)

Defendant Nype, Russell L

John W. Muije
Retained
7023867002(W)

Plaintiff Las Vegas Land Partners LLC

Garry L. Hayes
Retained
702-832-5592(W)

EVENTS & ORDERS OF THE COURT

03/18/2014 **Motion to Continue Trial** (9:00 AM) (Judicial Officer Israel, Ronald J.)
Plaintiff's Motion to Continue Trial Date, and All Pre-Trial Deadlines, on Order Shortening Time

Minutes

03/18/2014 9:00 AM

- Colloquy regarding the age of this case, the New York matter and appeal. Upon Court's inquiry, Mr. Gragg advised his Clients obtained appellant Counsel, Mr. Sterling, and thought they would keep Counsel; Then they retained Mr. Gragg to take this case, a month ago and now would request a 6 month

continuance. Mr. Reisman objected, stating Plaintiff's had 5 months to obtain Counsel and further stated Mr. Reisman made his first appearance in October and is now ready for trial. Mr. Reisman Inquired of the 5 year rule. COURT ORDERED, Motion to Continue Trial, GRANTED. Court will allow the trial to move only to the next trial stack. Court noted the grounds for the delay were not reasonable, However will allow a 30 day continuance. The Judicial Executive Assistant (JEA) to issue a trial order. Colloquy regarding settlement. Court noted it would not order parties to a settlement conference. Colloquy regarding trial stack schedule, 06/16/14 may be available but not confirmed, and this being the oldest case in the stack.
05/01/14 9:30 AM PRE-TRIAL CONFERENCE 05/20/17 9:30 AM CALENDAR CALL 05/27/14 1:30 PM BENCH TRIAL.

Parties Present

Return to Register of Actions

EXHIBIT “6”



CLERK OF THE COURT

GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

ORDER

Richard E. Haskin, Esq.
Nevada State Bar # 11592
Timothy Elson, Esq.
Nevada State Bar # 11559
Victor Luke (*Pro Hac Vice*)
California State Bar # 235270
**GIBBS GIDEN LOCHER TURNER
SENET & WITTBRODT LLP**
7450 Arroyo Crossing Parkway, Suite 270
Las Vegas, Nevada 89113-4059
(702) 836-9800

Attorneys for Plaintiffs LAS VEGAS LAND
PARTNERS, LLC; LIVE WORK, LLC, and
ZOE PROPERTIES, LLC and
Counterdefendant LAS VEGAS LAND
PARTNERS, LLC

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

v.

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.

RUSSELL L. NYPE; REVENUE PLUS, LLC,

Counterclaimants,

v.

LAS VEGAS LAND PARTNERS, LLC; DOES I
through X; and ROE CORPORATIONS I through
X,

Counterdefendants.

CASE NO.: 07A551073

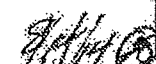
Dept.: XXVIII

**ORDER GRANTING EMERGENCY
MOTION ON AN ORDER SHORTENING
TIME TO WITHDRAW AS COUNSEL OF
RECORD FOR PLAINTIFFS LAS VEGAS
LAND PARTNERS, LLC, LIVE WORK,
LLC, AND ZOE PROPERTIES, LLC AND
COUNTERDEFENDANT LAS VEGAS
LAND PARTNERS, LLC**

///

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Order granting Withdrawal of Counsel, revised, clean 081414.doc



RA 000084

1 ORDER GRANTING EMERGENCY MOTION ON AN ORDER SHORTENING
2 TIME TO WITHDRAW AS COUNSEL OF RECORD FOR PLAINTIFFS LAS VEGAS
3 LAND PARTNERS, LLC, LIVE WORK, LLC, AND ZOE PROPERTIES, LLC AND
4 COUNTERDEFENDANT LAS VEGAS LAND PARTNERS, LLC

5 The law office of Gibbs, Giden, Locher, Turner, Senet & Wittbrodt, LLP's (hereinafter
6 "GGLTSW") Emergency Motion On An Order Shortening Time To Withdraw As Counsel Of
7 Record For Plaintiffs LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC, and ZOE
8 PROPERTIES, LLC and Counterdefendant LAS VEGAS LAND PARTNERS, LLC (hereinafter
9 collectively referred to as "LVLP") came on for hearing on August 14, 2014, before the above-
10 entitled Court, Honorable Ronald Israel presiding; Timothy Elson, Esq., appearing for and on behalf
11 of GGLTSW; Joshua Reisman, Esq., of REISMAN & SOROKAC, appearing for and on behalf of
12 Defendants and Counterclaimants RUSSELL L. NYPE and REVENUE PLUS, LLC; the Court
13 having read and considered the papers and pleadings on record herein, having heard arguments of
14 counsel, and being fully advised in the premises, the Court Finds as follows:

15 1. LVLP are sophisticated business entities with principals who are sophisticated
16 businessmen that created significant financial hardship and burden for their counsel in the six figure
17 range with an additional anticipated six figure amount to try this lawsuit.

18 2. Any additional representation by GGLTSW will result in an unreasonable financial
19 burden on the lawyers.

20 3. LVLP also failed substantially to fulfill an obligation to GGLTSW regarding the
21 lawyer's services even though GGLTSW gave reasonable warning that it would withdraw if the
22 obligation was not fulfilled.

23 4. Since this matter was remanded on appeal, LVLP have been aware that the Court
24 believed this matter needed to be tried as soon as possible, and that the Court was reluctant to grant
25 any further trial continuances.

26 5. The last known address and phone number where LVLP may be reached is as
27 follows:

28 ///

Attn: David Mitchell
801 Madison Avenue
New York, New York 10065
(917) 362-8787

Now, therefore, good cause appearing,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Motion is GRANTED and GGLTSW is granted an immediate withdrawal from the case as of the hearing on this Motion.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that LVLP are ordered and must obtain new counsel within two weeks from the date of the hearing, *i.e.*, August 28, 2014. If LVLP fail to obtain new counsel within that timeframe, LVLP may face any and all appropriate sanctions, including dismissal and/or other case-concluding sanctions. EDCR 7.42. To be perfectly clear, if LVLP fail to obtain new counsel within that timeframe, this Court may strike their Amended Complaint and/or Reply to NYPE's Second Amended Counterclaim, or other controlling pleadings in this matter.

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that this Court does not intend to grant any trial continuance at this time of the current trial setting of September 8, 2014.

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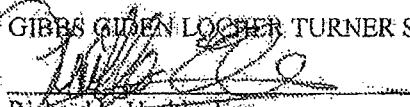
1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Pre-Trial Conference
2 and the hearing on pending motions in limine are continued to August 28, 2014, at 9:00 a.m.. The
3 deadline to submit the Joint Pre-Trial Memorandum pursuant to EDCR 2.67 is also continued to
4 August 28, 2014.

5 Dated this 15 day of August, 2014.

6 
7
8 DISTRICT COURT JUDGE

9 Respectfully Submitted by:

10 GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

11 
12 Richard E. Haskin, Esq.

13 Nevada State Bar # 11592

14 Timothy Elson, Esq.

15 Nevada State Bar # 11559

16 7450 Arroyo Crossing Parkway, Suite 270

17 Las Vegas, Nevada 89113-4059

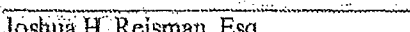
18 Attorneys for Plaintiffs LAS VEGAS LAND PARTNERS, LLC;

19 LIVE WORK, LLC; and ZOE PROPERTIES, LLC, and

20 Counterdefendant LAS VEGAS LAND PARTNERS, LLC

21 Approved as to form and content by:

22 REISMAN SOROKAC

23 
24 Joshua H. Reisman, Esq.

25 Nevada State Bar # 7152

26 Robert R. Warns III, Esq.

27 Nevada State Bar # 12123

28 8965 South Eastern Avenue, Suite 382

Las Vegas, Nevada 89123

Attorneys for Defendants and Counterclaimants

RUSSELL L. NYPE and REVENUE PLUS, LLC

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Pre-Trial Conference
2 and the hearing on pending motions in limine are continued to August 28, 2014, at 9:00 a.m. The
3 deadline to submit the Joint Pre-Trial Memorandum pursuant to EDCR 2.67 is also continued to
4 August 28, 2014.

5 Dated this 6 day of August, 2014.

6
7
8 
DISTRICT COURT JUDGE

9 Respectfully Submitted by:

10 GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP

11
12 Richard E. Haskin, Esq.
13 Nevada State Bar # 11592
14 Timothy Elson, Esq.
15 Nevada State Bar # 11559
16 7450 Arroyo Crossing Parkway, Suite 270
17 Las Vegas, Nevada 89113-4059
Attorneys for Plaintiffs LAS VEGAS LAND PARTNERS, LLC;
LIVE WORK, LLC; and ZOE PROPERTIES, LLC, and
Counterdefendant LAS VEGAS LAND PARTNERS, LLC

18 Approved as to form and content by:

19 REISMAN SOROKAC

20 Joshua H. Reisman, Esq.
21 Nevada State Bar # 7152
22 Robert R. Warns III, Esq.
23 Nevada State Bar # 12123
24 8965 South Eastern Avenue, Suite 382
25 Las Vegas, Nevada 89123
26 Attorneys for Defendants and Counterclaimants
27 RUSSELL L. NYPE and REVENUE PLUS, LLC
28

CERTIFICATE OF MAILING

The undersigned, an employee of the law firm of GIBBS GIDEN LOCHER TURNER SENET & WITTBRODT LLP, hereby certifies that on August 15, 2014, she served a copy of the foregoing ORDER GRANTING EMERGENCY MOTION ON AN ORDER SHORTENING TIME TO WITHDRAW AS COUNSEL OF RECORD FOR PLAINTIFFS LAS VEGAS LAND PARTNERS, LLC, LIVE WORK, LLC, AND ZOE PROPERTIES, LLC AND COUNTERDEFENDANT LAS VEGAS LAND PARTNERS, LLC by electronic service through the Regional Justice Center for Clark County, Nevada's ECF System:

Joshua H. Reisman, Esq.
Robert R. Warns III, Esq.
REISMAN SOROKAC
8965 South Eastern Avenue, Suite 382
Las Vegas, Nevada 89123

Attorneys for Defendants/Counterclaimants
**RUSSELL L. NYPE and REVENUE PLUS,
LLC**

Tel: (702) 727-6258
Fax: (702) 446-6756
Email: jreisman@rsnvlaw.com
Email: rwarns@rsnvlaw.com
Email: kwood@rsnvlaw.com

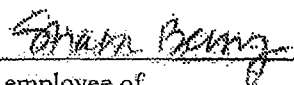

An employee of
Gibbs Giden Locher Turner
Senet & Wittbrodt LLP

EXHIBIT “7”

3/21/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6660379>

Skip to Main Content | Log out | My Account | Search Menu | New District Civil/Criminal Search | Refine Search | Back | Location : District Court Civil/Criminal | Help

REGISTER OF ACTIONS

CASE NO. 07A551073

Las Vegas Land Partners LLC, Plaintiff(s) vs. Russell Nype, Defendant(s)

§
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§Case Type: Other Civil Filing
Subtype: Other Civil Matters
Date Filed: 11/02/2007
Location: Department 11
Cross-Reference Case Number: A551073
Supreme Court No.: 59940
68819
70520**PARTY INFORMATION****Lead Attorneys**

Counter Claimant Nype, Russell L

John W. Muije
Retained
7023867002(W)

Counter Claimant Revenue Plus LLC

John W. Muije
Retained
7023867002(W)

Counter Defendant Las Vegas Land Partners LLC

Garry L. Hayes
Retained
702-832-5592(W)

Defendant Nype, Russell L

John W. Muije
Retained
7023867002(W)

Plaintiff Las Vegas Land Partners LLC

Garry L. Hayes
Retained
702-832-5592(W)**EVENTS & ORDERS OF THE COURT****DISPOSITIONS**

- 06/17/2009 **Order of Dismissal** (Judicial Officer: Togliatti, Jennifer)
Debtors: First Wall Street Capital International (Defendant)
Creditors: Las Vegas Land Partners LLC (Plaintiff), Livework LLC (Plaintiff), Zoe Properties LLC (Plaintiff)
Judgment: 06/17/2009, Docketed: 06/22/2009
- 10/24/2013 **Clerk's Certificate** (Judicial Officer: Israel, Ronald J.)
Debtors: Las Vegas Land Partners LLC (Plaintiff), Livework LLC (Plaintiff), Zoe Properties LLC (Plaintiff), Revenue Plus LLC (Counter Claimant), Las Vegas Land Partners LLC (Counter Defendant), FC Vegas 20 LLC (Other)
Creditors: Russell L Nype (Defendant), Revenue Plus LLC (Defendant), Revenue Plus LLC (Counter Claimant)
Judgment: 10/24/2013, Docketed: 10/31/2013
Comment: "REVERSED AND REMAND"
- 03/26/2015 **Order** (Judicial Officer: Israel, Ronald J.)
Debtors: Las Vegas Land Partners LLC (Counter Defendant)
Creditors: Russell L Nype (Counter Claimant), Revenue Plus LLC (Counter Claimant)
Judgment: 03/26/2015, Docketed: 04/02/2015
Total Judgment: 2,608,797.50
- 03/26/2015 **Order of Dismissal With Prejudice** (Judicial Officer: Israel, Ronald J.)

3/21/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6660379>

08/14/2014 **All Pending Motions** (3:00 AM) (Judicial Officer Israel, Ronald J.)
All Pending Motions (08/14/14)
Parties Present
Minutes
Result: Matter Heard

08/14/2014 **Motion in Limine**
Defendants/Counterclaimants' Motion in Limine To Preclude The Testimony Of Plaintiff/Counterdefendant's Expert Witness And Ex Parte Motion For An Order Shortening Time

08/14/2014 **Certificate of Service**
Certificate of Service of Defendants/Counterclaimants' Motion in Limine To Preclude The Testimony Of Plaintiff/ Counterdefendant's Expert Witness And Ex Parte Motion For An Order Shortening Time

08/15/2014 **Order Granting Motion**
Order Granting Emergency Motion on an Order Shortening Time to Withdraw as Counsel of Record for Plaintiff Las Vegas Land Partners, LLC, Live Work, LLC, and Zoe Properties, LLC and Counterdefendant Las Vegas Land Partners, LLC

08/19/2014 **Notice of Entry of Order**
Notice of Entry of Order Granting Emergency Motion on an Order Shortening Time to Withdraw as Counsel of Record

08/20/2014 **Motion to Continue Trial**
Motion to Continue Trial and Ex Parte Application for Order Shortening Time

08/22/2014 **Reply in Support**
Reply in Support of Defendant/Counterclaimants' Motion in Limine Regarding Licensing

08/25/2014 **Response**
Response to Plaintiffs' Motion to Continue Trial and Ex Parte Application for Order Shortening Time

08/25/2014 **Opposition to Motion**
Defendants/Counterclaimants Russell L. Nype and Revenue Plus, LLC's Opposition to Plaintiffs/Counterdefendant's Motion to Continue Trial

08/26/2014 **Motion to Continue Trial** (9:00 AM) (Judicial Officer Israel, Ronald J.)
Motion to Continue Trial and Ex Parte Application for Order Shortening Time
Parties Present
Minutes
Result: Denied

08/26/2014 **Objection**
Nype's Objections to Plaintiff and Counterdefendants' NRCP 16.1(a)(3) Pretrial Disclosures, Trial Exhibits and Designations of Deposition Testimony Intended to be Used at Trial

08/26/2014 **Order Setting Civil Bench Trial**
Order Re-Setting Civil Non-Jury Trial

08/28/2014 **CANCELED Calendar Call** (9:30 AM) (Judicial Officer Israel, Ronald J.)
Vacated

08/28/2014 **CANCELED Status Check** (9:30 AM) (Judicial Officer Israel, Ronald J.)
Vacated
Status Check: Confirmation of Counsel for Plaintiff (Mr. Caldwell)

08/28/2014 **Recorders Transcript of Hearing**
Transcript of Proceedings Motion to Continue Trial and Ex Parte Application for Order Shortening Time

09/02/2014 **Motion to Dismiss**
Motion to Dismiss

09/08/2014 **CANCELED Bench Trial** (1:30 PM) (Judicial Officer Israel, Ronald J.)
Vacated

09/10/2014 **Opposition to Motion in Limine**
Plaintiffs Las Vegas Land Partners LLC, Livework, LLC, Zoe Properties, LLC and Plaintiff / Counterdefendant Las Vegas Land Partners, LLC's Opposition to Defendants / Counterclaimants' Motion in Limine to Preclude the Testimony of Expert Witness

09/12/2014 **Supplemental**
Defendants/Counterclaimants Russell L. Nype and Revenue Plus, LLC's Fourth Supplement to NRCP 16.1(a)(3) Pre-trial Disclosures

09/18/2014 **Pre Trial Conference** (9:30 AM) (Judicial Officer Israel, Ronald J.)
Parties Present
Minutes
Result: Matter Heard

09/18/2014 **Order Denying**
Order Denying Motion to Continue Trial

09/19/2014 **Notice of Entry of Order**
Notice of Entry of Order

09/19/2014 **Opposition to Motion to Dismiss**
Opposition to Motion to Dismiss

09/22/2014 **Certificate of Service**
Amended Certificate of Service

09/22/2014 **Objection**
Plaintiffs Las Vegas Land Partners LLC, Livework, LLC, Zoe Properties, LLC and Plaintiff/Counterdefendant Las Vegas Land Partners LLC's Objection to Defendants' NRCP 16.1 (a)(3) Pretrial Disclosures, Trial Exhibits and Designations of Deposition Testimony Intended to be Used at Trial

09/24/2014 **Acceptance of Service**
Acceptance of Service of Subpoena for Appearance at Trial for Sooz Jones Walker

09/29/2014 **Objection**
Nype's Objections to Plaintiff and Counterdefendants Second and Third Supplemental NRCP 16.1(a)(3) Pretrial Disclosures

09/30/2014 **Telephonic Conference** (1:00 PM) (Judicial Officer Israel, Ronald J.)
Telephone Conference Re: Potential witness conflict disclosure
Parties Present
Minutes
Result: Matter Resolved

09/30/2014 **Pre-trial Memorandum**
Plaintiffs' Pre-Trial Memorandum

09/30/2014 **Objection**
Nype's Objection to Plaintiff and Counterdefendants' Updated Trial Exhibit List

09/30/2014 **Pre-trial Memorandum**

EXHIBIT “8”

3/21/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6660379&HearingID=184618305&SingleViewMode=Minutes>

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[Location](#) [District Court Civil/Criminal](#) [Help](#)

REGISTER OF ACTIONS

CASE No. 07A551073

Las Vegas Land Partners LLC, Plaintiff(s) vs. Russell Nype, Defendant(s)

§
§
§
§
§
§
§
§
§

Case Type: **Other Civil Filing**
Subtype: **Other Civil Matters**
Date Filed: **11/02/2007**
Location: **Department 11**
Cross-Reference Case Number: **A551073**
Supreme Court No.: **59940**
68819
70520

PARTY INFORMATION

Lead Attorneys

Counter Claimant Nype, Russell L

John W. Muije
Retained
7023867002(W)

Counter Claimant Revenue Plus LLC

John W. Muije
Retained
7023867002(W)

Counter Defendant Las Vegas Land Partners LLC

Garry L. Hayes
Retained
702-832-5592(W)

Defendant Nype, Russell L

John W. Muije
Retained
7023867002(W)

Plaintiff Las Vegas Land Partners LLC

Garry L. Hayes
Retained
702-832-5592(W)

EVENTS & ORDERS OF THE COURT

08/26/2014 **Motion to Continue Trial (9:00 AM)** (Judicial Officer Israel, Ronald J.)
Motion to Continue Trial and Ex Parte Application for Order Shortening Time

Minutes

08/26/2014 9:00 AM

- Colloquy regarding the Plaintiff's delay in this case. Mr. Dushoff noted he was not ready for trial. Court noted the Plaintiff's past attorneys withdrew due to money being owed. Mr. Reisman argued Plaintiff's continued delay tactics. Mr. Dushoff stated he has now been retained and would not pull out of the case. Court noted Plaintiff's continually postpone this trial and Mr. Dushoff was informed this trial would not be continued. COURT ORDERED, Motion to Continue Trial, DENIED. COURT FURTHER ORDERED, Trial VACATED and RESET to the next stack. The Judicial Executive Assistant (JEA) to issue the trial order. Motions In Limine to be RESET with the Calendar Call. Mr. Reisman noted every time we move out the trial, new Motions In Limine could be filed. Court stated Mr. Dushoff has just been retained

3/21/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=6660379&HearingID=184618305&SingleViewMode=Minutes>

and will allow the Motions In Limine. Court further noted Counsel must meet and confer and go over all the pending motions. Court stated if Motions to enforce the law are scheduled on calendar, there may be sanctions imposed. 09/18/14 9:30 AM PRE-TRIAL CONFERENCE 10/07/14 9:30 AM CALENDAR CALL...MOTIONS IN LIMINE 10/13/14 1:30 PM BENCH TRIAL

Parties Present

Return to Register of Actions

EXHIBIT "9"

EXHIBIT “9”

1 **RFP**

2 JOHN W. MUIJE & ASSOCIATES

3 JOHN W. MUIJE, ESQ.

4 Nevada Bar No. 2419

5 1840 East Sahara Avenue, #106

6 Las Vegas, Nevada 89104

7 Telephone: 702-386-7002

8 Facsimile: 702- 386-9135

9 E-Mail: jmuije@mujelawoffice.com

10 *Attorneys for Plaintiffs*

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,

CASE NO: A-16-740689-B

16 Plaintiffs,

DEPT NO: XV

17 vs.

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

Entity Defendants.

PLAINTIFFS' REQUEST FOR THE PRODUCTION
OF DOCUMENTS TO DEFENDANT LIVE WORK, LLC

TO: LIVE WORK, LLC

TO: GARRY HAYES, ESQ., of the Law Firm of HAYES & WELSH, its attorneys of record
Plaintiff, RUSSELL L. NYPE and REVENUE PLUS, LLC, (collectively, "NYPE") by and

1 through counsel, hereby propound the following Requests for the Production of Documents to LIVE
2 WORK, LLC, to be answered within thirty (30) days hereof, according to the Instructions herein.

3 **DEFINITIONS**

4 The Following Definition and Guidelines are to be used with respect to this Request for
5 Production of Documents:

6 (1) **"Agent"** means any attorney, accountant, financial adviser, investment bank, or any
7 other person acting on behalf of, or in furtherance of the interests of, another.

8 (2) **"Associate" or "Associates"** means a subsidiary, affiliated entity or individual with
9 whom LIVE WORK, LLC has had or presently has overlapping ownership and/or
10 with which it has had transactional arrangements, such as e.g., joint venture parties.
11 The term Associates or Associate shall include but shall not be limited to the
12 following:

- 13 (a) AARON PROPERTY LLC
- 14 (b) ADRIAN PROPERTY LLC
- 15 (c) AQUARIUS OWNER, LLC
- 16 (d) AVA PROPERTY LLC
- 17 (e) BARNET LIBERMAN
- 18 (f) CASA MITCHELL, LLC
- 19 (g) CASINO COOLIDGE, LLC
- 20 (h) DAVID J. MITCHELL
- 21 (i) LEAH PROPERTY, LLC
- 22 (j) LAS VEGAS BONNEVILLE PARTNERS LLC
- 23 (k) LAS VEGAS LAND PARTNERS, LLC
- 24 (l) LIBERMAN HOLDINGS, LLC
- 25 (m) LIVE WORK, LLC
- 26 (n) LIVE WORK MANAGER, LLC
- 27 (o) LIVE WORKS TIC SUCCESSOR, LLC
- 28 (p) LVLP HOLDINGS

- (q) **LVLV HOLDINGS, LLC**
- (r) **L/W TIC SUCCESSOR, LLC**
- (s) **MARC PROPERTY, LLC**
- (t) **MEYER PROPERTY, LLC**
- (u) **MEYER PROPERTY LTD**
- (v) **MITCHELL HOLDINGS, LLC**
- (w) **STELLA PROPERTY LLC**
- (x) **WINK ONE, LLC**
- (y) **ZOE PROPERTY, LLC**
- (z) **305 LAS VEGAS, LLC**

3. **"Document"** is defined to be synonymous in meaning and equal in scope to the usage of this term in Nevada Rules of Civil Procedure 34(a), and shall mean any and all designated documents or electronically stored information—including writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations—stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form and information in tangible or other form, whether printed, typed, recorded, computerized, filmed, reproduced by any process, or written or produced by hand, and whether an original, drafts, mater, duplicate or copy, or notated version thereof, that is **in** Your possession, custody, or control. A draft or non-identical copy is a separate document within the meaning of this term.

4. **"Document"** as used in this Request for Production of Documents shall also include, but not be limited to, electronic files, other data generated by and/or stored on or through any of Your computer system and storage media (e.g., internal or external hard drives, CD-ROM's, floppy disks, backup tapes, thumb drives, internet-based posting boards, or any other data storage media or mechanisms), or any other electronic data. This includes, but is not limited to: email and other electronic and/or text messages); voice mails; word processing documents; spreadsheets; databases; calendars; telephone logs; contact manager information; Internet usage files; offline storage or information stored on removable media; information contained on laptops or other portable devices;

1 and network access information. Further, this includes data in any format for storing electronic data.

2 5. **“Relating” or “referring”** are used in their broadcast sense and shall mean and
3 include, but shall not be limited to, avert, allude, comprise, concern, constitute, describe, discuss,
4 mention, note, pertain, quote, recite, recount, reflect, report or state.

5 6. The singular shall include the plural, and the plural shall include the singular. The
6 conjunctive “and” shall include the disjunctive **“or”** and the disjunctive “or” shall include the
7 conjunctive “and”.

8 7. **“Action”** shall mean RUSSELL L. NYPE; REVENUE PLUS, LLC, DOES I through X;
9 DOES I through X; DOE CORPORATIONS I through X; and DOES PARTNERSHIPS I through **X**, vs.
10 DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS, LLC; MEYER
11 PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK ONE, LLC; LIVE WORK,
12 LLC; LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC; LVLP HOLDINGS, LLC; MITCHELL
13 HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE WORKS TIC
14 SUCCESSOR, LLC; CASINO COOLIDGE LLC; DOES I through III, and ROE CORPORATIONS I through
15 III, inclusive, Clark County District Court Case No. A-16-740689-C, Dept. XV.

16 8. **“Judgment”** shall mean and refer to the Judgment entered by the Eighth Judicial
17 District Court in Case No. a-07-551073 on behalf of Las Vegas Land Partners, LLC; Live Works,
18 LLC and Zoe Properties, LLC, Plaintiffs vs. Russell L. Nype; Revenue Plus, LLC; Does I through
19 III; and Roe Corporations I through III, inclusive on or about April 10, 2015, as amended.

20 9. **“Judgment Debtor”** shall mean and refer to Las Vegas Land Partners, LLC and/or
21 its “Associates”.

22 10. Each Document produced shall be produced as it is kept in the usual course of
23 business (i.e., in the file folder or binder in which such Documents were located when the request
24 was served) or shall be organized and labeled to correspond to the categories of Documents
25 requested.

26 11. You are instructed to produce any and all Documents which are in your possession,
27 custody or control. Possession, custody or control includes constructive possession whereby you
28 have a right to compel the production of a matter from a third-party(including an agency, authority

1 or representative).

2 12. To the extent the location of any Document called for by this Exhibit is unknown to
3 you, so state. If any estimate can reasonably be made as to the location of an unknown Document,
4 describe the Document with sufficient particularity so that it can be identified, set forth your best
5 estimate of the Document's location, and describe the basis upon which the estimate is made.

6 13. The term "**Communication**" as used herein shall mean any dissemination of
7 information by transmission or a statement from one person to another or in the presence of another,
8 whether by writing, orally or by action or conduct, including, but not limited to, emails, text
9 messages, letters, or any other form of written communication, any oral, written or electronic
10 transmission of information without limitation, including meetings, discussions, conversations,
11 telephone calls, memoranda, letter, telecopies, telexes, email messages, text messages, memoranda,
12 conferences, seminars, or notes, and relates solely to non-privileged communications.

13 14. "**Individual**," "**Person**" or "**Persons**" shall mean natural persons, proprietorships,
14 sole proprietorships, corporations, nonprofit corporations, municipal corporations, local, state,
15 federal or foreign governments or governmental agencies, political subdivisions, general or limited
16 partnerships, business trusts, trusts, estates, clubs, groups, unincorporated associations, or other
17 business or public organizations.

18 15. "**You**" or "**Your**" means LIVE WORK, LLC and any other Affiliate, Agent, or
19 "Associate", and any attorneys, advisors, consultants, employees, agents, officers, partners,
20 principals, representatives or persons working on their behalf (individually or collectively including
21 all past or present employees or managers exercising discretion in making policies or decisions), as
22 well as any subsidiaries, predecessors or assigns of Las Vegas Land Partners, LLC and any Associate
23 (individually or collectively).

1
2 17. All documents concerning or constituting supporting work papers and/or
3 documents used by LIVE WORK, LLC from January, 1, 2007 through the present, used for
4 accounting and tax purposes, including but not limited to:

5 Bank Statements

6 Cancelled Checks

7 Deposit receipts

8 General ledgers

9 Electronic work sheets

10 Loan documents, including year-end statements

11 Amortization schedules

12 Purchase documents

13 Agreements and contracts

14 Details and description of assets included on the tax returns of
15 LIVE WORK, LLC

16 Details of Notes receivables included on the tax returns and how
17 they were repaid, copies of all related promissory notes

18 Depreciation schedules on properties included on the tax returns

19 All K-1's, or accountings from affiliated entities used to prepare
20 tax returns

21
22 18. All Communications as between your company (or any Associate) from Jan 1, 2007
23 to present, with all accounting, bookkeeping and financial personnel, whether Individual, Firm,
24 Company, or Subcontractor, including but not limited to any CPA, Bookkeeper, Tax preparer,
25 Auditor, Accountant, Computer Specialist, Consultant, Clerk, Assistant, or employee whose job was
26 to provide Bookkeeping services, Tax Preparation services, Audit services, Tax planning,
27 Comptroller services, Valuation services, Estate services, Litigation Support services, Financial
28

1
2 Reporting services, Financial Statement Preparation services, Services for the Recordation of
3 Accounting Transactions manually or into a Computer, Services for Inspecting, Transmitting, or
4 Receive Accounting Data, and any Services for purposes of Storing and/or Preserving Accounting
5 Records Manually or by Computer.
6

7 19. All Communications as between LIVE WORK, LLC and any of the following:

- 8 (a) FOREST CITY ENTERPRISES, INC.
9 (b) FOREST CITY ENTERPRISES, L.P.
10 (c) FOREST CITY COMMERCIAL MANAGEMENT, INC.
11 (d) FOREST CITY COMMERCIAL MANAGEMENT, LLC
12 (e) FOREST CITY PROPERTIES, LLC
13 (f) FOREST CITY REAL ESTATE SERVICES, LLC
14 (g) FOREST CITY TRS, LLC
15 (h) FC VEGAS, 20, LLC
16 (i) FC VEGAS, 39, LLC
17 (j) FC/LW VEGAS, LLC
18 (k) PQ LAS VEGAS, LLC
19 (l) PQ GROUND LEASE, LLC
20 (m) QH LAS VEGAS, LLC
21 (n) DOWNTOWN VEGAS, LLC
22 (o) L/W TIC SUCCESSOR, LLC
23

24 20. Copies of any/all lawsuits, judgments, etc., which you or an Associate may be a party
25 to arising on or after January 1, 2007.
26

27 21. Your New York Income Tax Returns for all periods from January 1, 2007 until the
28 present.

- 1 22. Your Federal Income Tax Returns.
- 2 23. Copies of any and all documents or Communications as between you and any
- 3 "Associate" for the last twelve (12) years.
- 4 24. Copies of any and all accounting and financial records.
- 5 25. Copies of all accounting reports and financial summaries received pursuant to the
- 6 Tenancy in Common Agreement between FC RTC 39, LLC, FC RTC 20, LLC, and Wink One, LLC
- 7 dated April 28, 2008, and any amendments thereto.
- 8
- 9 26. Copies of any and all quarterly property reports and statements of cash flow
- 10 received by Live Work as required by the amended and restated operating agreement of FC/LV Las
- 11 Vegas, LLC.
- 12 27. Copies of all annual certified financial statements of FC/LW Las Vegas, LLC as
- 13 required by the amended and restated operating agreement of FC/LW Las Vegas, LLC.
- 14
- 15 28. Clear legible copies of all checks, and all ledger entries reflecting the payment of
- 16 attorneys fees by you or any Associate, especially including but not limited to the attorneys that
- 17 have represented you in this proceeding.
- 18 29. All Documents (including without limitation accounting records and supporting
- 19 documents) that were used in the preparation of the FY2007 to FY2017 tax returns of LIVE
- 20 WORK, LLC.
- 21
- 22 30. All Documents concerning professional services provided for the benefit of LIVE
- 23 WORK, LLC and its Associates (including without limitation accounting records and supporting
- 24 documents that were used to provide consulting, accounting,
- 25
- 26
- 27
- 28

1 bookkeeping, or any other services from January 2, 2007 through the present including but not
2 limited to all signed Engagement letters with CPA's, Accountants, or Lawyers.

3 31. All Documents constituting or concerning Communications, including all
4 email messages sent or received, as between you and Sam K. Spitz, CPA, and/or SKE Group,
5 LLC.

6 32. All Documents constituting or concerning Communications as to any other
7 CPA's Accountants, Bookkeepers, Real Estate brokers, Appraisers, or other third-parties or
8 independent contractors and their Agents.

9 33. All Documents reflecting or concerning RTC rents associated with LIVE WORK,
10 LLC (including without limitation those that are included in the general ledgers and tax returns of
11 LIVE WORK, LLC and any Associates).

12 34. Documents reflecting or concerning rents from the Book Store located at 601
13 South Main Street, Las Vegas, NV 89101 including without limitation those that are included in
14 the general ledger and tax returns of LIVE WORK, LLC from January 1, 2007 through the
15 present.

16 35. Documents reflecting or concerning rents from the Motel located at: 608 First
17 Street, Las Vegas, NV 89101 including without limitation serve those that are included in the
18 general ledgers and tax returns of LIVE WORK, LLC from January 1, 2007 through the present.

19 36. Documents reflecting or concerning rents and/or the source of rents received from
20 Aquarius Owner, LLC during the Relevant Time Period, including without limitation those that
21 appear in the general ledgers through 2012.

22 37. Documents reflecting or concerning the location of where the Aquarius Owner,
23 LLC rents appear or are grouped in the tax returns of LIVE WORK, LLC.
24
25
26
27
28

1 53. Documents concerning explanations by the CPA or Accountant for Tax
2 Adjustments made in preparing the tax returns of LIVE WORK, LLC.

3 DATED this 8th day of May, 2018

4 JOHN W. MUIJE & ASSOCIATES

6
7 By. 

8 JOHN W. MUIJE, ESQ.

9 Nevada Bar No. 2419

10 1840 East Sahara Avenue, #106

11 Las Vegas, Nevada 89104

12 Telephone: 702-386-7002

13 Facsimile: 702- 386-9135

14 E-Mail: jmuje@muijelawoffice.com

15 Attorneys for Plaintiff

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

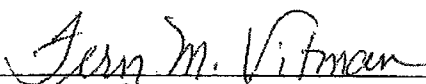
CERTIFICATE OF SERVICE

I hereby certify that I am an employee of JOHN W. MUIJE & ASSOCIATES, and that on the 8TH day of May, 2018, I caused to be served a true and correct copy of the foregoing **PLAINTIFFS' REQUEST FOR THE PRODUCTION OF DOCUMENTS TO DEFENDANT LIVE WORK, LLC**, 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
- ☐ via facsimile at the facsimile number listed below;
- ☐ by hand-delivering a copy to the party or parties as listed below:

Garry L. Hayes, Esq.
Megan K. Mayry McHenry, Esq.
HAYES & WELSH
199 Arroyo Grande, #200
Henderson, Nevada 89074
Telephone: (702) 509-9555
Facsimile: (702) 434-3739
E-Mail: ghayes@lvlaw.com
E-Mail: mmayry@lvlaw.com
Attorneys fo Defendants

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


An employee of JOHN W. MUIJE & ASSOCIATES

R:\JFiles\NYPE\J3792H\2016-05 - Alter Ego SUIT\2018-05 -- NYPE RFP TO DEFTS\2018 -- May RFP to Def. Live Work, LLC.wpd

EXHIBIT “10”

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

13 Plaintiffs,

14 v.

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

26 Defendants.

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

23 **DEFENDANT LIVE WORK, LLC'S RESPONSES TO PLAINTIFFS' FIRST SET OF**
24 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

25 Defendant, LIVE WORK, LLC, through its counsel, Garry L. Hayes, Esq. of the
26 Law Office of Hayes & Welsh, hereby responds to Plaintiffs' First Set of Requests for
27 Production of Documents dated May 8, 2018 as follows:
28

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

1 Answering Defendant, in addition to any documents specifically identified herein,
2 incorporates the following documents:

3 **GENERAL RESPONSES**

- 4 A. Any documents previously produced in any other litigation matters between the parties;
5 B. Any documents produced in any proceedings before the Nevada Supreme Court or any
6 other legal proceedings between the parties;
7 C. Any documents produced by any party according to NRCP Rule 16.1 in this matter.

8 **GENERAL OBJECTIONS**

9
10 The following General Objections are incorporated by reference and made part of
11 Defendant's response to each Request for Production of Documents. These General
12 Objections may be specifically referenced in the responses to the Request for Production of
13 Documents for the purpose of clarity. Any omission to specifically refer to a General
14 Objection, however, should not be construed as a waiver of that General Objection. In
15 addition, by responding to any of the Requests for Production of Documents, Defendant does
16 not waive and expressly preserves the General Objections and does not concede or admit the
17 relevancy of any responses herein.
18

19 (A) Defendant has previously produced consolidated tax returns. Defendant
20 incorporates in the following responses these previously produced tax returns.
21

22 (B) Defendant objects to the definitions and instructions accompanying Plaintiff's
23 Request for Production of Documents to the extent they seek to impose duties or obligations
24 upon Defendant greater than required by the Nevada Rules of Civil Procedure and Local
25 Rules for the Nevada District Court.

26 (C) Defendant objects to Plaintiff's Request for Production of Documents to the
27 extent they seek information or documentation that is subject to the attorney/client privilege,
28

- 1 SPZ001097 - SPZ001100 LVLP 2013 Trial Balance SPZ001097-SPZ001100
- 2 SPZ001101 - SPZ001104 LVLP 2014 cash account activity SPZ001101-SPZ001104
- 3 SPZ001105 - SPZ001109 LVLP 2014 Trial Balance SPZ001105-SPZ001109
- 4 SPZ001110 - SPZ001114 LVLP Subpoena SPZ001110-SPZ001114
- 5 Sam Spitz Production -
- 6 March 2018
- 7 SPZ001115 - SPZ001117 SKE Group, LLC Engagement Letter with LVLP Holdings, LLC dated
January 15, 2008
- 8 SPZ001118 - SPZ001120 SKE Group, LLC Engagement Letter with LVLP Holdings, LLC dated
January 3, 2016
- 9 SPZ001121 - SPZ001123 SKE Group, LLC Engagement Letter with LVLP Holdings, LLC dated
January 8, 2015
- 10 SPZ001124 - SPZ001126 SKE Group, LLC Engagement Letter with LVLP Holdings, LLC dated
January 5, 2014
- 11 SPZ001127 - SPZ001129 SKE Group, LLC Engagement Letter with LVLP Holdings, LLC dated
January 15, 2013
- 12
- 13 Sam Spitz Production - April
- 14 2018
- 15
- 16 19. All Communications as between LIVE WORK, LLC and any of the
- 17 following:
- 18 (a) FOREST CITY ENTERPRISES, INC.
- 19 (b) FOREST CITY ENTERPRISES, L.P.
- 20 (c) FOREST CITY COMMERCIAL MANAGEMENT, INC.
- 21 (d) FOREST CITY COMMERCIAL MANAGEMENT, LLC
- 22 (e) FOREST CITY PROPERTIES, LLC
- 23 (f) FOREST CITY REAL ESTATE SERVICES, LLC
- 24 (g) FOREST CITY TRS, LLC
- 25 (h) FC VEGAS, 20, LLC
- 26 (i) FC VEGAS, 39, LLC
- 27 (j) FC/LW VEGAS, LLC
- 28

- (k) PQ LAS VEGAS, LLC
- (l) PQ GROUND LEASE, LLC
- (m) QH LAS VEGAS, LLC
- (n) DOWNTOWN VEGAS, LLC
- (o) L/W TIC SUCCESSOR, LLC

RESPONSE #19: See prior disclosures.

20. Copies of any/all lawsuits, judgments, etc., which you or an Associate may be a party to arising on or after January 1, 2007.

RESPONSE #20: Plaintiff has copies of all relevant documents for litigation between the parties.

See: Clark County Nevada District Court Documents from Case Number A551073 Dept. No IX Dated November 2007- April 2009 (LVLP000001-LVLP000576)

See also: Settlement Agreement January 2010 by/among First Wall Street Capital International LLC d/b/a First Wall Street Capital International ("FW"), Las Vegas Land Partners LLC ("LVLP") and Forest City Enterprises, Inc ("Forest City") (P08883-P08912)

21. Your New York Income Tax Returns for all periods from January 1, 2007 until the present.

RESPONSE #21: LVLP Holdings New York State Income Tax Return FY 2012 and FY 2013 includes FC/LW Vegas LLC (FY 2012 LVLP10-00037-LVLP10-00058), (FY 2013 LVLP09-00003-LVLP09-00022)

22. Your Federal Income Tax Returns.

RESPONSE #22: Livework LLC included on Federal Income Tax Return for FC/LW Vegas LLC FY 2011 (LVLP005283-LVLP005311), Livework LLC included on Federal Income Tax Return for PQ Las Vegas, LLC FY 2012 (SPZ000246-SPZ000263),

1 Livework LLC included on Federal Income Tax Return for FC/LW Vegas LLC FY 2013
2 (SPZ000131-SPZ000153), Livework LLC included on Federal Income Tax Return for
3 FC/LW Vegas LLC FY 2014 (SPZ000688-SPZ000706), Livework LLC included on Federal
4 Income Tax Return for FC/LW Vegas LLC FY 2015 (SPZ000743-SPZ000774), Livework
5 LLC included on Federal Income Tax Return for PQ Las Vegas LLC FY 2015 (SPZ000797-
6 SPZ000820), Livework LLC included on Federal Income Tax Return for PQ Las Vegas LLC
7 FY 2016 (SPZ000821-SPZ000842)
8

9 23. Copies of any and all documents or Communications as between you and
10 Any "Associate" for the last twelve (12) years.
11

12 **RESPONSE #23:**

13 Email Correspondence with Kelly Van Tine regarding LiveWork and associated
14 properties/entities (P000743-P01512),

15 P05810- Email Correspondence with Kelly Van Tine Dated June 28, 2006 with attachment
16 P05813 "LiveWork Budget June 2006" P05810-P05813

17 P02824- Email Correspondence with Matthew Dannow Dated May 29, 2007 with attachments:
18 P02898 "Organizational Charts for LiveWork, LLC and Zoe Property, LLC", "Certificate of
19 Formation" and "Operating Agreement" - Confidential P02824-P02898

20 P03234- Multiple Email Correspondences with Matthew Danow Dated June 12, 2007 with
21 P03307 attachments: "Ground Lease of Cromer parcel from Triopoly, LLC", "Amendment to
22 Ground Lease", Sublease of the Cromer parcel from Triopoly to TMG LLC",
23 "Recorded Memorandum of Sublease to TMG", "Annual List of Managers for
24 LiveWork Entities", "LVLP-Forest City Purchase Agreement - Dated June 2007" -
25 Confidential P03234-P03307

26 P04310- Multiple Email Correspondence with Matthew Danow Dated June 15, 2007 with
27 P04337 Attachment "Certificate of Formation Livework Manager, LLC - Confidential P04310-
28 P04337

29 P04338- Multiple Email Correspondence with Matthew Danow Dated June 18, 2007 with
30 P04420 attachments: "Title Exception Letters" Dated June 15, 2007; Manager's Consent and
31 Subordination of Management Agreement;; Letter from Katsky Korins RE:
32 \$116,400,00.00 Loan, from KeyBank National Association to each of LiveWork, LLC,
33 FC Vegas 39, and FC Vegas 20, LLC Dated June 25, 2007 - Confidential P04338-
34 P04420

35 P04421- Multiple Email Correspondences with Matthew Danow Dated June 19, 2007 with
36 P04640 attachments: "Agreement of Purchase and Sale" Dated June 2007, "Unanimous
37 Written Consent of the Members of Las Vegas Land Partners, LLC"; "Consent of the
38 Sole Member of LiveWork LLC"; "Global Signal Lease and Subleases"; "Certificates of
39 Livework, LLC, LiveWork Manager, LLC, and Las Vegas Land Partners, LLC"; "Legal
40 Opinion" and "Transmittal Letter Containing LiveWork Loan Document Signature
41 Pages, certificates and opinion" - Confidential P04421-P04640

1 Multiple Email Correspondence with Matthew Danow Dated June 21, 2007 With
2 attachments: "Certificates of Livework and LVLP"; "LiveWork Signed Signature page
3 to RTC and SNDA"; "Estate of George A. Cromer The George A. Cromer Trust Letter"
4 P04847- Restated Limited Liability Company Agreement of LiveWork Manager, LLC" Dated
P05067 June 25, 2007; - Confidential P04847-P05067

5 Multiple Email Correspondences with Matthew Danow Dated June 22, 2007 with
6 attachment "Final Signed PSA"; "Signature Page Signed LiveWork, LLC", "Bank of
7 P05068- America Letter of Credit Number : 3088751" Dated June 21, 2007; "Letter Agreement
P05194 confirming Terms of the Nype escrow agreement" Dated June 22, 2007;
"Replacement Pages of Purchase Agreement reflecting new purchase price
\$82,357,574.37 and Nype escrow amount of \$430,068" - Confidential P05068-
P05194

8 Multiple Email Correspondences with Matthew Danow Dated July 2, 2007 with
9 P05263- attachment "Borrower's Certificate" Signed Livework , LLC - Confidential P05263-
P05288 P05288

10 Multiple Email Correspondences with Matthew Danow Dated July 10, 2007 with
11 P05293- Attachment "Amendment Agreement for RMI"; "LiveWork's Signed Amendment
P05304 Agreement" - Confidential P05293-P05304

12 Email Correspondence with Matthew Danow Dated August 20, 2007 with
13 P05356- Attachments: "Hedge Resolutions executed on behalf of LiveWork, LLC"; "Certification
P05631 of Balance Sheet" - Confidential P05356-P05631

14 24. Copies of any and all accounting and financial records.

15 **RESPONSE #24:** This request is vague and ambiguous and thus Answering
16 Defendant cannot provide a response.

17 25. Copies of all accounting reports and financial summaries received
18 pursuant to the Tenancy in Common Agreement between FC RTC 39, LLC, FC RTC 20,
19 LLC, and Wink One, LLC dated April 28, 2008, and any amendments thereto.
20

21 **RESPONSE #25:** Discovery is continuing.

22 26. Copies of any and all quarterly property reports and statements of cash
23 flow received by Live Work as required by the amended and restated operating
24 agreement of FC/LV Las Vegas, LLC.
25

26 **RESPONSE #26:** Discovery is continuing.

27 27. Copies of all annual certified financial statements of FC/LW Las Vegas,
28 LLC as required by the amended and restated operating agreement of FC/LW Las Vegas,

1 SPZ001126; SKE Group, LLC Engagement Letter with LVLP Holdings, LLC dated January
2 15, 2013 SPZ001127 – SPZ001129
3

4
5 31. All Documents constituting or concerning Communications, including all
6 email messages sent or received, as between you and Sam K. Spitz, CPA, and/or SKE Group,
7 LLC.

8 **RESPONSE #31:** See prior Spitz production – response 18.

9 32. All Documents constituting or concerning Communications as to any
10 other CPA's Accountants, Bookkeepers, Real Estate brokers, Appraisers, or other third-
11 parties or independent contractors and their Agents.

12 **RESPONSE #32:** See Response for Request #31.

13 33. All Documents reflecting or concerning RTC rents associated with LIVE
14 WORK, LLC (including without limitation those that are included in the general ledgers
15 and tax returns of LIVE WORK, LLC and any Associates).
16

17 **RESPONSE #33:** Discovery is continuing.

18 See also: General Ledgers for Forest City Enterprises LVLP046-074 (LVLP Nype
19 Docs>defendant's disclosures), See also: RTC Payment Ledger and correspondence
20 LVLP5100001-LVLP51000101 RTC Ground Lease LVLP5000001-5000111, RTC Gaming
21 agreement, payment directions, etc. LVLP4900001-LVLP4900049, RTC SDT cover letter
22 LVLP4800001-LVLP4800002
23

24 34. Documents reflecting or concerning rents from the Book Store located at
25 601 South Main Street, Las Vegas, NV 89101 including without limitation those that are
26 included in the general ledger and tax returns of LIVE WORK, LLC from January 1,
27 2007 through the present.
28

1 **RESPONSE #34:** Discovery is continuing.

2 35. Documents reflecting or concerning rents from the Motel located at: 608
3 First Street, Las Vegas, NV 89101 including without limitation serve those that are
4 included in the general ledgers and tax returns of LIVE WORK, LLC from January 1,
5 2007 through the present.
6

7 **RESPONSE #35:** Discovery is continuing.

8 36. Documents reflecting or concerning rents and/or the source of rents
9 received from Aquarius Owner, LLC during the Relevant Time Period, including without
10 limitation those that appear in the general ledgers through 2012.
11

12 **RESPONSE #36:** Discovery is continuing.

13 37. Documents reflecting or concerning the location of where the Aquarius
14 Owner, LLC rents appear or are grouped in the tax returns of LIVE WORK, LLC.
15

16 **RESPONSE #37:** Discovery is continuing.

17 38. Documents concerning why the Note Receivable (of approximately
18 \$1/7mm) as shown as due from "Aquarius Owner, LLC" in 2010 (apparently removed by
19 journal entry in 2011).
20

21 **RESPONSE #38:** Discovery is continuing.

22 39. Documents concerning the accounting treatment or journal entries
23 concerning the 2015-FINAL K-1 of FC/LW Vegas, LLC, including without limitation
24 entries reflecting how and why assets with an original cost basis of \$28M were sold for
25 \$8.5m.)
26

27 **RESPONSE #39:** Discovery is continuing.

28 40. Documents concerning the accounting treatment or journal entries
concerning the 2015 K-1 of QH Las Vegas, LLC, including without limitation the K-1

1 that was marked as FINAL.

2 **RESPONSE #40:** Discovery is continuing.

3 41. Documents concerning the recording or journal entries concerning the
4 disposition of the 40% interest of Stella Property, LLC.
5

6 **RESPONSE #41:** Discovery is continuing.

7 43. Documents concerning the recording or journal entries concerning the
8 2015 K-1 of PQ Las Vegas, LLC and/or PQ Grand Lease, LLC, including without
9 limitation that which was marked as FINAL.

10 **RESPONSE #43 [sic]:** Discovery is continuing.

11 43. Documents concerning the recording, accounting treatment or journal
12 Entries concerning the disposition of the 10% interest of Livework, LLC as to its Joint
13 Venture with various Forest City Affiliated Entities including but not limited to FC
14 Vegas 20, LLC.
15

16 **RESPONSE #43:** Discovery is continuing.

17 44. Documents concerning the recording, accounting treatment or journal
18 entries concerning the PQ Ground Lease, LLC including without limitation entries
19 concerning why it last appears on the 2012 tax return as passive activity, and why it no
20 longer appears on later year tax returns.
21

22 **RESPONSE #44:** Discovery is continuing.

23 45. Documents constituting or concerning accountings for PQ Las Vegas,
24 LLC and QH Las Vegas, LLC activity included in the tax returns of LIVE WORK, LLC.

25 **RESPONSE #45:** Discovery is continuing.

26 46. Documents constituting or concerning details and supporting work papers
27
28

1 concerning the sale of 929 South Casino Center Blvd (as previously held in LEAH, LLC) in
2 2015 for \$1,000,000.

3 **RESPONSE #46:** Discovery is continuing.

4
5 47. Documents concerning the recording or journal entries concerning the
6 details and supporting work papers concerning the value of 929 South Casino Center
7 Blvd sold by Leah, LLC in 2015 for \$1,000,000.

8 **RESPONSE #47:** Discovery is continuing.

9
10 48. Documents concerning the details and supporting work papers concerning
11 The calculation of basis included in the sale of 929 South Casino Center Blvd.(resulting
12 in a loss).

13 **RESPONSE #48:** Discovery is continuing.

14
15 49. Documents concerning the details and supporting work papers concerning
16 the partial sale of property held in Leah, LLC, including without limitation that noted as
17 a "partial sale in 2007" by the CPA on his list of disregarded entities.

18 **RESPONSE #49:** Discovery is continuing.

19
20 50. Documents concerning the details and supporting work papers of the 2013
21 General ledgers expenses noted as "RMI expenses".

22 **RESPONSE #50:** Discovery is continuing.

23
24 51. Documents concerning the accounting documentation supporting
25 reimbursement of RMI expenses.

26 **RESPONSE #51:** Discovery is continuing.

27
28 52. Documents concerning Tax Adjustments made by CPA's or Accountants
in preparing the tax returns of LIVE WORK, LLC.


RESPONSE #52: Discovery is continuing.

1 53. Documents concerning explanations by the CPA or Accountant for Tax
2 Adjustments made in preparing the tax returns of LIVE WORK, LLC.

3 **RESPONSE #53:** Discovery is continuing.

4 DATED this 10 day of ^{July}~~June~~, 2018.

5
6 LAW OFFICE OF HAYES & WELSH

7
8 
9 GARRY L. HAYES, ESQ.
10 Nevada State Bar No. 1540
11 199 N. Arroyo Grande Blvd., Ste. 200
12 Henderson, NV 89074
13 *Attorneys for Mitchell Defendants*
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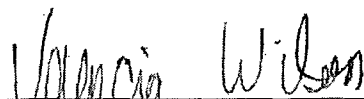
LAW OFFICE OF
HAYES & WELSH
A PROFESSIONAL CORPORATION
199 NORTH ARROYO GRANDE BLVD., SUITE 200
HENDERSON, NEVADA 89074
(702) 434-3444 FAX (702) 434-3739

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), and EDCR 8.05, I hereby certify that on the 10th day of June, 2018, I served a true and correct copy of the foregoing DEFENDANT LIVE WORK, LLC'S RESPONSES TO PLAINTIFFS' FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS through the Court's electronic filing and service system to:

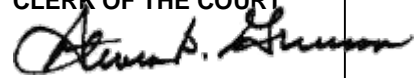
JOHN W. MUIJE, ESQ.
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HARRY PAUL MARQUIS, ESQ.
Harry Paul Marquis, Chartered
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Las Vegas, NV 89101
harry@marquislaw.net
*Attorneys for Defendants 305 Las Vegas, LLC
and Barnet Liberman*


Employee of the Law Office of Hayes & Welsh

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Steven D. Grierson
CLERK OF THE COURT



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JOHN W. MUIJE & ASSOCIATES
JOHN W. MUIJE, ESQ.
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Email: Jmuije@muijelawoffice.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs.

vs.

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

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

**HEARING REQUESTED
PLAINTIFFS' MOTION TO
COMPEL DEFENDANTS'
PRODUCTION OF DOCUMENTS,
ON ORDER SHORTENING TIME**

Date of Hearing: 5/6/19

Time of Hearing: 9:00 a.m. -

Plaintiffs Russell L. Nype and Revenue Plus, LLC (collectively, "Plaintiffs"), by and through their counsel of record, John W. Muije, Esq. of the law firm John W. Muije & Associates, hereby move the Court pursuant to Nevada Rule of Civil Procedure ("NRCPP") 37 for an order compelling Defendants 305 Las Vegas, LLC, Barnet Liberman ("Mr. Liberman"), Casino Coolidge, LLC (collectively, the "Liberian Defendants"), David J. Mitchell ("Mr. Mitchell"), Las Vegas Land Partners, LLC, Meyer Property, Ltd., Zoe Property, LLC, Leah

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1 Property, LLC, Wink One, LLC, Live Work, LLC, Live Work Manager, LLC, Aquarius Owner,
2 LLC, LVLP Holdings, LLC, Mitchell Holdings, LLC, Live Works TIC, and Successor, LLC
3 (collectively, the "Mitchell Defendants" and together with the Liberman Defendants,
4 "Defendants") to provide complete responses to Plaintiffs' requests for production, which
5 Plaintiffs served on Defendants pursuant to NRCP 34. Plaintiffs further move for an award of its
6 fees and costs incurred in bringing this Motion.

7 Finally, Plaintiffs move, ex parte, pursuant to Eighth Judicial District Court Local Rule
8 ("EDCR") 2.26, for an order shortening time.

9 This Motion is based upon the Memorandum of Points and Authorities below, the exhibits
10 contained in the supporting Appendix (Volumes I and II, filed contemporaneously herewith), the
11 papers and pleadings on file in this matter, and any oral argument allowed on this Motion.

12 DATED this 19th day of April, 2019.

13 JOHN W. MUIJE & ASSOCIATES

14
15
16 By: 

17 JOHN W. MUIJE, ESQ.
18 Nevada Bar No: 2419
19 1840 East Sahara Avenue, Suite 106
20 Las Vegas, NV 89104
21 Telephone No: (702) 386-7002
22 Facsimile No: (702) 386-9135
23 Email: jmuije@muijelawoffice.com
24 *Attorneys for Plaintiffs*
25
26
27
28

EX PARTE MOTION FOR AN ORDER SHORTENING TIME

Plaintiffs move this Court, ex parte, to set the hearing on the Motion to Compel on shortened time. EDCR 2.26 permits shortening of time for hearings and states that "[e]x parte motions to shorten time may not be granted except upon an unsworn declaration under penalty of perjury or affidavit of counsel describing the circumstances claimed to constitute good cause and justify the shortening of time"

Here, good cause justifying the shortening of time exists because the current discovery cut-off is May 31, 2019.¹ If this Motion is heard in the ordinary course, Plaintiffs will not receive key discovery materials in sufficient time to complete the necessary, remaining discovery in this matter and adequately prepare for trial. Importantly, the Liberman Defendants' counsel admits that he is sitting on many thousands of pages of discovery materials that he needs to review and produce. Because the discovery materials at issue are extremely relevant to Plaintiffs' claims for alter ego and fraudulent transfers, Plaintiffs must receive these materials so that they can complete all remaining discovery and adequately prepare for trial. (See Ex. 1, ¶¶ 4-6.) All citations in this Motion to exhibits refer to the exhibits contained in the contemporaneously filed supporting appendix.

Among other important discovery needing to be done are the follow-up depositions of Messrs. Mitchell and Liberman. Plaintiffs took their depositions in October of 2018. Thereafter, and despite having insisted—including in sworn, deposition testimony—that they'd produced all relevant discovery materials, the Liberman Defendants have just recently disclosed over 2400 pages of emails and documents. All of these recently produced materials should have been produced prior to their 2018 depositions, and, most importantly, reveal multiple previously undisclosed transactions and business dealings. In order to fairly address these recently produced materials, Defendants' counsel initially agreed, in principle, to make Messrs. Liberman and

¹ On Friday, April 5, 2019, Plaintiffs filed a motion to extend the discovery cut-off deadline by 30 days. The Court heard that matter on April 15, 2019 and granted said Motion.

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1 Mitchell available for follow-up depositions as to such belated disclosures. The Court has now
2 authorized such depositions. See id., ¶¶ 7-12.

3 No doubt complicating the issue, Defendants' respective original counsel have moved to
4 withdraw from this matter for Defendants' failure and refusals to pay their attorney's fees.
5 Despite his admission that he had many thousands of pages of documents to disclose, the
6 Liberman Defendants' former counsel indicated that he did not intend to do so because he was not
7 being paid. Although new counsel for 305 Las Vegas, LLC has expressed an intention to produce
8 such documents as quickly as possible, given the looming close of discovery, Plaintiffs consider
9 it necessary to file this motion to assure their rights and claims are protected. Absent an order
10 from this Court, it is extremely unlikely that Plaintiffs will receive complete responses to their
11 requests in sufficient time to complete reasonably necessary residual discovery in this matter.
12

13 Based on the foregoing, Plaintiffs respectfully request that the Court set the hearing on
14 this Motion on an Order Shortening Time at the Court's earliest possible convenience, but not
15 between April 24 – 26, 2019, as Plaintiffs' counsel will be attending his last surviving uncle's
16 military funeral at Arlington National Cemetery during those three days.
17

18 DATED this 19th day of April, 2019.

19 JOHN W. MUIJE & ASSOCIATES

20
21
22 By: 

JOHN W. MUIJE, ESQ.

Nevada Bar No. 2419

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Attorneys for Plaintiffs

AFFIDAVIT OF JOHN W. MUIJE ESQ.
IN SUPPORT OF ORDER SHORTENING TIME

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1. I am a lawyer duly licensed to practice law in this State and before this Honorable Court. I am an attorney with the Law Firm of JOHN W. MUIJE & ASSOCIATES, representing Plaintiffs, and I have practiced law in this jurisdiction for almost 39 years.

2. The trial in this matter is currently scheduled for a five-week calendar stack commencing on August 5, 2019, with a current Close of Discovery set for May 31, 2019, and handling the resolution of this motion and any additional discovery authorized in the ordinary course would not allow the parties to properly complete discovery, prepare for trial and be ready to have the case heard at the time and date scheduled.

3. The undersigned discussed with both withdrawing counsel the importance of supplying additional documentation not heretofore produced in two separate EDCR 2.34 consultations that occurred on April 1, 2019.

4. Attorney Hayes continued his insistence that they had diligently requested the Mitchell clients to produce all the documents the Plaintiffs have continuously sought, and that the Hayes office had promptly and previously turned over all documents received from its clients.

5. Attorney Marquis indicated that he was a solo practitioner, was not getting paid, and was not in a position to spend countless additional hours reviewing, organizing and disclosing thousands of additional pages supplied to him by the Liberman defendants.

6. The instant motion is not filed with the intent to harass, annoy or for any other improper purpose, but solely in order to obtain the additional time reasonably necessary to complete important discovery critical to ascertaining and resolving the complex issues in this case.

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7. Accordingly, based upon the above and foregoing, as well as the relevant factual declarations contained in Exhibit "1", the undersigned counsel respectfully requests that this Court issue an Order Shortening Time for the hearing of this matter.

FURTHER YOUR DECLARANT SAYETH NAUGHT.

DATED this 19th day of April, 2019.

JOHN W. MUIJE & ASSOCIATES

By: _____

JOHN W. MUIJE, ESQ.
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E-Mail: jmuije@muijelawoffice.com
Attorneys for Plaintiffs

SUBSCRIBED AND SWORN to before me
this 19th day of April, 2019

Fern M. Vitman
NOTARY PUBLIC IN AND FOR SAID
COUNTY AND STATE



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ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing, therefore,

IT IS HEREBY ORDERED that the foregoing **PLAINTIFFS' MOTION TO**
COMPEL DEFENDANTS' PRODUCTION OF DOCUMENTS ON ORDER
SHORTENING TIME shall be heard on the 4 day of May, 2019, at the hour of

9am, before the above-entitled Court, or as soon thereafter as counsel may be heard.

DATED this 22 day of April, 2019.


DISTRICT COURT JUDGE

Respectfully submitted by:

JOHN W. MUIJE & ASSOCIATES

By: 
JOHN W. MUIJE, ESQ.
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Attorneys for Plaintiffs

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION AND STATEMENT OF FACTS

4 This Motion concerns Plaintiffs' lengthy and ongoing efforts to obtain relevant documents
5 from Defendants in this matter.

6 In May of 2018, Plaintiffs served comprehensive requests for production of documents on
7 the Liberman Defendants that, among other things, sought the production of email
8 communications between the parties, amongst the various affiliated entities, and a limited number
9 of identified, relevant third parties. (See e.g., Ex. 2 at NYPE0015-NYPE0016 (Requests 19 and
10 23 to 305 Las Vegas, LLC².) The Liberman Defendants responded to these document requests
11 on July 10, 2018, but failed to produce any responsive emails. (See e.g., Ex. 3 at NYPE0021,
12 (305 Las Vegas, LLC's Response to Request 19) and at NYPE0022 (Response to Request 23).)
13 Also, in May of 2018, Plaintiffs served requests for production of documents on the Mitchell
14 Defendants that were substantially similar to the above-referenced requests to the Liberman
15 Defendants. (See e.g., Ex. 4 at NYPE0031-NYPE0033 (Requests 16, 17, 19 and 23 to Live Work
16 LLC).) The Mitchell Defendants responded to these document requests on July 10, 2018, but
17 also failed to produce any responsive emails of supporting financial documentation. (See e.g.,
18 Ex.5 at NYPE0040-NYPE0041 at pages 15 and 16 (ResponseS to Requests 16-17), NYPE0043
19 (Response to Request 19) and NYPE0044-NYPE0045 (Response to Request 23).) Despite
20 purporting to provide some data, those answers wholly failed and neglected to include any of the
21 materials recently produced by the Liberman defendants, or the financial data recently obtained
22 from the Forest City Entities. Quite simply, virtually none of the key emails or the significant
23 accounting backup sought by plaintiffs has ever been produced by the Mitchell Defendants. Yet,
24 Defendants and their respective counsel have continuously asserted that they have no further
25 responsive documentation. (See Ex. 1, ¶ 21.)
26

27
28 ² Plaintiffs sent substantially similar Requests for Production of Documents to all Defendants in
this matter.

1 Despite months of insistence that they did not have the subject documentation, the
2 Liberman Defendants (after multiple "meet and confers"), finally started to produce responsive
3 emails (and attachments) on or about January 31, 2019—more than 6 months after the documents
4 should have been produced. See id. ¶ 22. That production included approximately 1,300 pages
5 of documents and disclosed numerous previously undisclosed documents and transactions—
6 including some of the very documents that Defendants had been insisting, for months, did not
7 exist. See id. ¶ 23. The production also appeared organized chronologically, covering the period
8 of late 2007 through early 2009. See id. ¶ 24. After again engaging in multiple "meet and
9 confer" efforts, on or about February 27, 2019, the Liberman Defendants produced a second wave
10 of chronologically ordered documents and emails, covering the remaining portions of 2009, and
11 totaling over 1,100 pages of documents. See id. ¶ 25. During the course of multiple
12 conversations between counsel in late 2018 and early 2019, counsel for the Liberman Defendants,
13 Harry Marquis, Esq. ("Mr. Marquis"), disclosed that Mr. Liberman had produced to him many
14 thousands of pages of additional emails and attachments (the "Undisclosed Documents"), which
15 Mr. Marquis intended to produce in this action once he had sufficient time to review the same for
16 relevance and privilege. See id. ¶ 26. However, Mr. Marquis complained that he was a "one-man
17 shop" and that the project was daunting and voluminous. See id. ¶ 27. Plaintiffs **are still waiting**
18 for these thousands of pages of Undisclosed Documents, which presumably cover the period of
19 **2010 through the present**. See id. ¶ 28. Mr. Marquis had indicated, however, that because the
20 Liberman Defendants refused to pay him for his services, he was not going to incur substantial
21 additional attorneys' fees reviewing and producing the Undisclosed Documents. See id. ¶ 29.

23 At the hearing on Plaintiffs' Motion to Enlarge Time to Complete Discovery, held on
24 April 15, 2019, new counsel for 305 Las Vegas, LLC, Brian Bosch, Esq., acknowledged he had
25 received a flash-drive from Attorney Harry Marquis, Esq. with those documents which he
26 intended to produce as quickly as possible. New counsel for Barnet Liberman and Casino
27 Coolidge, LLC, however, was unaware that his clients had yet to produce responsive documents
28 and promised to look into such. This Motion in part seeks expedited compliance by all
Defendants with their discovery obligations.

1 While the Mitchell Defendants maintain that they do not have possession of any of the
2 subject emails and documents, many of these recently disclosed documents reveal that Mr.
3 Mitchell and his office staff were, indeed, recipients of them, e.g., as a "cc" on the emails. See id.
4 ¶ 30. Indeed, the consistent testimony of both Messrs. Mitchell and Liberman has always been
5 that Mr. Mitchell is the "tax partner" in charge of maintaining financial records and assuring the
6 filing of proper tax returns for their numerous entities. See id. ¶ 31. For these reasons, Plaintiffs
7 believe that the Mitchell Defendants likewise have a substantial amount of documents that they
8 must disclose (or that the Mitchell Defendants destroyed them). See id. ¶ 32.

11 Even more critical to the proper analysis and presentation of evidence in this case than
12 the emails is the underlying financial documentation relating to the defendants' financial
13 misconduct. As will be discussed momentarily, Judge Israel (in the predecessor judgment case)
14 had ordered, on or about February 2, 2017, that the judgment debtor in that matter, LVLP,
15 produce substantial and important financial data regarding the various affiliated entities, most of
16 whom are named as defendants in this matter. See Exhibit "6", NYPE0055-NYPE0057. As is
17 explained in the Declaration of Plaintiffs' counsel, Exhibit "1", ¶ 35, not only did timely
18 compliance with that Order not occur, but bits and pieces of relevant data were trickled in over
19 the course of many months in multiple waves. In fact, that pattern has continued to this day in the
20 context of various responses to discovery requests and supplemental disclosures.

23 Furthermore, as sequential waves of discovery responses were trickled in by the Mitchell
24 Defendants, it became readily apparent that the Mitchell Defendants were practicing a "shoebox"
25 theory of defense, producing duplicate documentation, disorganized documentation, and large
26 stacks of documentation, all in a jumble, so as to increase the workload and difficulty for
27 Plaintiffs and Plaintiffs' counsel in discerning anything meaningful from the delayed, repetitive,
28 duplicative, and disorganized documentation. See Exhibit "1", ¶ 37.

Hence, when comprehensive discovery requests were promulgated to the various defendants herein on or about May 8, 2019, a conscious effort was made to be detailed, specific, and to solicit exactly the itemized specific financial backup necessary to properly analyze defendants' financial transactions and conduct. In this regard, and for sake of comparison, the court is respectfully referred to Exhibit "7", Plaintiffs' Request for Production of Documents directed to Mitchell Holdings, LLC, also the Exhibit "8", Mitchell Holdings, LLC's responses thereto. As noted hereinabove, similar sets of discovery were served on all the various LVLP affiliates and entities that are parties hereto, and virtually identical responses were made by all such entities, with the notable exception of Defendant David Mitchell and Defendant Mitchell Holdings, LLC actually producing tax returns in response to their specific requests. See, e.g., Exhibit "8", Mitchell Holdings response No. 3 at NYPE0085. Notably, however, while limited "current" tax returns were produced for Mr. Mitchell and for Mitchell Holdings, LLC, a response to the itemized request seeking supporting and backup documentation used for accounting purposes (as compiled by Plaintiff's expert witness, Mark Rich, CPA), i.e. Requests No. 16 and 17, no such documents were produced for either David Mitchell, Mitchell Holdings, LLC or most of the other entities involved (a limited amount of such documents have actually been produced by LVLP itself). Even more significantly, not even tax returns were produced for Mr. Mitchell or for Mitchell Holdings, LLC for any period prior to 2012.

As is noted in the Declaration of Plaintiff's counsel, Exhibit "1", ¶ 38, perhaps one of the most critical transaction sequences involving the conveyance of LVLP's valuable assets occurred during the time frame of 2010 and 2011, when LVLP and its affiliates entered into amended agreements with the Forest City entities, diluting their ownership and their percentage of equity in the Joint Venture from 40% to 10%. Other than naked tax returns, general ledgers for LVLP, and certain limited bank statements, no meaningful financial backup, documentation, or explanation

1 has been provided regarding the financial accounts relevant to this major dilution of valuable
2 equity ownership. For example, ledgers regarding contributions and distributions from the Forest
3 City joint ventures have never been produced, equity detail regarding the assets and holdings
4 remain absent, receivables, cash journals, and allocations of profit, losses, and revenue statements
5 all remain missing and unexplained, despite multiple repeated requests to counsel for LVLP, Mr.
6 Hayes', to produce the balance of such documents. Exhibit "1", ¶ 39. Mr. Hayes' excuse, as
7 quoted in the Motion to Extend Discovery, was that they polled their clients every time an
8 additional request or demand was made, and that they promptly turned over whatever documents
9 their clients chose to provide them or produce! Exhibit "1", ¶ 40.

12 This becomes all the more interesting insofar as Plaintiffs became extremely frustrated at
13 the lack of progress and cooperation by LVLP and its principals, and decided to take the
14 deposition of their long-time CPA, Mr. Sam Spitz, in or about March, 2018.

16 After properly noticing Mr. Spitz' deposition, Plaintiffs' counsel discussed the same with
17 both Mr. Spitz and Mr. Hayes, then representing the Mitchell defendants herein. It was agreed
18 that the document production called for in the Subpoena Duces Tecum would be made first,
19 approximately two weeks prior to the scheduled deposition, so that the deposition could be
20 undertaken more efficiently. Spitz alleged "complete" documents were in fact produced, but
21 interestingly enough, on the very eve of the deposition (well over a week later), a supplement
22 containing alleged signed (by Defendant David Mitchell) copies of engagement letters was first
23 produced as well. Exhibit "1", ¶'s 41-43.

25 But, Spitz failed to produce his emails and adamantly refused to provide access to
26 electronic files (despite the subpoena calling for the same). Further, to the shock and surprise of
27 Plaintiffs, Spitz testified that he had destroyed essentially all of his files pre-dating 2013.
28 Exhibit "1", ¶'s 44-45.

Voluntary efforts were made to obtain access to the electronic files, and in fact emails ultimately were produced approximately six weeks later. Nevertheless, it became readily apparent by the Fall of 2018 that access to the electronic files would not be granted by Spitz. A motion to compel was filed, and Mr. Muije's detailed itemized sworn declaration was submitted in support thereof. Exhibit "1", ¶s 47-48. A true and correct copy of that Sworn Declaration (with supporting exhibits) submitted to the New Jersey Court is in Appendix, Vol II, as Exhibit "9" and by this reference incorporated herein. Significantly, as noted in Exhibit "9," paragraph 17 through 22, the alleged engagement letters showed significant *indicia* of being fabricated and produced, *ex post facto*, for the convenience of Spitz and the defendants. As also noted in Exhibit "9", paragraph 20:

"Forensically, there is no explanation as to a why a lone 2008 engagement letter exists other than to conveniently explain why substantially all of the 2007 to 2012 missing CPA records were not produced."

The declaration in support of the motion to compel then goes on to analyze professional accounting engagement letters, noting that even Spitz testified that those would change on an almost annual basis, whereas the multiple signed engagement letters belatedly produced were virtually identical except for the nominal dates thereon. Furthermore, the website of CPA Spitz set forth a comprehensive strong record "retention" policy (not a record destruction policy), as noted in Exhibit "9", paragraph 45, and a true and correct copy of that website regarding record retention is attached as Exhibit "D" to Exhibit "9".

The declaration further noted at paragraphs 26 and 27 that some of the Spitz documentation in question showed signs of modification and alteration. Most importantly, in conjunction with the motion to compel, paragraph 29 advises that the only way to correctly analyze and determine the veracity and obtain accurate accounting data is to examine the original

1 source electronic data, i.e. the source hard drives utilized by Spitz. See Exhibit “9”, paragraph
2 29.

3
4 The motion to compel ultimately resulted in an Order, in early December, 2018, a true and
5 correct copy of which is attached hereto as Exhibit “10”.

6 Subsequent to that Order, Spitz and his counsel refused to meet and confer to establish a
7 protocol for examination of the original source hard drives, and merely produced a thumb drive
8 allegedly containing copies of all of the electronic records. Notably, the thumb drive did not
9 contain copies of the signed engagement letters. Interestingly, however, it did contain a
10 December 2009 Accounting Statement as to one of the Forest City joint venture properties which
11 had never been produced or disclosed previously! Exhibit “1”, ¶’s 50-52.

12
13 In light of Spitz’ flaunting his nose at the New Jersey Court’s original Order, a motion for
14 an order to show cause was prepared and filed, which resulted in a second Order by the New
15 Jersey Court, a true and correct copy of which is attached hereto as Exhibit “11”.

16
17 While the Order specifically granted Plaintiffs access to the original source drives,
18 it contained numerous procedural steps and safeguards to protect third parties and assure the
19 orderly production of the documents, all of which necessarily entailed consumption of time,
20 energy and resources. Exhibit “1”, ¶ 54. As this Motion is prepared, Spitz has finally replied to
21 the background and foundational information required under the Order, and Plaintiffs have
22 responded with a proposed protocol for the examination of the original source hard drives. As
23 noted in Exhibit “11”, however, Spitz has ten days to object. Should he do so, the matter would
24 go back before the New Jersey Court. Exhibit “1”, ¶’s 55-56.

25
26 Hence, under the best of circumstances, Plaintiffs may obtain access to CPA Sam
27 Spitz’ original source electronic files by the original discovery deadline of May 1, 2019 (modified
28 to May 31, 2019 by Order of the Court on April 15, 2019). Exhibit “1”, ¶ 57.

1 As detailed in the Declaration of John W. Muije, Esq., Ex. 1, the parties have engaged in
2 multiple EDCR 2.34 meet and confer teleconferences and exchanged multiple discovery dispute
3 letters in an attempt to resolve this matter without the Court's intervention. Unfortunately,
4 although some progress was made, Plaintiffs are still awaiting production of thousands of pages
5 of essential discovery materials. See id. ¶ 58.

6 Further complicating matters, counsel for both the Liberman Defendants and the Mitchell
7 Defendants filed Motions to Withdraw. While the Liberman Defendants have substituted in two
8 new, separate attorneys, the Motion to Withdraw filed by counsel for the Mitchell Defendants has
9 been granted, with no replacement in sight. These developments will likely serve to further
10 unjustly delay this matter, to Plaintiffs' prejudice³.

11 These continual delays fostered by Defendants, along with the fact Plaintiffs are still
12 awaiting production of thousands of pages of documents, have necessitated this Motion.
13

14 II.

15 ARGUMENT

16 A. LEGAL STANDARD FOR A MOTION TO COMPEL.

17 NRCP 37(a)(1) provides that,

18
19 On notice to other parties and all affected persons, a party may move for an order
20 compelling disclosure or discovery. The motion must include a certification that
21 the movant has in good faith conferred or attempted to confer with the person or
22 party failing to make disclosure or discovery in an effort to obtain it without court
23 action.

24 Pursuant to NRCP 37(a)(3)(B)(iv), "[a] party seeking discovery may move for an order
25 compelling ...production ... if a party fails to produce documents ... as requested under Rule
26 34." "For purposes of Rule 37(a), an evasive or incomplete disclosure, answer, or response must
27 be treated as a failure to disclose, answer, or respond." NRCP 37(a)(4).

28 NRCP 26(b)(1) provides, in relevant part, that

Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses Information within this scope of discovery need not be admissible in evidence to be discoverable.

For purposes of trial, relevance means information "having any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence." NRS 48.015 (emphasis added.) "Relevance within the meaning of Rule 26(b)(1) is considerably broader than relevance for trial purposes." *F.T.C. v. AMG Servs., Inc.*, 291 F.R.D. 544, 552 (D. Nev. 2013)⁴ (emphasis added). "Rule 26 . . . contemplate[s] liberal discovery, and . . . relevancy under Rule 26 is extremely broad. *U.S. E.E.O.C. v. Caesars Entm't, Inc.*, 237 F.R.D. 428, 431 (D. Nev. 2006) (citations omitted) (emphasis added).

"The party opposing discovery has the burden of showing that the discovery is . . . not relevant." *Phillips v. Clark Cnty. Sch. Dist.*, No. 2:10-CV-02068-GMN, 2012 WL 135705, at *4 (D. Nev. Jan. 18, 2012). "To meet this burden, the objecting party must specifically detail the reasons why each request is irrelevant." *Phillips*, 2012 WL 135705, at *4 (citing *Graham v. Casey's General Stores*, 206 F.R.D. 251, 253-4 (S.D.Ind.2000).)

B. DEFENDANTS HAVE FAILED TO FULLY RESPOND TO PLAINTIFFS' DISCOVERY REQUESTS, WITHHOLDING THE PRODUCTION OF THOUSANDS OF PAGES OF RELEVANT DISCOVERY MATERIALS AND VIRTUALLY ALL IMPORTANT ACCOUNTING BACK-UP.

1. Requests 16, 17, 19 and 23

Plaintiffs' Request No. 19 to Defendants sought all communications between Defendants and certain third-parties referred to herein as the "Forest City entities". (Ex. 2, at NYPE0015, Request 19; Ex. 1, ¶ 42.) Defendants objected on various grounds, including that the request was "not reasonably calculated to lead the [sic] discovery of admissible evidence," and/or responded,

³ Plaintiffs' Limited Oppositions to the Motions to Withdraw filed by the Liberman Defendants' counsel and the Mitchell Defendants' counsel contain discussions of Defendants' delay tactics in the underlying A-07-551073 matter.

⁴ "Federal cases interpreting the Federal Rules of Civil Procedure 'are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.'" *Executive Mgmt., Ltd. v. Ticor Title Ins. Co.*, 118 Nev. 46, 53, 38 P.3d 872, 876 (2002) (quoting *Las Vegas Novelty v. Fernandez*, 106 Nev. 113, 119, 787 P.2d 772, 776 (1990)).

1 without identifying any responsive documents. (See, Ex. 3 at NYPE0021, Response to Request
2 19.)

3 Plaintiffs' Request No. 23 to Defendants sought "[c]opies of any and all documents or
4 Communications as between [Defendants] and Any "Associate" for the last twelve (12) years."
5 (Ex. 2 at NYPE0016, Request 23). Here again, Defendants generally objected on various
6 grounds, including that the request is "not reasonably calculated to lead the [sic] discovery of
7 admissible evidence," and/or responded, without identifying any responsive documents. (See,
8 Ex. 3, at NYPE0022, Response to Request 23.)

9 As previously discussed at length, *supra*, at page 11, line 1, through page 12, line 11, the
10 defendants have also continually failed and refused to produce detailed accounting backup, such
11 as would be responsive to Requests for Production Nos 16 and 17.

12 The nature of this action demonstrates the importance of obtaining full compliance with
13 these requests. In 2015, Plaintiffs obtained a multi-million-dollar judgment against Defendant
14 Las Vegas Land Partners, LLC ("LVLP"), which entity is owned and controlled by Messrs.
15 Mitchell and Liberman and is affiliated with the remaining defendants herein. That judgment
16 was based upon services Plaintiffs provided to LVLP—in 2006 and early 2007—but which
17 LVLP refused to pay for. (See Ex. 1, ¶ 59.) The Judgment was entered in Case No. A-07-
18 551073 (the "2007 Case") after nearly 8 years of unbelievably expensive litigation. See id. ¶ 60.
19 Initial judgment-debtor discovery revealed that LVLP had no liquid or readily attachable assets,
20 that Messrs. Liberman and Mitchell were LVLP's (as well as its affiliates') alter ego and that
21 Messrs. Liberman and Mitchell had committed numerous fraudulent transfers designed to hinder
22 and delay their creditors—including Plaintiffs. See id. ¶ 61. Accordingly, Plaintiffs brought this
23 action, asserting claims of alter ego and fraudulent transfers. See id. ¶ 62.

24 Beginning in 2007, shortly before the start of the 2007 case, Defendants and the Forest
25 City entities entered into multiple joint venture- and partnership-like transactions. See id. " ¶ 63.
26 Among other things, these transactions included the development of certain real property and
27 land-swaps and development agreements with the City of Las Vegas. See id. ¶ 64. Defendants'
28 and the Forest City entities' contracts include numerous financial components and record-sharing

1 requirements (e.g., accountings of financial matters). Plaintiffs' discovery in this action,
2 including Requests 16, 17, 19 and 23, all pertain to the various business dealings among
3 Defendants, themselves, as well as the Forest City entities. See id. ¶ 65. The information sought
4 by Requests 16, 17, 19 and 23, is especially crucial, as those requests seek information related to
5 the financial dealings of the Defendants and financial accountings provided by the Forest City
6 entities and Defendants. See id. ¶ 66. As such, the discovery sought bears directly upon
7 Plaintiffs' alter-ego and fraudulent-transfer claims.

8
9 As detailed herein, despite just recently producing approximately 2,400 pages of
10 documents responsive to Requests 19 and 23, the Liberman Defendants' counsel admits that he is
11 in possession of many thousands of pages of Undisclosed Documents. In that the prior
12 productions chronologically covered the period of 2007 through 2009, Plaintiffs believe that these
13 remaining documents cover the important periods of 2010 through the present. New counsel for
14 305 Las Vegas, LLC has acknowledged the existence of those many thousands of pages and has
15 indicated he will attempt to produce them as quickly as possible. Still, given the looming close of
16 discovery (just extended for 30 days to and until May 31, 2019), this Motion is brought to make a
17 record of Plaintiffs' concerns and assure timely compliance and responses to these long overdue
18 requests.

19 With regard to the Mitchell Defendants, their counsel continues to assert that the Mitchell
20 Defendants do not have any further documents responsive to Requests 16, 17, 19 or 23, or for that
21 matter most of Plaintiffs' other requests as well. See id. ¶ 67. Likewise, they contend that they
22 have produced all financial records and critical back up incident to the same. The evidence,
23 however, demonstrates that the Mitchell Defendants were recipients of many of the 2,400 pages
24 of documents the Liberman Defendants have already produced, strongly implying that they were
25 also the recipients of the Undisclosed Documents. Moreover, the consistent testimony of both
26 Mr. Mitchell and Mr. Liberman has always been that Mr. Mitchell is the "tax partner" in charge
27 of maintaining financial records and assuring the filing of proper tax returns for their numerous
28 entities. As discussed, *Supra* at p. 13, lines 20-24, as regards the "records destruction policy" and
missing backup spanning 2007 until at least 2012, and remembering that Mitchell personally

1 signed (See discussion, *Supra* at p.12, lines 22-24), the recurring suspicious engagement letters
2 admonishing LVLP about the importance of maintaining and preserving the important financial
3 back up, no such back up has yet been produced for those critical years. See Exhibit 9,
4 NYPE0127.

5 For these reasons, Plaintiffs believe that the Mitchell Defendants are either intentionally
6 withholding responsive documents or that they previously destroyed such documents in violation
7 of their evidence-preservation obligations.
8

9 Finally, it is also interesting to note that Exhibit "12" contains a brief discussion and
10 dialogue with Mr. Mitchell including express and unqualified testimony that no relevant records
11 from the critical time frame in question had been destroyed or lost! See Exhibit "12",
12 NYPE0173-NYPE0174.

13 As noted above, the recently-produced 2,400 pages of documents—covering just the
14 period between 2007 and 2009—have already disclosed the existence of multiple, previously
15 undisclosed transactions and business arrangements. Discovery since October, 2018, has already
16 revealed multiple previously undisclosed transactions relevant to Plaintiffs' alter-ego and
17 fraudulent-transfer claims—including a previously non-disclosed sale to an inside entity in
18 exchange for a \$5,000,000 note, which note with accrued interest was never paid and
19 subsequently written off at a time it totaled over \$13,000,000. Significantly, neither the note nor
20 the write-off were ever listed or shown on the defendants' financial statements or tax returns!!
21 As yet one other example, plaintiffs have recently learned from the documents provided in
22 February by the FC Entities (defined below) of the existence of previously unaccounted for
23 distributions and what appears to be a previously undisclosed defendant bank account! See id. ¶
24 69. As noted herein, the Liberman Defendants admit that they have thousands of additional pages
25 of discovery they still haven't produced, making it extremely likely that such discovery will
26 reveal further previously undisclosed transactions and issues. And add in the missing or
27 destroyed financial backup spanning the critical years between 2007 and 2012, one can only
28

1 wonder what additional nefarious conduct the defendants are hiding. One can only imagine the
2 transactions and business dealings that will be revealed when Defendants finally produce
3 responsive documents covering the period of 2010 through the present. Absent an order from this
4 Court, it is extremely unlikely that Plaintiffs will receive the Undisclosed Documents in sufficient
5 time to complete all necessary, remaining discovery in this matter.

6 For the foregoing reasons, the Court should issue an order compelling (1) the Liberman
7 Defendants to produce full and complete responses to Requests 19 and 23 (including, the
8 undisclosed Documents) and (2) the Mitchell Defendants to produce documents responsive to
9 Requests 19 and 23, and that all defendants produce comprehensive financial information
10 responsive to Requests for Production 16 and 17 as directed to all defendants.

11 **2. Compliance Affidavit**

12 In light of Defendants' ongoing, substantial discovery failures—including Defendants'
13 assertions that they didn't have responsive documents that they thereafter produced, this Court
14 should exercise its discretion and require both Mr. Liberman and Mr. Mitchell to each submit an
15 appropriate affidavit that they and their entities have fully complied with their discovery
16 obligations. In that regard, the Court should require that the compliance affidavit state that to the
17 best of their respective knowledge and belief, formed after extensive investigation and research,
18 they have produced all non-privileged materials responsive to all of Plaintiffs' discovery requests.

19 **C. THIS COURT SHOULD ORDER DEFENDANTS TO PAY PLAINTIFFS'**
20 **EXPENSES INCURRED IN BRINGING THIS MOTION.**

21 Rule 37(a)(5)(A) states, in pertinent part, that “[i]f the motion [to compel] is granted — or
22 if the disclosure or requested discovery is provided after the motion was filed — the court **must** .
23 . . . require the party . . . whose conduct necessitated the motion, the party or attorney advising that
24 conduct, or both to **pay the movant’s reasonable expenses incurred in making the motion,**
25 **including attorney fees.**” (emphasis added).

26 Defendants, without basis, have failed and refused to produce thousands of pages of
27 discoverable documents in this matter. Accordingly, if the Court grants this Motion, this Court
28 must also require Defendants to pay Plaintiffs' expenses incurred in connection with this Motion.

1 In that regard, Plaintiffs have incurred approximately \$9,500, or more, in holding meet and
2 confers related to these discovery issues and in bringing this Motion. (See Ex. 1 ¶ 58.) If the
3 Court is inclined to grant such directly related fees and costs, Plaintiffs will submit a full request
4 for their attorney's fees (supported by invoices, etc.) associated with this Motion, including their
5 expenses in preparing any reply brief and attending the hearing on the same.

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III.

CONCLUSION

Based upon the foregoing, Plaintiffs respectfully request that the Court issue an Order as follows:

(1) Compelling the Liberman Defendants to produce full and complete responses to Requests 16, 17, 19 and 23 (including, the Undisclosed Documents);

(2) Compelling the Mitchell Defendants to produce documents responsive to Requests 16, 17, 19 and 23;

(3) Compelling all defendants to produce complete financial and accounting records and backup, as repeatedly sought and requested;

(4) Requiring Defendants to produce compliance affidavits as set forth above; and

(5) Awarding against Defendants their reasonable attorneys' fees and costs.

DATED this 19th day of April, 2019.

JOHN W. MUIJE & ASSOCIATES

By: 

JOHN W. MUIJE, ESQ.

Nevada Bar No: 2419

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the
2nd day of April, 2019, I caused the foregoing document, **PLAINTIFFS' MOTION TO
COMPEL DEFENDANTS' PRODUCTION OF DOCUMENTS, ON ORDER
SHORTENING TIME,**

to be served as follows:

X by electronically filing and serving with the Clerk of the Court via the Odyssey E-File and Serve System;

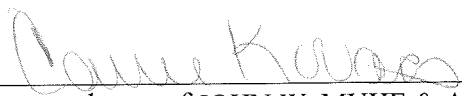
by placing a copy of the same for mailing in the United States mail, with first class postage prepaid marked certified return receipt requested addressed as follows; and/or

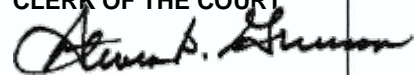
Via E-Mail at the addresses listed below;

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10 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

9 RUSSELL L. NYPE AND REVENUS PLUS,
10 LLC

11 Plaintiffs,

12 vs.

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

24 Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

DATE: May 15, 2019

TIME: 10:30 a.m.

**NOTICE OF ENTRY OF ORDER COMPELLING DISCOVERY, AWARDING
SANCTIONS, AND BRIEFLY EXTENDING DISCOVERY FOR LIMITED
PURPOSES AND CONTINUING THE TRIAL DATE**

24 TO: ELLIOT S. BLUT, ESQ., of **BLUT LAW GROUP, P.C.**, Attorneys for Defendants
25 BARNET LIBERMAN AND CASINO COOLIDGE, LLC

26 TO: Brian B. Boschee, Esq., of the Law Offices of **HOLLEY DRIGGS WALCH FINE
27 PUZEY STEIN & THOMPSON**, Attorneys for Defendant 305 Las Vegas, LLC TO:

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

1 PLEASE TAKE NOTICE that the ORDER COMPELLING DISCOVERY,
2 AWARDING SANCTIONS, AND BRIEFLY EXTENDING DISCOVERY FOR LIMITED
3 PURPOSES AND CONTINUING THE TRIAL DATE, was entered with the Court on the 30th
4 day of May, 2019, a cop of which is attached hereto as Exhibit "1".

5
6 DATED this 30th day of May, 2019.

7 JOHN W. MUIJE & ASSOCIATES

8
9
10 By:  JOHN W.

11 J. MUIJE, ESQ.

12 Nevada Bar No: 2419

13 1840 E. Sahara Ave #106

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15 Phone No: (702) 386-7002

16 Fax No: (702) 386-9135

17 Email: jmuije@muijelawoffice.com

18 Attorneys for Plaintiffs

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CERTIFICATE OF MAILING

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 30th day of May, 2019, I caused the foregoing document, **NOTICE OF ENTRY OF ORDER COMPELLING DISCOVERY, AWARDING SANCTIONS, AND BRIEFLY EXTENDING DISCOVERY FOR LIMITED PURPOSES AND CONTINUING THE TRIAL DATE**, to be served as follows:

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

Elliot S. Blut, Esq.
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Attorneys for Mitchell Defendants



An Employee of John W. Muije & Associates

EXHIBIT “1”

Steven D. Grierson

1 **ORDER**

2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No: 2419
5 1840 East Sahara Avenue, Suite 106
6 Las Vegas, NV 89104
7 Telephone No: (702) 386-7002
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9 Email: jmuije@muijelawoffice.com
10 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

CASE NO: A-16-740689-B

DEPT NO: XI

Plaintiffs.

vs.

DATE: May 15, 2019

TIME: 10:30- a.m.

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

Mitchell Defendants.

ORDER COMPELLING DISCOVERY, AWARDING SANCTIONS,

AND

**BRIEFLY EXTENDING DISCOVERY FOR LIMITED
PURPOSES-**

AND

CONTINUING THE TRIAL DATE

1 This matter came on for hearing on May 15, 2019 at the hour of 10:30 a.m., Plaintiffs
2 represented by John W. Muije, Esq., of the Law Firm of JOHN W. MUIJE & ASSOCIATES,
3 Defendant 305 Las Vegas, LLC represented by Brian W. Boschee, Esq., of the Firm of HOLLEY
4 DRIGGS WALCH FINE PUZEY STEIN & THOMPSON, Defendants Barnet Liberman and
5 Casino Coolidge, LLC represented by Elliot S. Blut, Esq., of BLUT LAW GROUP, P.C., and
6 Defendants, DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS,
7 LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK
8 ONE, LLC; LIVE WORK, LLC LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC;
9 LVLP HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305
10 LAS VEGAS, LLC; LIVE OWRKS TIC SUCCESSOR, LIVE WORK, LLC, appearing by and
11 through their attorney of record, JAMES EDWARDS, ESQ., in association with the Firm of
12 COHEN, JOHNSON, PARKER & EDWARDS, and CPA Michael Rosten appearing in Proper
13 Person, and the Court having reviewed and considered the pleadings papers and documents on
14 file herein, and the arguments and representations of counsel and Mr. Rosten, and good cause
15 appearing,
16
17
18
19

20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Court finds that
21 Plaintiffs' Motion to Compel Defendant's Production of Documents on Order Shortening Time as
22 filed on April 22, 2019, was originally convened on May 6, 2019, but was continued for nine (9)
23 days due to the retention of newly appearing counsel for the Mitchell Defendants, James Edwards
24 in association with the firm of Cohen Johnson Parker & Edwards et al.
25

26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court finds that
27 there has been no written opposition to Plaintiff's Motion;
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court further
finds, based upon the representations of counsel for Plaintiff and counsel for 305 Las Vegas,

1 LLC, that 305 Las Vegas, LLC has made a substantial and good faith effort, producing well over
2 10,000 pages of new materials between the date of the filing of the motion and the time and date
3 noted above;

4
5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, however, that there
6 remain unresolved discovery issues as more fully explained in Plaintiff's Motion of April 22,
7 2019, and that all defendants are expressly ordered to make an expeditious and diligent search for
8 all of the additional documentation and information noted and sought by Plaintiffs, insofar as the
9 Court hereby expressly **GRANTS** and approves Plaintiff's Motion to Compel and further awards
10 sanctions, as noted hereinafter;

11
12 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court awards
13 Plaintiffs as against all defendants, jointly and severally, the sum of \$1,500.00 at this time,
14 without prejudice to further application for fees and costs, and that defendants shall pay said sum
15 to the Trust Account of John W. Muije & Associates 30 days from the date of this Order.

16
17 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** in light of the above and
18 foregoing, that the presently scheduled depositions of CPA's Rosten and Taylor be vacated at the
19 present time, subject to resetting at a mutually convenient time and date subsequent to May 30,
20 2019;

21
22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court
23 recognizes that Plaintiff have numerous subpoenas, noticed depositions, and a pending motion to
24 compel against the New Jersey CPA, Sam Spitz, already in progress, and that a brief extension
25 of time would benefit the parties so as to allow those already promulgated and authorized
26 discovery efforts by the Plaintiffs to come to fruition;

27
28 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that in granting
Plaintiff's Motion to Compel, at least a modest amount of time must be afforded to the

1 defendants to adequately search, research, and carefully examine their physical and electronic
2 files to assure that all relevant discoverable information and documentation, including but not
3 limited to the information already requested by the Plaintiffs, may be located, produced, and
4 disclosed, and the Court's hereby expressly authorizes three weeks from the date of the hearing,
5 i.e. through and including Wednesday, June 5, 2019, for all defendants to fully and completely
6 comply with this Order compelling discovery and requiring them to produce the sought after
7 emails and financial data, including full responses to Requests for Production 16, 17, 19 and 23,
8 and the rest of Plaintiff's specific discovery requests to defendants, including all emails and the
9 backup and supporting financial data, accounting back-up, and financial details, schedules and
10 reports sought by Plaintiffs.
11

12 **IT IS FURTHER ORDER, ADJUDGED AND DECREED** that on or before June 5,
13 2019, David Mitchell, shall submit sworn affidavits to Plaintiff's counsel and file the same with
14 the Court, stating under oath, that they and each defendant entity have fully and completely
15 searched all available files and document repositories, both physical and electronic, and that such
16 sworn affidavits shall further set forth specifically the efforts undertaken and what was done to
17 assure full compliance with said defendant's discovery obligations. The said affidavit shall also
18 state under oath, (after describing the research, investigation and search methods used), that said
19 defendants have fully and completely complied with all of their discovery obligations, and
20 produced all relevant and available documentation. As to any documentation not found or
21 produced, the affidavits shall explain in specific detail why such documentation, (e.g. financial
22 and accounting work papers spanning 2007 through 2012), has not been produced;
23

24 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that once the defendants
25 have satisfied this Order and their discovery obligations hereunder, on or before June 5, 2019,
26 that Plaintiffs and their designated expert witness, Mark Rich, CPA, shall have three weeks
27
28

1 thereafter, through and including June 26, 2019, within which to supplement Plaintiff's
2 previously disclosed expert witness report, in light of the many thousands of pages of newly
3 discovered and disclosed documentation first available to the Plaintiffs subsequent to the prior
4 depositions of Messrs Liberman and Mitchell, which occurred in October, 2018;
5

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, if any residual
7 discovery dispute continues to exist after the Defendants' deadline of June 5, 2019 as set forth
8 above, Plaintiffs' June 26th deadline to supplement their expert's report will be tolled while the
9 Court and parties work out the issue;
10

11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, given that the deadline
12 for expert witness reports and rebuttal witness reports has already passed, that Defendants shall
13 not be authorized to supplement their prior expert witness report, rebut Mr. Rich's contemplated
14 supplement or designate any different expert, particularly insofar as the current authorization for
15 Plaintiffs to supplement their expert witness report derives specifically, directly, and proximately
16 from discovery defalcations on the part of the defendants;
17

18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that subsequent to the
19 aforesaid June 26, 2019, deadline for Plaintiffs' expert to supplement his expert witness report,
20 the Court will authorize four weeks (through and including July 24, 2019) for the parties to
21 conduct the depositions of already identified pertinent witnesses, limited to the following:
22

- 23 1. David Mitchell;
- 24 2. Barnet Liberman;
- 25 3. Russell Nype;
- 26 4. Michael Rosten, CPA;
- 27 5. Scott W. Taylor, CPA;
- 28 6. Mark Rich, CPA
7. An appropriate 30(b)(6) deposition of Defendant
Wink One, LLC, as previously noticed (with no
appearance or attendance by the defendant or any
Representative of said defendant);
8. An appropriate 30(b)(6) deposition of Live Work, LLC;
9. The deposition of Defendants' New Jersey CPA, Sam Spitz

1 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs

2
3 previously served subpoenas and records depositions, currently in progress, including the
4 proceedings incident to Plaintiff's New Jersey Motion to Compel versus CPA Spitz, may be seen
5 through to fruition during this briefly extended discovery period;

6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, however, absent
7 specific Order of the Court, that no new or additional depositions or discovery efforts shall be
8 undertaken.
9

10 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court will issue
11 a separate Scheduling Order setting forth the new dispositive motion deadline, estimated to be on
12 or about August 23, 2019, and further setting appropriate trial scheduling dates and procedures, in
13 contemplation of the trial of this matter occurring during the Court's October 14th calendar stack;
14

15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** in light of the above and
16 foregoing, that the presently scheduled deposition of CPA's Rosten and Taylor be vacated at the
17 present time, subject to resetting at a mutually convenient time and date subsequent to May 30,
18 2019;
19

20 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, in light of the Court's
21 decision and disposition of Plaintiff's Motion to Compel, and the brief limited extension of both
22 discovery and a trial date which result in part therefrom, that the hearing on the Mitchell
23 Defendants Motion to Extend Discovery and Continue Trial presently set for June 17, 2019 be
24 vacated as moot.
25

26 DATED this 30th day of May, 2019.

27
28 
ERIC STRICKLAND
DISTRICT COURT

1 Submitted by:

2 JOHN W. MUIJE & ASSOCIATES

4 By: _____

John W. Muije, Esq.
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Attorneys for Plaintiff

10 DATED this ____ day of May, 2019

11 APPROVED AS TO FORM AND
12 AND CONTENT

13 **BLUT LAW GROUP, P.C.**

15 By: _____

/s/ Elliot S. Blut

Elliot S. Blut, Esq.
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Las Vegas, Nevada 89101
E-Mail: eblut@blutlaw.com
Attorneys for Defendants
Barnet Liberman and Casino
Coolidge, LLC

22 DATED this ____ day of May, 2019

DATED this ____ day of May, 2019

APPROVED AS TO FORM AND
CONTENT

**HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON**

By: _____

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Attorneys for Defendant
305 Las Vegas, LLC

1 APPROVED AS TO FORM AND
2 CONTENT

3 COHEN JOHNSON PARKE
4 & EDWARDS

5 By: _____

6 H. Stan Johnson, Esq
7 Nevada Bar No: 000265
8 James L. Edwards, Esq
9 Nevada Bar No. 004256
10 375 E. Warm Springs Rd., #104
11 Las Vegas, Nevada 89119
12 *Attorneys for Mitchell Defendants*
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Steven D. Grierson

MSNC
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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 OWRKS TIC SUCCESSOR,
LLC; CASINO COOLIDGE, LLC; DOES I
through III, and ROE CORPORATIONS I through
III, inclusive,

Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

HEARING REQUESTED

**PLAINTIFFS' MOTION FOR
SANCTIONS PURSUANT TO
NRCP 37(b) AND MOTION TO
EXTEND TIME FOR
PLAINTIFFS' DEADLINE FOR
SUPPLEMENTAL EXPERT
REPORT ON ORDER
SHORTENING TIME**

Date of Hearing: 6/24/19

Time of Hearing: 9:00 a.m.

Plaintiffs Russell L. Nype and Revenue Plus, LLC (collectively, "Plaintiffs"), by and
through their counsel of record, John W. Muije, Esq. of the law firm John W. Muije &
Associates, hereby move this Court pursuant to Nevada Rule of Civil Procedure ("NRCP") 37 for
an order for sanctions (the "Motion for Sanctions") against Defendants David J. Mitchell ("Mr.
Mitchell"), Las Vegas Land Partners, LLC, Meyer Property, Ltd., Zoe Property, LLC, Leah

1 Property, LLC, Wink One, LLC, Live Work, LLC, Live Work Manager, LLC, Aquarius Owner,
2 LLC, LVLP Holdings, LLC, Mitchell Holdings, LLC, Live Works TIC, and Successor, LLC
3 (collectively, the "Mitchell Defendants") for failing to comply with this Court's ordered June 5,
4 2019 deadline for producing documents and compliance affidavits relating to the documents
5 sought by Plaintiffs' requests for production, which Plaintiffs served on Defendants pursuant to
6 NRCP 34. Plaintiffs further move for an award of its fees and costs incurred in bringing this
7 Motion for Sanctions.

8
9 Additionally and unfortunately, given the Mitchell Defendants' failure to comply with the
10 Court's Order compelling discovery, Plaintiffs also request a brief deferral of the deadline for
11 Plaintiffs to submit their supplemental expert report. (See, Ex. 2, 5/30/19 Order, page 4, line 26
12 through page 5, line 4).

13 Plaintiffs also move, ex parte, pursuant to Eighth Judicial District Court Local Rule
14 ("EDCR") 2.26, for an order shortening time.

15 This Motion is based upon the Memorandum of Points and Authorities below, the
16 Affidavit of John W. Muije ("Muije Aff."), attached hereto as Exhibit 1, the papers and pleadings
17 on file in this matter, and any oral argument allowed on this Motion.

18 DATED this 13th day of June, 2019.

19 JOHN W. MUIJE & ASSOCIATES

20
21 By: 

22 JOHN W. MUIJE, ESQ.
23 Nevada Bar No: 2419
24 1840 East Sahara Avenue, Suite 106
25 Las Vegas, NV 89104
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28 Email: jmuije@muijelawoffice.com
Attorneys for Plaintiffs

///

///

EX PARTE MOTION FOR AN ORDER SHORTENING TIME

Plaintiffs move this Court, ex parte, to set the hearing on the Motion for Sanctions on shortened time. EDCR 2.26 permits shortening of time for hearings and states that "[e]x parte motions to shorten time may not be granted except upon an unsworn declaration under penalty of perjury or affidavit of counsel describing the circumstances claimed to constitute good cause and justify the shortening of time"

Here, good cause justifying the shortening of time exists. (Ex. 1, ¶ 4). The Mitchell Defendants were expressly ordered to "fully and completely comply with this Order compelling discovery and requiring them to produce the sought after emails and financial data" by June 5, 2019, per the Court's May 30, 2019 Order granting Plaintiffs' Motion to Compel. (Ex. 1, ¶ 5; Ex. 2, page 4, lines 6 through 8). The Court further ordered that, "on or before June 5, 2019, David Mitchell, shall submit sworn affidavits to Plaintiff's counsel and file the same with the Court, stating under oath, that they and each defendant entity have fully and completely searched all available files and document repositories, both physical and electronic, and that such sworn affidavits shall further set forth specifically the efforts undertaken and what was done to assure full compliance with said defendant's discovery obligations." (Ex. 1, ¶ 6; Ex. 2, page 4, lines 13-19).

Unfortunately, but consistent with their conduct throughout this litigation and the prior litigation, the Mitchell Defendants have failed to obey this Court's June 5, 2019 deadline. (Ex. 1, ¶ 7; Ex. 4). Although the Mitchell Defendants allegedly supplied documents to their counsel, they waited until the morning of June 5, 2019 to do so, thus guaranteeing Plaintiffs would not timely receive the documents because the Mitchell Defendants' counsel would need time to review them prior to producing the documents to Plaintiffs. (Ex. 1, ¶ 8; Ex. 4). Indeed, their counsel requested a one-week extension to produce the documents, as well as the affidavits ordered by the Court, which the Mitchell Defendants also failed to disclose and file with the Court as required by the Court's May 30, 2019 Order. (Ex. 1, ¶ 9; Ex. 4; Ex. 2).

The Mitchell Defendants' bad-faith document dump on their counsel on the morning of the June 5, 2019 deadline is just another in a long line of examples of their type of dilatory

1 behavior and disregard for Court orders throughout this litigation. (Ex. 1, ¶ 10). Although a one-
2 week extension may not seem like much (and while Plaintiffs are sympathetic to the Mitchell
3 Defendants' counsel for the situation his clients have placed him in), here such an extension
4 would wreak havoc with this Court's structured discovery plan, as discussed at the May 15, 2019
5 hearing on Plaintiff's Motion to Compel. (Ex. 1, ¶ 11). Per the Court's May 30, 2019 Order,
6 Plaintiffs' expert has only until June 26, 2019 to supplement his report based on the additional
7 documents to be produced (Ex. 2, page 4, line 26 through page 5, line 4), and the parties have
8 until July 24, 2019 to complete depositions. (Ex. 1, ¶ 12; Ex. 2, page 5, lines 18 through 28). If
9 the Mitchell Defendants' failure to comply with the Court's June 5, 2019 deadline is not
10 remedied immediately, Plaintiffs will be pushed to the brink of these deadlines. (Ex. 1, ¶ 13).
11 While this Court has stated that it would likely toll the deadline for Plaintiffs' expert's
12 supplemental report if a discovery dispute arose (5/15/19 transcript, Ex. 3, page 21, lines 2-5), if
13 this Motion for Sanctions is heard in the ordinary course, that deadline will have passed even
14 prior to the hearing. (Ex. 1, ¶ 14). Moreover, if the Mitchell Defendants are not sanctioned
15 immediately, it is a near certainty that the Mitchell Defendants will continue to employ such
16 delay tactics. (Ex. 1, ¶ 15). The Mitchell Defendants should not be rewarded for their conduct by
17 being allowed to obtain yet another lengthy delay of this litigation for yet another new attorney
18 (necessitated by their failure to pay their previous attorney!) to get up to speed in this matter.
19 (Ex. 1, ¶ 16).

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JOHN W. MUIJE & ASSOCIATES
1840 E. Sahara Ave., #106
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1 Accordingly, for the foregoing reasons, this Court should set the hearing on the Motion
2 for Sanctions on shortened time. (Ex. 1, ¶ 17).

3 **ORDER SHORTENING TIME**

4 It appearing to the satisfaction of the Court, and good cause appearing, therefore,


5 IT IS HEREBY ORDERED that the foregoing **PLAINTIFFS' MOTION FOR**
6 **SANCTIONS PURSUANT TO NRCP 37(b) AND MOTION TO EXTEND PLAINTIFFS'**
7 **DEADLINE FOR SUPPLEMENTAL EXPERT REPORT ON ORDER SHORTENING**
8 **TIME** shall be heard on the 24 day of June, 2019, at the hour of

9 9:00 a.m., before the above-entitled Court. Defendants' oppositions, if any, are due by
10 _____, 2019. Plaintiffs' reply, if any, is due by _____,
11 2019.

12 DATED this 14 day of June, 2019.

14 
15 _____
16 DISTRICT COURT JUDGE
17 Interlinea

16 Respectfully submitted by:
17 JOHN W. MUIJE & ASSOCIATES

18 
19 By: _____
20 JOHN W. MUIJE, ESQ.
21 Nevada Bar No. 2419
22 1840 East Sahara Avenue, Suite 106
23 Las Vegas, NV 89104
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27 *Attorneys for Plaintiffs*

28 *///*
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 INTRODUCTION AND STATEMENT OF FACTS

4 This Motion for Sanctions concerns Plaintiffs' lengthy and ongoing efforts to overcome
5 the Mitchell Defendants' incessant and repetitive attempts to delay this litigation by, among other
6 things, refusing to produce relevant documents in this matter. Plaintiffs have provided details of
7 the Mitchell Defendants' delay tactics in other recently filed pleadings in this matter.¹ In the
8 latest attempt to obtain said documents from the Mitchell Defendants, Plaintiffs filed their Motion
9 to Compel Defendants' Production of Documents on Order Shortening Time (the "Motion to
10 Compel") on April 22, 2019. The Order Shortening Time was granted, and the Motion to
11 Compel was set for hearing on May 6, 2019. However, the hearing was continued for nine days
12 to May 15, 2019, due to the Mitchell Defendants' retention of new counsel. (Ex. 2, page 2, lines
13 20 through 25).

14 Pursuant to the May 15, 2019 hearing on the Motion to Compel, the Court ordered that,
15 "all defendants are expressly ordered to make an expeditious and diligent search for all of the
16 additional documentation and information noted and sought by Plaintiffs, insofar as the Court
17 hereby expressly GRANTS and approves Plaintiffs' Motion to Compel and further awards
18 sanctions...." Id., at page 3, lines 7 through 11) (emphasis in original). The Court awarded to
19 Plaintiffs, "as against all defendants, jointly and severally, the sum of \$1,500.00 at this time,
20 without prejudice to further application for fees and costs" to be paid by defendants 30 days from
21 the date of this Order." (Id., at page 3, lines 12 through 16).

22 Although granting the Plaintiffs' Motion to Compel, the Court acknowledged that, "at
23 least a modest amount of time must be afforded to the defendants to adequately research, and
24 carefully examine their physical and electronic files to assure that all relevant discoverable
25 information and documentation [...] may be [...] disclosed, and the Court's [sic] hereby
26
27

28 ¹ See, (i) Plaintiffs' Opposition to Defendants Barnet Liberman, 305 Las Vegas, LLC and Casino Coolidge, LLC's
Motion to Withdraw as Counsel of Record, filed on March 25, 2019, (ii) Plaintiffs' Limited Opposition to the
Mitchell Defendants' Motion to Withdraw as Counsel of Record, filed on March 27, 2019, and (iii) Plaintiffs'
Motion to Compel Defendants' Production of Documents, on Order Shortening Time, filed on April 22, 2019.

1 expressly authorizes three weeks from the date of the hearing, i.e. through and including
2 Wednesday, June 5, 2019, for all defendants to fully and completely comply with this Order....”
3 (Id., at page 3, line 28 through page 4, line 7) (emphasis in original).

4 The Court further ordered that, “on or before June 5, 2019, David Mitchell, shall submit
5 sworn affidavits to Plaintiff’s counsel and file the same with the Court, stating under oath, that
6 they and each defendant entity have fully and completely searched all available files and
7 document repositories, both physical and electronic, and that such sworn affidavits shall further
8 set forth specifically the efforts undertaken and what was done to assure full compliance with said
9 defendant’s discovery obligations.” (Id., at page 4, lines 13 through 19). Said affidavits were
10 also to state under oath that “defendants have fully and completely complied with all of their
11 discovery obligations and produced all relevant and available documents.” (Id., at page 4, lines
12 19 through 23). Regarding documents not found or not produced, the affidavit was to explain
13 why in specific detail. (Id., at page 4, lines 23-25).

14 The Mitchell Defendants’ counsel was informed during the May 15, 2019 hearing on
15 Plaintiffs’ Motion to Compel that if Mr. Mitchell “says he doesn’t have documents, he needs to
16 file a certification under oath that he doesn’t have the documents and what the best efforts are that
17 he’s made to discover whether he had them.” (Ex. 3, page 14, lines 20 through 23). Counsel for
18 the Mitchell Defendants acknowledged this, stating that, “[t]o the extent that there are no
19 documents we will have him do so. That’s something that we wouldn’t have a problem with.”
20 (Id., at page 14, line 25 through page 15, line 2).

21 The Court further stated at the hearing that, “[w]ith respect to those documents that are
22 subject to Mr. Muije’s motion to compel Mr. Mitchell and his related entities have three weeks
23 from this date to comply with producing that information, whether it is written discoveries or
24 certifications of the efforts that were made to find documents that were unsuccessful.” (Id., at
25 page 20, lines 20 through 25).

26 Despite the June 5, 2019 Court-ordered deadline for production and affidavits, counsel for
27 the Mitchell Defendants sent an email request to Plaintiffs’ counsel on June 5, 2019 seeking a
28 “one week extension to produce the documents requested in 16, 17, 19 and 23 and also the

1 affidavit required by the order.” (Ex. 4). The email went on to state that the Mitchell
2 Defendants’ counsel “received a large deposit of documents this morning from our client” and
3 counsel was “going through them to see if they are responsive and/or privileged.” (Id.).

4 Plaintiffs’ counsel responded to the Mitchell Defendants’ counsel via email on June 6,
5 2019. (Ex. 5). Plaintiffs’ counsel stated that, while sympathetic to the situation the Mitchell
6 Defendants had forced upon counsel, his request for an extension was respectfully denied as it
7 was simply another example of the Mitchell Defendants’ “ongoing pattern and habit of blowing
8 off discovery obligations, ignoring deadlines, producing documents piecemeal, ignoring court
9 orders, etc.” (Id.). Plaintiffs’ counsel further explained that Plaintiffs could not afford to
10 continue to amass attorney’s fees for and be prejudiced by Mr. Mitchell’s constant delay tactics.
11 (Id.).

12 As a result of the Mitchell Defendants’ failure to comply with the Court’s Order, Plaintiffs
13 now file this Motion for Sanctions.

14 II.

15 ARGUMENT

16 A. FAILURE TO OBEY A COURT’S ORDER GRANTING A MOTION TO 17 COMPEL DISCOVERY IS SANCTIONABLE.

18 NRCP 37(b)(1) provides that,

19 If a party or a party’s officer, director, or managing agent — or a witness
20 designated under Rule 30(b)(6) or 31(a)(4) — fails to obey an order to provide or
21 permit discovery, including an order under Rule 35 or 37(a), the court may issue
22 further just orders that may include the following:

23 (A) directing that the matters embraced in the order or other
24 designated facts be taken as established for purposes of the action, as the
25 prevailing party claims;

26 (B) prohibiting the disobedient party from supporting or
27 opposing designated claims or defenses, or from introducing designated matters in
28 evidence;

(C) striking pleadings in whole or in part;

(D) staying further proceedings until the order is obeyed;

(E) dismissing the action or proceeding in whole or in part;

(F) rendering a default judgment against the disobedient

party; or

(G) treating as contempt of court the failure to obey any order
except an order to submit to a physical or mental examination.

Furthermore, NRCP 37(b)(3) states that,

Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

“[C]ourts have ‘inherent equitable powers to dismiss actions or enter default judgments for ... abusive litigation practices.’” Young v. Johnny Ribiero Bldg., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990) (quoting Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 916 (9th Cir. 1987)).

For the reasons stated below, the Mitchell Defendants should be sanctioned pursuant to NRCP 37(b).

B. THE MITCHELL DEFENDANTS FAILED TO OBEY THIS COURT’S ORDER COMPELLING DISCOVERY AND SHOULD BE SANCTIONED.

This Court’s Order granting Plaintiffs’ Motion to Compel was entered on May 30, 2019. (Ex. 2). As noted above, this Order required, among other things, that (1) the Mitchell Defendants “fully and completely comply with this Order compelling discovery and requiring them to produce the sought after emails and financial data” by June 5, 2019, (Ex. 1, ¶ 5; Ex. 2, page 4, lines 6 through 8), and (2) “on or before June 5, 2019, David Mitchell, shall submit sworn affidavits to Plaintiff’s counsel and file the same with the Court, stating under oath, that they and each defendant entity have fully and completely searched all available files and document repositories, both physical and electronic, and that such sworn affidavits shall further set forth specifically the efforts undertaken and what was done to assure full compliance with said defendant’s discovery obligations.” (See Ex. 1, ¶ 6; Ex. 2, page 4, lines 13 through 19).

The Mitchell Defendants did neither of these things. According to their counsel, the Mitchell Defendants did not provide him with any documents until the morning of June 5, 2019, the very date the documents were to be produced to Plaintiffs per the Court’s Order. (Ex. 4; Ex. 2, page 3, line 27 through page 4, line 12). As a result of their “at the buzzer” production, the Mitchell Defendants’ counsel requested an additional week to review the documents to determine

1 if they were responsive and/or privileged. (Ex. 4). Counsel also requested an extension to obtain
2 the affidavits required by the Order. (Id.). That the Mitchell Defendants did not produce the
3 affidavits is particularly troubling, since they did belatedly supply documents to their attorney
4 and should have therefore known what efforts were taken to retrieve those documents, as well as
5 the types of documents that they could and could not find! (Ex. 1, ¶ 18).

6 While Plaintiffs are sympathetic to the unfortunate situation the Mitchell Defendants'
7 conduct has caused for their counsel, Plaintiffs have suffered greatly as a consequence of these
8 delay tactics. (Ex. 1, ¶ 19). Therefore, Plaintiffs' counsel declined to grant an extension of time
9 to comply with the June 5, 2019 deadline. (Ex. 1, ¶ 20; Ex. 5). Simply put, enough is enough.
10 Plaintiffs have already waited long enough for these documents and should not be forced to bear
11 any additional fees, costs, delays, and prejudice caused by the Mitchell Defendants' repeated
12 dilatory tactics. (Ex. 1, ¶ 21).

13 Indeed, in the related underlying matter, Judge Israel originally ordered production of
14 much of the subject documentation on February 2, 2017, more than two years ago. (See, Ex. 6,
15 page 3, line 27 through Page 4, line 8; page 5, 25-28).

16 As this Court's Order granting Plaintiffs' Motion to Compel has been ignored by the
17 Mitchell Defendants, and Plaintiffs are now faced with yet another delay in receiving documents,
18 Plaintiffs now see no other option than to move this Court for sanctions against the Mitchell
19 Defendants pursuant to NRCP 37(b). (Ex. 1, ¶ 22). Indeed, if the Mitchell Defendants are not
20 sanctioned immediately, it is a near certainty that the Mitchell Defendants will continue with their
21 delay tactics. (Ex. 1, ¶ 23). They should not be rewarded for their conduct by being allowed to
22 obtain yet further unreasonable and unwarranted delay of this litigation. (Ex. 1, ¶ 24).

23 Rather than be forced to wait again for the Mitchell Defendants' to obey a Court order and
24 produce the documents and the affidavits, Plaintiffs request that this Court immediately sanction
25 the Mitchell Defendants pursuant to NRCP 37(b)(1). In particular, sanctions appropriate for
26 addressing the Mitchell Defendants' continual disobedience to this Court's orders in this matter
27 include (i) prohibiting the Mitchell Defendants from supporting or opposing designated claims
28 and defenses, or from introducing designated matters into evidence (NRCP 37(b)(1)(B)), (ii)

1 striking pleadings in whole or in part (NRCP 37(b)(1)(C)), (iii) rendering a default judgment
2 against the Mitchell Defendants (NRCP 37(b)(1)(F)), and (iv) treating the Mitchell Defendants'
3 failure to obey the Court's May 31, 2019 Order as contempt of court (NRCP 37(b)(1)(G)).

4 Additionally, pursuant to NRCP 37(b)(3), the Court should also order the Mitchell
5 Defendants to pay Plaintiffs' reasonable expenses, including attorney's fees, proximately caused
6 by their woefully inadequate and incomplete discovery responses which necessitated Plaintiffs'
7 recent Motion to Compel, as well as for said defendants' failure to comply with the Court's June
8 5, 2019 deadline. Additionally, Plaintiffs suggest that this course and pattern of conduct by the
9 Mitchell Defendants has been continuous, stemming back to their repeated flagrant failure and
10 refusal to comply with Judge Israel's prior Order (Exhibit 6) (covering and overlapping much of
11 the relevant documentation in question) of February 2, 2017, and that the Court should likewise
12 sanction the Mitchell Defendants in an amount sufficient to both reimburse the Plaintiffs for
13 excess and unnecessary discovery fees and costs in this matter, but also for the substantial fees
14 and costs they have incurred in their efforts to obtain related discovery in the underlying
15 Judgment matter.

16 Respectfully, anything less than substantial reimbursement of most of the fees and costs
17 incurred by plaintiff in obtaining relevant discovery information from the defendants would be
18 inadequate in terms of deterrent value!! A modest or *de Minimis* monetary sanction against the
19 Mitchell defendants would likely be considered (by them) as nothing more than their cost of
20 doing business!

21 In that regard, Plaintiffs have incurred in excess of \$100,000.00 in fees and costs since
22 July, 2018, in their efforts to obtain the documentation in question. (Ex. 1 ¶ 25). Even more
23 monies were accrued and incurred prior to that time in terms of attempting to obtain previously
24 ordered discovery in the underlying Judgment Case. If the Court grants this Motion for
25 Sanctions, Plaintiffs will submit a comprehensive and appropriate request for their attorney's fees
26 (supported by itemized invoices, etc.) associated with their long-standing efforts to try to obtain
27 the subject documents. (Ex. 1 ¶ 26).
28

III.

CONCLUSION

Based upon the foregoing, Plaintiffs respectfully request that the Court issue an Order sanctioning the Mitchell Defendants pursuant to NRCP 37(b)(1) for their failure to comply with the Court's May 31, 2019 Order requiring them to produce documents and affidavits by June 5, 2019. Such sanctions should include (i) prohibiting the Mitchell Defendants from supporting or opposing designated claims and defenses, or from introducing designated matters into evidence (NRCP 37(b)(1)(B)), (ii) striking pleadings in whole or in part (NRCP 37(b)(1)(C)), (iii) rendering a default judgment against the Mitchell Defendants (NRCP 37(b)(1)(F)), and (iv) treating the Mitchell Defendants' failure to obey the Court's May 31, 2019 Order as contempt of court (NRCP 37(b)(1)(G)). Plaintiffs also request an Order requiring the Mitchell Defendants to pay Plaintiffs' attorneys' fees and costs related to the many months of effort expended in trying to procure those documents, including but not limited to the fees and costs caused by their failure to comply with the Court's May 31, 2019 Order, pursuant to NRCP 37(b)(3), as well as their failure to comply with Judge Israel's Order of February 2, 2017.

Finally, the Court should consider a brief extension of Plaintiffs' deadline to supplement their expert report commensurate with the additional delay now caused yet again by the Mitchell Defendants.

DATED this 13th day of June, 2019.

JOHN W. MUIJE & ASSOCIATES

By: _____

JOHN W. MUIJE, ESQ.
Nevada Bar No: 2419
1840 East Sahara Avenue, Suite 106
Las Vegas, NV 89104
Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
Email: jmuije@muijelawoffice.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 13th day of June, 2019, I caused the foregoing document, **PLAINTIFFS' MOTION FOR SANCTIONS PURSUANT TO NRCP 37(b) AND MOTION TO EXTEND PLAINTIFFS' DEADLINE FOR SUPPLEMENTAL EXPERT REPORT ON ORDER SHORTENING TIME**, to be served as follows:

— by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or

by electronically **SERVING** 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

Elliot S. Blut, Esq.
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E-Mail: jedwards@parkeredwardslaw.com
Attorneys for Newly Appearing Counsel
for David J. Mitchell and possibly several
other defendants

An employee of John W.
Muije & Associates

EXHIBIT “1”

**DECLARATION OF JOHN W. MUIJE, ESQ. IN SUPPORT OF PLAINTIFFS' MOTION
FOR SANCTIONS AND MOTION TO EXTEND PLAINTIFFS' DEADLINE FOR
SUPPLEMENTAL EXPERT REPORT PURSUANT TO NRCP 37(b) ON ORDER
SHORTENING TIME**

JOHN W. MUIJE, under penalty of perjury, hereby declares, deposes and says:

1. Unless stated otherwise, I have personal knowledge of the matters set forth in this Declaration and, if called as a witness, could and would competently testify thereto.

2. I am counsel of record for Plaintiffs Russell L. Nype and Revenue Plus, LLC.

3. I make this declaration in support of Plaintiffs' Motion for Sanctions Pursuant to NRCP 37(b) on Order Shortening Time (the "Motion for Sanctions").

4. Good cause justifying the shortening of time exists.

5. The Mitchell Defendants¹ were expressly ordered to "fully and completely comply with this Order compelling discovery and requiring them to produce the sought after emails and financial data" by June 5, 2019, per the Court's May 30, 2019 Order granting Plaintiffs' Motion to Compel.

6. The Court further ordered that, "on or before June 5, 2019, David Mitchell, shall submit sworn affidavits to Plaintiff's counsel and file the same with the Court, stating under oath, that they and each defendant entity have fully and completely searched all available files and document repositories, both physical and electronic, and that such sworn affidavits shall further set forth specifically the efforts undertaken and what was done to assure full compliance with said defendant's discovery obligations."

7. Unfortunately, but consistent with their conduct throughout this litigation and the prior litigation, the Mitchell Defendants have failed to obey this Court's June 5, 2019 deadline.

¹ Terms not further defined herein shall have the meanings ascribed to them in the Motion for Sanctions.

1 8. Although the Mitchell Defendants allegedly supplied documents to their counsel,
2 they waited until the morning of June 5, 2019 to do so, thus guaranteeing Plaintiffs would not
3 timely receive the documents because the Mitchell Defendants' counsel would need time to
4 review them prior to producing the documents to Plaintiffs.
5

6 9. Their counsel requested a one-week extension to produce the documents, as well
7 as the affidavits ordered by the Court, which the Mitchell Defendants also failed to disclose and
8 file with the Court as required by the Court's May 30, 2019 Order.
9

10 10. The Mitchell Defendants' bad-faith document dump on their counsel on the
11 morning of the June 5, 2019 deadline is just another in a long line of examples of their type of
12 dilatory behavior and disregard for Court orders throughout this litigation.

13 11. Although a one-week extension may not seem like much (and while Plaintiffs are
14 sympathetic to the Mitchell Defendants' counsel for the situation his clients have placed him in),
15 here such an extension would wreak havoc with this Court's structured discovery plan, as
16 discussed at the May 15, 2019 hearing on Plaintiff's Motion to Compel.
17

18 12. Per the Court's May 30, 2019 Order, Plaintiffs' expert has only until June 26,
19 2019 to supplement his report based on the additional documents to be produced, and the parties
20 have until July 24, 2019 to complete depositions.
21

22 13. If the Mitchell Defendants' failure to comply with the Court's June 5, 2019
23 deadline is not remedied immediately, Plaintiffs will be pushed to the brink of these deadlines.

24 14. While this Court has stated that it would likely toll the deadline for Plaintiffs'
25 expert's supplemental report if a discovery dispute arose (Ex. 3, page 21, lines 2 through 5), if
26 this Motion for Sanctions is heard in the ordinary course, that deadline will have passed even
27 prior to the hearing.
28

1 15. Moreover, if the Mitchell Defendants are not sanctioned immediately, it is a near
2 certainty that the Mitchell Defendants will continue to employ such delay tactics.

3 16. The Mitchell Defendants should not be rewarded for their conduct by being
4 allowed to obtain yet another lengthy delay of this litigation for yet another new attorney
5 (necessitated by their failure to pay their previous attorney!) to get up to speed in this matter.
6

7 17. Accordingly, for the foregoing reasons, this Court should set the hearing on the
8 Motion for Sanctions on shortened time.

9 18. That the Mitchell Defendants did not produce the affidavits is particularly
10 troubling, since they did belatedly supply documents to their attorney and should have therefore
11 known what efforts were taken to retrieve those documents, as well as the types of documents
12 that they could and could not find!

13 19. While Plaintiffs are sympathetic to the unfortunate situation the Mitchell
14 Defendants' conduct has caused for their counsel, Plaintiffs have suffered greatly as a
15 consequence of these delay tactics.
16

17 20. Therefore, Plaintiffs' counsel declined to grant an extension of time to comply
18 with the June 5, 2019 deadline.
19

20 21. Plaintiffs have already waited long enough for these documents and should not be
21 forced to bear any additional fees, costs, delays, and prejudice caused by the Mitchell
22 Defendants' repeated dilatory tactics.

23 22. As this Court's Order granting Plaintiffs' Motion to Compel has been ignored by
24 the Mitchell Defendants, and Plaintiffs are now faced with yet another delay in receiving
25 documents, Plaintiffs now see no other option than to move this Court for sanctions against the
26 Mitchell Defendants pursuant to NRCP 37(b).
27
28

1 23. Indeed, if the Mitchell Defendants are not sanctioned immediately, it is a near
2 certainty that the Mitchell Defendants will continue with their delay tactics.

3 24. They should not be rewarded for their conduct by being allowed to obtain yet
4 further unreasonable and unwarranted delay of this litigation.
5

6 25. Plaintiffs have incurred in excess of \$100,000.00 in fees and costs since July,
7 2018, in their efforts to obtain the documentation in question.

8 26. If the Court grants this Motion for Sanctions, Plaintiffs will submit a full request
9 for their attorney's fees (supported by itemized invoices, etc.) associated with their long-standing
10 efforts to try to obtain the subject documents.
11

12 27. Attached to the Motion for Sanctions as Exhibit 2 is a true and correct copy of the
13 Notice of Entry of Order Compelling Discovery, Awarding Sanctions, and Briefly Extending
14 Discovery for Limited Purposes and Continuing the Trial Date, filed on May 30, 2019.

15 28. Attached to the Motion for Sanctions as Exhibit 3 is a true and correct copy of the
16 May 15, 2019 Transcript of the Hearing on all Pending Motions.
17

18 29. Attached to the Motion for Sanctions as Exhibit 4 is a true and correct copy of
19 email correspondence dated June 5, 2019 from the Mitchell Defendants' counsel to Plaintiffs'
20 counsel.
21

22 30. Attached to the Motion for Sanctions as Exhibit 5 is a true and correct copy of
23 email correspondence dated June 6, 2019 from Plaintiffs' counsel to the Mitchell Defendants'
24 counsel.
25

26 ///

27 ///

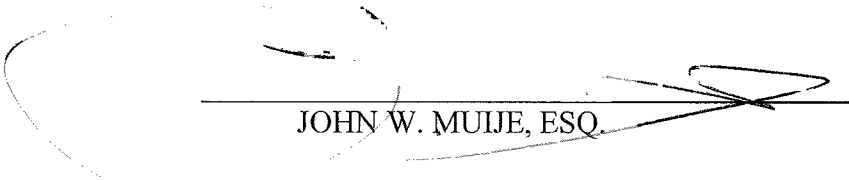
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///

31. Attached to the Motion for Sanctions as Exhibit 6 is a true and correct copy of the
Discovery Commissioner's Report and Recommendations filed on February 2, 2017 in the A-07-
551073 matter, including the Order signed by Judge Israel affirming and adopting the Discovery
Commissioner's Report and Recommendations.


I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
is true and correct.

Executed this 13th day of June, 2019.



JOHN W. MUIJE, ESQ.

EXHIBIT “2”



1 **ORDER**

2 JOHN W. MUIJE & ASSOCIATES

3 JOHN W. MUIJE, ESQ.

4 Nevada Bar No: 2419

5 1840 East Sahara Avenue, Suite 106

6 Las Vegas, NV 89104

7 Telephone No: (702) 386-7002

8 Facsimile No: (702) 386-9135

9 Email: Jmuije@muijelawoffice.com

10 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

15 Plaintiffs.

16 vs.

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

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

DATE: May 15, 2019

TIME: 10:30- a.m.

ORDER COMPELLING DISCOVERY, AWARDING SANCTIONS,

AND

**BRIEFLY EXTENDING DISCOVERY FOR LIMITED
PURPOSES-**

AND

CONTINUING THE TRIAL DATE

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

1 This matter came on for hearing on May 15, 2019 at the hour of 10:30 a.m., Plaintiffs
2 represented by John W. Muije, Esq., of the Law Firm of JOHN W. MUIJE & ASSOCIATES,
3 Defendant 305 Las Vegas, LLC represented by Brian W. Boschee, Esq., of the Firm of HOLLEY
4 DRIGGS WALCH FINE PUZEY STEIN & THOMPSON, Defendants Barnet Liberman and
5 Casino Coolidge, LLC represented by Elliot S. Blut, Esq., of BLUT LAW GROUP, P.C., and
6 Defendants, DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS,
7 LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK
8 ONE, LLC; LIVE WORK, LLC LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC;
9 LVLV HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305
10 LAS VEGAS, LLC; LIVE OWRKS TIC SUCCESSOR, LIVE WORK, LLC, appearing by and
11 through their attorney of record, JAMES EDWARDS, ESQ., in association with the Firm of
12 COHEN, JOHNSON, PARKER & EDWARDS, and CPA Michael Rosten appearing in Proper
13 Person, and the Court having reviewed and considered the pleadings papers and documents on
14 file herein, and the arguments and representations of counsel and Mr. Rosten, and good cause
15 appearing,
16

17 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Court finds that
18 Plaintiffs' Motion to Compel Defendant's Production of Documents on Order Shortening Time as
19 filed on April 22, 2019, was originally convened on May 6, 2019, but was continued for nine (9)
20 days due to the retention of newly appearing counsel for the Mitchell Defendants, James Edwards
21 in association with the firm of Cohen Johnson Parker & Edwards et al.
22

23 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court finds that
24 there has been no written opposition to Plaintiff's Motion;
25

26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court further
27 finds, based upon the representations of counsel for Plaintiff and counsel for 305 Las Vegas,
28

1 LLC, that 305 Las Vegas, LLC has made a substantial and good faith effort, producing well over
2 10,000 pages of new materials between the date of the filing of the motion and the time and date
3 noted above;

4
5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, however, that there
6 remain unresolved discovery issues as more fully explained in Plaintiff's Motion of April 22,
7 2019, and that all defendants are expressly ordered to make an expeditious and diligent search for
8 all of the additional documentation and information noted and sought by Plaintiffs, insofar as the
9 Court hereby expressly GRANTS and approves Plaintiff's Motion to Compel and further awards
10 sanctions, as noted hereinafter;

11
12 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court awards
13 Plaintiffs as against all defendants, jointly and severally, the sum of \$1,500.00 at this time,
14 without prejudice to further application for fees and costs, and that defendants shall pay said sum
15 to the Trust Account of John W. Muije & Associates 30 days from the date of this Order.

16
17 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** in light of the above and
18 foregoing, that the presently scheduled depositions of CPA's Rosten and Taylor be vacated at the
19 present time, subject to resetting at a mutually convenient time and date subsequent to May 30,
20 2019;

21
22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court
23 recognizes that Plaintiff have numerous subpoenas, noticed depositions, and a pending motion to
24 compel against the New Jersey CPA, Sam Spitz, already in progress, and that a brief extension
25 of time would benefit the parties so as to allow those already promulgated and authorized
26 discovery efforts by the Plaintiffs to come to fruition;

27
28 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that in granting
Plaintiff's Motion to Compel, at least a modest amount of time must be afforded to the

1 defendants to adequately search, research, and carefully examine their physical and electronic
2 files to assure that all relevant discoverable information and documentation, including but not
3 limited to the information already requested by the Plaintiffs, may be located, produced, and
4 disclosed, and the Court's hereby expressly authorizes three weeks from the date of the hearing,
5 i.e. through and including Wednesday, June 5, 2019, for all defendants to fully and completely
6 comply with this Order compelling discovery and requiring them to produce the sought after
7 emails and financial data, including full responses to Requests for Production 16, 17, 19 and 23,
8 and the rest of Plaintiff's specific discovery requests to defendants, including all emails and the
9 backup and supporting financial data, accounting back-up, and financial details, schedules and
10 reports sought by Plaintiffs.
11

12
13 **IT IS FURTHER ORDERD, ADJUDGED AND DECREED** that on or before June 5,
14 2019, David Mitchell, shall submit sworn affidavits to Plaintiff's counsel and file the same with
15 the Court, stating under oath, that they and each defendant entity have fully and completely
16 searched all available files and document repositories, both physical and electronic, and that such
17 sworn affidavits shall further set forth specifically the efforts undertaken and what was done to
18 assure full compliance with said defendant's discovery obligations. The said affidavit shall also
19 state under oath, (after describing the research, investigation and search methods used), that said
20 defendants have fully and completely complied with all of their discovery obligations, and
21 produced all relevant and available documentation. As to any documentation not found or
22 produced, the affidavits shall explain in specific detail why such documentation, (e.g. financial
23 and accounting work papers spanning 2007 through 2012), has not been produced;
24
25

26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that once the defendants
27 have satisfied this Order and their discovery obligations hereunder, on or before June 5, 2019,
28 that Plaintiffs and their designated expert witness, Mark Rich, CPA, shall have three weeks

1 thereafter, through and including June 26, 2019, within which to supplement Plaintiff's
2 previously disclosed expert witness report, in light of the many thousands of pages of newly
3 discovered and disclosed documentation first available to the Plaintiffs subsequent to the prior
4 depositions of Messrs Liberman and Mitchell, which occurred in October, 2018;

5
6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, if any residual
7 discovery dispute continues to exist after the Defendants' deadline of June 5, 2019 as set forth
8 above, Plaintiffs' June 26th deadline to supplement their expert's report will be tolled while the
9 Court and parties work out the issue;

10
11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, given that the deadline
12 for expert witness reports and rebuttal witness reports has already passed, that Defendants shall
13 not be authorized to supplement their prior expert witness report, rebut Mr. Rich's contemplated
14 supplement or designate any different expert, particularly insofar as the current authorization for
15 Plaintiffs to supplement their expert witness report derives specifically, directly, and proximately
16 from discovery defalcations on the part of the defendants;

17
18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that subsequent to the
19 aforesaid June 26, 2019, deadline for Plaintiffs' expert to supplement his expert witness report,
20 the Court will authorize four weeks (through and including July 24, 2019) for the parties to
21 conduct the depositions of already identified pertinent witnesses, limited to the following:

- 22
23 1. David Mitchell;
24 2. Barnet Liberman;
25 3. Russell Nype;
26 4. Michael Rosten, CPA;
27 5. Scott W. Taylor, CPA;
28 6. Mark Rich, CPA
7. An appropriate 30(b)(6) deposition of Defendant
Wink One, LLC, as previously noticed (with no
appearance or attendance by the defendant or any
Representative of said defendant);
8. An appropriate 30(b)(6) deposition of Live Work, LLC;
9. The deposition of Defendants' New Jersey CPA, Sam Spitz

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiffs previously served subpoenas and records depositions, currently in progress, including the proceedings incident to Plaintiff's New Jersey Motion to Compel versus CPA Spitz, may be seen through to fruition during this briefly extended discovery period;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, however, absent specific Order of the Court, that no new or additional depositions or discovery efforts shall be undertaken.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court will issue a separate Scheduling Order setting forth the new dispositive motion deadline, estimated to be on or about August 23, 2019, and further setting appropriate trial scheduling dates and procedures, in contemplation of the trial of this matter occurring during the Court's October 14th calendar stack;

IT IS FURTHER ORDERD, ADJUDGED AND DECREED in light of the above and foregoing, that the presently scheduled deposition of CPA's Rosten and Taylor be vacated at the present time, subject to resetting at a mutually convenient time and date subsequent to May 30, 2019;

IT IS FURTHER ORDERED, ADJUDGED AND DECREED, in light of the Court's decision and disposition of Plaintiff's Motion to Compel, and the brief limited extension of both discovery and a trial date which result in part therefrom, that the hearing on the Mitchell Defendants Motion to Extend Discovery and Continue Trial presently set for June 17, 2019 be vacated as moot.

DATED this 20th day of May, 2019.

DISTRICT COURT JUDGE

1 Submitted by:

2 JOHN W. MUIJE & ASSOCIATES

3
4 By: _____

5 John W. Muije, Esq.
6 Nevada Bar No: 2419
7 1840 East Sahara Avenue, Suite 106
8 Las Vegas, NV 89104
9 Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
Email: jmuije@muijelawoffice.com
Attorneys for Plaintiff

10 DATED this ____ day of May, 2019

11 APPROVED AS TO FORM AND
12 AND CONTENT

13 **BLUT LAW GROUP, P.C.**

14
15 By: _____

16 /s/ Elliot S. Blut

17 Elliot S. Blut, Esq.
18 Nevada Bar No: 006570
19 300 So. Fourth Street, Ste 701
20 Las Vegas, Nevada 89101
21 E-Mail: eblut@blutlaw.com
Attorneys for Defendants
Barnet Liberman and Casino
Coolidge, LLC

22 DATED this ____ day of May, 2019

DATED this ____ day of May, 2019

APPROVED AS TO FORM AND
CONTENT

**HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON**

By: _____

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1 APPROVED AS TO FORM AND
2 CONTENT

3 COHEN JOHNSON PARKE
4 & EDWARDS

5 By: _____

6 H. Stan Johnson, Esq
7 Nevada Bar No: 000265
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EXHIBIT “3”



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

RUSSELL NYPE, et al.	.	
	.	
Plaintiffs	.	CASE NO. A-16-749689-B
	.	
vs.	.	
	.	DEPT. NO. XI
DAVID MITCHELL, et al.	.	
	.	
Defendants	.	Transcript of
	.	Proceedings
.....	.	

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

HEARING ON ALL PENDING MOTIONS

WEDNESDAY, MAY 15, 2019

APPEARANCES:

FOR THE PLAINTIFFS: JOHN W. MUIJE, ESQ.

FOR THE DEFENDANTS: JAMES L. EDWARDS, ESQ.
ELLIOT S. BLUT, ESQ.
BRIAN BOSCHKE, ESQ.

ALSO PRESENT: MR. MICHAEL ROSTEN, CPA

COURT RECORDER:	TRANSCRIPTION BY:
JILL HAWKINS	FLORENCE HOYT
District Court	Las Vegas, Nevada 89146

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 LAS VEGAS, NEVADA, WEDNESDAY, MAY 15, 2019, 10:31 A.M.

2 (Court was called to order)

3 THE COURT: Good morning. You can come up. There's
4 not that many people here. Please feel free to take over the
5 courtroom in whatever way you feel appropriate.

6 Mr. Boschee, it was a pleasure not seeing you at
7 8:30.

8 MR. BOSCHEE: That's what I said when I came in. I
9 thought, I hope everybody had a leisurely, wonderful morning.

10 THE COURT: I did. Thank you.

11 MR. BOSCHEE: Not looking at the lien documents. I
12 know I did.

13 THE COURT: Okay. If you could all identify
14 yourselves for purposes of the record, because I'm not sure
15 Dulce can keep up with all of you yet.

16 MR. BLUT: Right. Elliot Blut for Barnet Liberman,
17 and Casino Coolidge LLC.

18 MR. BOSCHEE: Good morning, Your Honor. Brian
19 Boschee on behalf of 305 Las Vegas LLC.

20 MR. EDWARDS: Jim Edwards on behalf of the Mitchell
21 defendants.

22 MR. ROSTEN: Mike Rosten with Piercy Bowler Taylor &
23 Kern. I was retained by Hayes & Welsh, who has withdrawn from
24 the case, and I would like to speak with the Court, Your
25 Honor.

1 THE COURT: Okay.

2 MR. MUIJE: And, Your Honor, John Muije appearing on
3 behalf of the plaintiffs.

4 THE COURT: All right. Let's start with Mr. Rosten.
5 You guys can sit down.

6 Mr. Rosten, your name came up in a settlement
7 conference the other day, so I am familiar with your
8 reputation. I used to hire Ravelle Taylor to assist me in the
9 old days when I was still a private practicing lawyer.

10 MR. ROSTEN: Excellent.

11 THE COURT: So that's many, many years ago.

12 MR. ROSTEN: I've been contacted about that, and I
13 submitted a draft engagement letter, and right now I'm just
14 kind of in a holding pattern.

15 THE COURT: It's either going to work out or it's
16 not.

17 MR. ROSTEN: Yeah.

18 THE COURT: Yeah. Okay. So what's going on? I
19 don't want to know anything privileged.

20 MR. ROSTEN: Nothing will be privileged, no.

21 THE COURT: Okay.

22 MR. ROSTEN: I was retained back in September of
23 2018 by Hayes & Welsh to provide some forensic accounting
24 expertise, expert witness services, and potential rebuttal of
25 the plaintiffs' expert.

1 THE COURT: Okay.

2 MR. ROSTEN: They have filed an application to
3 withdraw, and I think they've been granted a withdrawal as of
4 two weeks ago.

5 THE COURT: Yes. And now I have two lawyers that
6 are taking their place.

7 MR. ROSTEN: And I have not been retained at this
8 point, so currently I am not retained in this case. I am
9 scheduled for a deposition this afternoon at 3:00 p.m. --

10 THE COURT: By Mr. Muije.

11 MR. ROSTEN: -- by Mr. Muije. I am owed \$11,000. I
12 have copies of my engagement letter here, and would be happy
13 to show it to the Court or the attorneys. A provision of my
14 engagement letter is that unless I am paid in full I do not
15 provide deposition testimony or trial testimony. So I am
16 seeking a protective order from that deposition of myself and
17 of Mr. Taylor, who's with my office.

18 THE COURT: Okay.

19 MR. ROSTEN: Mr. Scott Taylor, not Ravelle Taylor.

20 THE COURT: Right. So I'm going to take a break
21 while I let Mr. Boschee and Mr. Edwards talk to you given what
22 you've made your oral request for protective order, because
23 I'm not sure that -- how much of this they know about and to
24 determine if something can be worked out, and if they after a
25 few minutes are unable to reach a resolution with you after

1 talking to you about it, then I will come back in and I will
2 have a discussion with Mr. Muije and we'll figure out what to
3 do. Okay?

4 MR. ROSTEN: Okay.

5 THE COURT: Five minutes long enough, guys?

6 MR. BOSCHEE: I think so. Thank you, Your Honor.

7 THE COURT: Do you need the settlement conference
8 room to talk?

9 MR. EDWARDS: That'd be great.

10 THE COURT: Ramsey's not here, so Dani will take you
11 to the settlement conference room. Just keep going, Mr.
12 Boschee. Keep walking.

13 MR. BOSCHEE: Well, I don't know that I have
14 anything I can say to him, but I'll keep walking.

15 THE COURT: Keep walking.

16 UNIDENTIFIED SPEAKER: I'm going to go, too.

17 THE COURT: Are you part of the team from Hayes &
18 Welsh?

19 MR. BOSCHEE: I'm not.

20 THE COURT: No. You were. You were. Weren't you?

21 MR. BLUT: No, but I --

22 THE COURT: All right. You guys all go.

23 Mr. Muije, you can't go. You are adverse, clearly
24 adverse, since you've noticed his depo.

25 MR. MUIJE: I would agree with that, Your Honor.

1 THE COURT: All right. I'm going to go back to my
2 room.
3 MR. MUIJE: Thank you.
4 (Court recessed at 10:35 a.m., until 10:48 a.m.)
5 THE COURT: Were you able to reach an accommodation?
6 MR. EDWARDS: Well, Your Honor --
7 THE COURT: It's yes or no.
8 MR. EDWARDS: In our minds we have a proposal.
9 THE COURT: Well, but do you have a proposal that
10 Mr. Rosten accepted?
11 MR. EDWARDS: I think he's on board with this
12 proposal.
13 MR. ROSTEN: I think -- yeah. I could say that it's
14 actually my proposal.
15 THE COURT: Okay. So you and the counsel for the
16 various defendants have reached an agreement on how you're
17 going to get paid?
18 MR. ROSTEN: Pending it actually happening.
19 THE COURT: Yeah.
20 MR. ROSTEN: Yes. We're owed \$11,120.
21 THE COURT: Okay.
22 MR. ROSTEN: And the \$5,000 retainer needs to be
23 replenished. And my proposal is that that needs to be made by
24 the 30th of May or we will withdraw, which I have the right to
25 do per the engagement letter which I can provide the Court

1 with a copy of, if you'd like.

2 THE COURT: I don't need it yet.

3 MR. ROSTEN: Okay. And at that point the report
4 will be withdrawn, as well, and there won't be any need to
5 depose me or Scott Taylor.

6 THE COURT: So that's contingent on me granting Mr.
7 Edwards's motion to extend discovery probably. So you're
8 saying they're going to pay you by May 30th, and you'll show
9 up for depo?

10 MR. ROSTEN: I think I'm saying the reverse. If
11 they don't pay me by the 30th of May, we're going to withdraw.

12 THE COURT: Okay. If they pay you by the 30th, you
13 will show up for your deposition?

14 MR. ROSTEN: Yes.

15 THE COURT: Or are you going to go to your
16 deposition today regardless?

17 MR. ROSTEN: No. I'd like the protective order from
18 the deposition today.

19 THE COURT: Okay. Mr. Muije, now this part involves
20 you.

21 MR. MUIJE: Well, Your Honor, I will indicate to Mr.
22 Johnson --

23 THE COURT: It's Edwards. Mr. Edwards.

24 MR. MUIJE: I know. This is Mr. Edwards, but his
25 partner Stan Johnson and I communicated by email yesterday,

1 and Mr. Johnson suggested, A, that he was going to file a
2 motion to extend discovery, which we received shortly
3 thereafter; and then, B, that in light of that pending motion
4 perhaps I would want to consider deferring or extending the
5 depositions of the defense experts.

6 I wrote him back respectfully and said that the
7 delays and the pattern engaged in by Mr. Mitchell not only in
8 this case, but in the prior case -- the Court will note it was
9 60 days between the motion to withdraw and the appearance of
10 new counsel -- that's at Mr. Mitchell's feet. That shouldn't
11 be my client's problem. He shouldn't have had to pay
12 thousands and thousands of dollars to keep the litigation
13 going with Mr. Mitchell absent. We had a noticed deposition
14 of one of the key parties, Wink One. Nobody showed up. We're
15 out a lot of money. And to now suggest that, well, gee, we
16 feel sorry for Mr. Johnson and Mr. Edwards and we're going to
17 cut them a break even if it costs Mr. Nype another \$50,000 in
18 attorneys' fees and costs. No. We have the depositions we
19 need scheduled and set, including Mr. Rosten and Mr. Taylor.
20 We have Mr. Mitchell scheduled for next Wednesday. We have
21 Mr. Liberman scheduled for the following Wednesday. Our
22 motion to resolve the New Jersey discovery dispute is set for
23 May 24th. We've got this lined to hopefully get the discovery
24 done and ready so that we can maintain our trial date.

25 With that said and done, should the Court grant in

1 whole or in part my motion to compel, I anticipate
2 legitimately that the defendants will need a little bit more
3 time than two weeks to fully satisfy and comply with their
4 discovery obligations. But we don't need 90 days. Maybe we
5 need two weeks, maybe we need 30 days at most, but to
6 prejudice my client because they haven't been taking care of
7 business, that's just patently unfair. And, again, I had --
8 Mr. Johnson alluded to the fact in his motion that I didn't
9 get back to him when he sent me an email on Friday. I was in
10 the mountains northeast of Wells, Nevada, from Thursday until
11 Monday morning.

12 THE COURT: You know, there's not a lot of cell
13 service up there.

14 MR. MUIJE: Pardon?

15 THE COURT: There's not a lot of cell service up
16 there.

17 MR. MUIJE: There isn't.

18 THE COURT: I've been there. There's not a lot
19 service.

20 MR. MUIJE: It isn't at all. So I became aware of
21 this proposed request to extend discovery on Monday. Today's
22 Wednesday. I just read this carefully this morning for the
23 first time. It came in about 4:00 o'clock yesterday. And I
24 don't think it's appropriate, Your Honor. I think that Mr.
25 Rosten and Mr. Taylor should testify. And, again, I'm willing

1 to pay their testimonial fees for time actually expended in
2 the deposition because, you know, that's appropriate. If I
3 want to hear what they have to say, I should pay for their
4 actual time. But I shouldn't have to pay Mr. Mitchell's
5 defaulted payment obligation for all the work done heretofore.

6 THE COURT: I don't think anybody's asking you to do
7 that.

8 So then let me ask a couple of questions about Mr.
9 Boschee before I go to Mr. Edwards --

10 MR. MUIJE: Certainly.

11 THE COURT: -- because he's part of my prep work.

12 You were going to look through the documents that he
13 sent you and determine if there were any issues; right?

14 MR. BOSCHEE: Yes. And we did.

15 THE COURT: Are there?

16 MR. BOSCHEE: There were. And Mr. Muije we --

17 THE COURT: Did you work them out?

18 MR. BOSCHEE: We did. Well, I think so. He hasn't
19 had a chance to review them all yet, but we took a -- we
20 unredacted a lot of them. We did a supplemental disclosure
21 yesterday of about I think 9,000 of the documents.

22 MR. MUIJE: Little over 9,000.

23 MR. BOSCHEE: There are still some documents that
24 are privileged mostly between -- actually it's my former
25 partner Nick Santoro and these guys, which we have created a

1 detail privilege log for, and we provided that to Mr. Muije
2 yesterday, as well.

3 I think we're good at this point, but I -- obviously
4 John's going to need time to go through the privilege log, go
5 through the documents and everything. I got them to him as
6 fast as I could. It was a lot of documents to undo. But we
7 did do that. We got that over to him yesterday.

8 I think at least from my client's perspective we're
9 good with Mr. Muije as of today. If there are other issues,
10 we'll meet and confer, but I'll defer to Mr. Muije.

11 MR. MUIJE: I would concur with that, Your Honor.
12 Again, I haven't had a chance to go through fully. But Mr.
13 Boschee did represent to me that the supplemental production
14 -- he didn't reproduce the ones that were unredacted that he
15 had produced a week ago or 10 days ago. But what he did was
16 he unredacted several thousand pages, and then he created a
17 much more specific detailed privilege log identifying the
18 parties and the date of the privileged documents. So on its
19 face it looks like he's completed the discovery disclosure of
20 all the emails that we were looking for.

21 With that said and done, we still think that there's
22 financial data out there that we haven't received, and I don't
23 know if Mr. Boschee's had a chance to confer with his clients
24 or obtain supplements on that regarding the accounting and
25 financial data that we've still been looking for.

1 MR. BOSCHEE: Some of that was with third parties.
2 I don't obviously have anything, or it would have been
3 disclosed. We need to get our arms around whether that's our
4 obligation or their obligation. I don't -- I actually don't
5 know where the financials are. I don't know that it's my
6 obligation.

7 THE COURT: How long is that going to take?

8 MR. BOSCHEE: It's going to take at least a week or
9 two to figure out what I don't -- because Mr. Muije is talking
10 about documents that I don't know that I don't know. I mean,
11 I'm not exactly sure what he's looking for from my client in
12 terms of financials, so I need to get --

13 THE COURT: A couple of weeks is the discovery
14 cutoff.

15 MR. BOSCHEE: I understand. But --

16 THE COURT: Okay. So --

17 MR. BOSCHEE: But there's really -- other than
18 disclosing those documents, which we'll need to do and we'll
19 probably talk today or tomorrow, I don't know exactly what
20 documents he needs from 305 financially that I would have that
21 they wouldn't have. So, you know, today, tomorrow, we'll get
22 our arms around that, and if I need to disclose additional
23 documents, if I can get my hands on them I will. I don't
24 think that I have them, I don't think that my client has them.
25 But if we do, we'll get them to him.

1 THE COURT: Okay. Mr. Edwards, you last time we
2 were here, which was on May 6th, read the motion to compel
3 which you hadn't had the opportunity to see before. I didn't
4 get a written opposition from you, but I did get a motion to
5 continue discovery. So can you tell me what's going on with
6 the motion to compel.

7 MR. EDWARDS: Yes, Your Honor. First of all I will
8 note I don't believe the motion to compel was properly served.
9 But, be that as it may --

10 THE COURT: I don't know.

11 MR. EDWARDS: Huh?

12 THE COURT: I don't know.

13 MR. EDWARDS: Yeah. The motion to compel was served
14 on the day that the order after the motion to withdraw by
15 Hayes & Welsh and after the Court granted the order that Hayes
16 & Welsh withdraw, the order states that the -- anything will
17 be served on Mr. Mitchell and not be on Mr. Hayes. It wasn't
18 served on Mr. Mitchell, it was on Mr. Hayes.

19 THE COURT: Okay.

20 MR. EDWARDS: What this goes to as far as the
21 request would be is that we've had contact with our client,
22 we've had contact with Mr. Hayes. Our -- that goes part and
23 parcel with, you know, our request for continuance. And at
24 least we would request that we have 30 days to produce. If
25 there's anything to be produced that hasn't been produced,

1 we'd ask that it be produced. Irrespective of the Court's
2 position -- I know there's an overlap here, but irrespective
3 of the Court's decision on continuing the trial, it's going to
4 take us 30 days to be able to comply with their discovery
5 requests if there is a response that is available.

6 THE COURT: But facially looking at the contents of
7 the motion to compel and the information it's requesting, it
8 doesn't seem that there's any problematic information in it
9 other than potentially privileged issues.

10 MR. EDWARDS: Correct.

11 THE COURT: So you have -- are you voluntarily going
12 to comply with the motion to compel, with the requests?

13 MR. EDWARDS: Well, to the extent --

14 THE COURT: Okay.

15 MR. EDWARDS: What I don't know, Your Honor, is -- I
16 know that there've been protestations from Mr. Mitchell saying
17 that they never had that document. I'm not in a position to
18 say whether he's telling the truth or he's not telling the
19 truth. I don't know whether the documents are there.

20 THE COURT: Well, if he says he doesn't have
21 documents, he needs to file a certification under oath that he
22 doesn't have the documents and what the best efforts are that
23 he's made to discover whether he had them.

24 MR. EDWARDS: And I see that is asked for in the
25 motion to compel. To the extent that there are no documents

1 we will have him do so. That's something that we wouldn't
2 have a problem with.

3 THE COURT: So how long is it going to take get
4 that? Because this all comes together, which is why I'm
5 trying to talk about this before I deal with Mr. Rosten's
6 issue on his depo.

7 MR. EDWARDS: So -- I understand. We're asking for
8 30 days, but we'll live by the Court. I recognize that that
9 runs up against and past the discovery cutoff. I'm aware of
10 that.

11 THE COURT: Well, let me ask the loaded question.
12 Your motion is very vague as to what you need to do on an
13 extension of discovery. Tell me specifically what you need to
14 do other than comply with the requests that are subject of the
15 motion to compel.

16 MR. EDWARDS: Probably -- I mean, if it's okay with
17 the Court, probably get a grasp on what is out there.

18 THE COURT: Other than figure out what's going on
19 and read everything, I mean, is there any other additional
20 discovery that you anticipate having to be done that hasn't
21 been done yet? That's what I'm trying to get to.

22 MR. EDWARDS: What I don't know is whether or not
23 his experts have been deposed at this point.

24 THE COURT: Mr. Muije, have your experts been
25 deposed?

1 MR. MUIJE: No, Your Honor. We had talked about a
2 date. And Mr. Hayes had tentatively noticed it, but when he
3 filed his motion to withdraw he vacated it.

4 THE COURT: So we've got plaintiffs' expert depos.
5 MR. BOSCHEE: One question I would have --
6 THE COURT: Wait. I'm not done.
7 MR. BOSCHEE: Okay.
8 THE COURT: I'm still on Mr. Edwards.
9 MR. BOSCHEE: About that, though. About that issue.
10 THE COURT: I'm not done with that.
11 What else, Mr. Edwards? I'm trying to make a list
12 here, and then I'll follow each one.

13 MR. EDWARDS: And I don't know at this point whether
14 Mr. Nype's deposition's been taken.

15 MR. MUIJE: It was scheduled the day before, so they
16 were scheduled back to back. And again, when Mr. Hayes
17 withdrew, nothing went forward on that.

18 THE COURT: Okay.
19 MR. EDWARDS: So those would be the two things,
20 then.

21 THE COURT: Those are the only thing.
22 MR. BOSCHEE: And I would also --
23 THE COURT: You wanted to say something, Mr.
24 Boschee, before I finish this issue.

25 MR. BOSCHEE: To that point Mr. Muije has indicated

1 he's going to supplement his expert's report with all these
2 documents that he's getting from me and from counsel --

3 THE COURT: And that seems fair, doesn't it?

4 MR. BOSCHEE: It certainly does. But I don't think
5 we can depose him until he has done that.

6 THE COURT: I understand.

7 MR. BOSCHEE: So that's a timing issue.

8 THE COURT: I actually know how that works.

9 MR. BOSCHEE: I know. I know.

10 THE COURT: So, Mr. Muije, you've got all the
11 documents from Mr. Boschee. Mr. Edwards says if I make him do
12 it in three weeks he will get it done in three weeks. So
13 assume you have all the universe of documents that exists in
14 three weeks. How long is it going to take your expert to do
15 the supplementation they need to do?

16 MR. MUIJE: Assuming we have them in hand, because,
17 again, we already have Mr. Boschee's and we've already started
18 the process of reviewing that --

19 THE COURT: Right.

20 MR. MUIJE: -- my belief is that we can review those
21 -- everything that's already been produced certainly within
22 the three weeks, and any supplemental production. My theory,
23 Your Honor -- and, again, I'm just being candid -- is that
24 part of our premise here is that Mr. Mitchell was cc-ed on 70
25 percent of the emails that were generated by Mr. Liberman one

1 way or the other. Either he originated them or he cc-ed him,
2 and he's never produced a single email from any of that.
3 We've got some emails from later on, we've got some emails
4 where he deals with Forest City in 2018, but we don't have the
5 '07, the '08, the '09, the '10, the '11 emails, the critical
6 period. And just correlating those and making sure that he's
7 produced, A, what he should have, and then, B, the additional
8 stuff that wasn't in Mr. Liberman's stuff is probably going to
9 take a week or two. I'll go out on a limb and say that from
10 the day that we receive comprehensive production from the
11 Mitchell camp we can get through that in two weeks.

12 THE COURT: So we'll say three.

13 Mr. Edwards, I'm going to ask a question you
14 probably don't know the answer to. But if you don't, that's
15 okay, just tell me. Do you know what searches have been run
16 on the electronic devices of Mr. Mitchell? The old devices,
17 not the current devices. The old devices.

18 MR. EDWARDS: I do not.

19 THE COURT: Okay. That needs to be part of what you
20 do as part of this production in three weeks.

21 MR. EDWARDS: Okay.

22 THE COURT: So, Mr. Muije, assume that Mr. Edwards
23 is able to comply with the deadline that I gave him in three
24 weeks where he will make a comprehensive production and/or
25 certification that he's done whatever they can do and they

1 can't do any more, and then you have three weeks to have your
2 experts review and provide a supplemental report. Tell me
3 about the remaining depositions that have to happen, the
4 plaintiff, your experts, and Mr. Rosten. How long are you
5 going to need for that? We're doing math.

6 MR. MUIJE: What I would suggest, again, six weeks
7 from today is going to put us right at June 30th, Your Honor.
8 I'm thinking in two weeks we can depose everybody we need to
9 depose from that date forward. We could conceivably go to a
10 July 15th date for a discovery cutoff. I would probably
11 propose to Mr. Edwards that we defer Mr. Mitchell until he
12 does supplement his discovery. And probably the same with Mr.
13 Liberman would be my proposal to Mr. Blut. So we'd be taking
14 Mitchell, Liberman, Wink One, Live Work. So that's four
15 depositions we want. And I would assume they'd want Mr. Rich
16 and, of course, Mr. Rosten and Mr. Taylor. And I'm assuming
17 they'd want Mr. Rich and Mr. Nype. So we've got about eight
18 depositions. But if the attorneys work together, we have lead
19 time on that, there's no reason we could not knock that out in
20 one week. But I would -- we've got the Fourth of July in
21 there, so I'm going to suggest two weeks as probably making
22 sense.

23 THE COURT: My math comes up to 10 weeks for what
24 you guys have just told me in total.

25 MR. BOSCHEE: I got the same 10 weeks when I was

1 sketching it out.

2 THE COURT: Well, I got eight to ten, but with the
3 holiday -- are you going to be out of town at all, Mr. Rosten,
4 for the Fourth of July holiday or anything around that time?

5 MR. ROSTEN: I don't believe so.

6 THE COURT: Okay. Because I'm trying to work around
7 people's vacations. I don't really work around the trial
8 schedules, but vacations I think are sacrosanct, because
9 family's important.

10 So I am going to give you some additional time to
11 complete the discovery given the hiccups we had with the
12 replacement of counsel and the delay in production of
13 documents.

14 Which means I'm also going to grant Mr. Rosten and
15 Mr. Taylor's request not to have their depositions taken until
16 later in the process, which will be sometime after the end of
17 June. I understand that agreements have been made with
18 defense counsel and Mr. Rosten to arrange for his payment, so
19 I will not get involved in that aspect any further.

20 With respect to those documents that are subject to
21 Mr. Muije's motion to compel Mr. Mitchell and his related
22 entities have three weeks from this date to comply with
23 producing that information, whether it is written discoveries
24 or certifications of the efforts that were made to find
25 documents that were unsuccessful.

1 Mr. Muije will have three weeks after the receipt of
2 that information for any supplemental expert reports. If
3 there is a discovery dispute after the production of the
4 information from Mr. Mitchell, I will likely toll that time
5 for you, Mr. Muije, while we work out that issue.

6 And then you have four additional weeks of cleanup
7 discovery after that time.

8 Does anybody else think they're going to need to
9 supplement their expert disclosures?

10 MR. BLUT: There are depositions, Your Honor.

11 MR. BOSCHEE: I don't think so.

12 MR. BLUT: No, we don't -- we [unintelligible].

13 THE COURT: So here's the depositions that I show that you
14 still have to take. You have to take Mr. Nype, you have to
15 take Mr. Mitchell, Mr. Liberman, and you have two 30(b)(6)s
16 for the defendants, and all of the experts. Did I get it
17 right? Anybody else you guys want to take? Because that's
18 all we're doing. We're not doing anything more unless you
19 guys need a custodian of records for somebody who has your
20 financial records that you can't get a hold of.

21 MR. MUIJE: The only other point I might make is we
22 have yet to see what Mr. Spitz has hidden on his computers.
23 That's still being worked on in New Jersey. And it may
24 behoove us to take --

25 THE COURT: Hidden?

1 MR. MUIJE: -- to retake Mr. Spitz's deposition once
2 we see what he has hidden away.

3 THE COURT: Hidden. You know, that's why you're a
4 collections lawyer.

5 Anything else? Did I miss anything?

6 MR. BOSCHEE: I think that's everything.

7 THE COURT: So Mr. Muije has also requested
8 attorneys' fees as part of this effort. I am going to grant
9 his request for \$1500 related to this motion.

10 MR. BOSCHEE: From whom?

11 THE COURT: You guys work it out.

12 MR. BOSCHEE: Okay.

13 THE COURT: Because it wasn't just one of you.
14 Mr. Rosten, it was --

15 MR. BOSCHEE: But only one of us has actually
16 complied with his request in his motion to this point before
17 the hearing.

18 THE COURT: Yeah. But you didn't -- yeah.

19 MR. BOSCHEE: I understand.

20 THE COURT: Mr. Rosten, it was a pleasure finally
21 meeting you. Have a nice day. Good luck.

22 MR. ROSTEN: And I would like to thank you, Your
23 Honor and the court for my unorthodox appearance here.

24 MR. MUIJE: And, Your Honor, just a housekeeping
25 matter.

1 THE COURT: Hold on. Wait. I've got to do the
2 clerk first, because it may impact you.

3 Yes, Dulce.

4 THE CLERK: Does this [inaudible].

5 THE COURT: Is everybody okay with me advancing the
6 motion that's scheduled for June 17th, which is Mr. Edwards's
7 motion to extend discovery and continue trial that we just
8 talked about?

9 MR. MUIJE: I'm fine with that, Your Honor.

10 THE COURT: Okay. So it's advanced to today.

11 MR. MUIJE: But we do have some housekeeping and the
12 trial scheduling order. We have a dispositive motion deadline
13 currently --

14 THE COURT: Well, you're going to actually get a new
15 order.

16 MR. MUIJE: Okay. That'll be great. And I don't
17 see any reason, because there was no rebuttal expert
18 designated by defendants, once Mr. Rosten's May 30th deadline
19 passes it would help us logistically, I think, if I could
20 depose him the first or second week of June and not have him
21 crammed into the July flock of depositions.

22 THE COURT: I said after the end of June. But if
23 you guys can work out a date that's before that, that's fine.

24 MR. MUIJE: Okay. That'll be great.

25 THE COURT: I gave you a list of the deponents

1 because I don't want people expanding the discovery beyond
2 this unless it's a custodian of records you need to produce
3 information.

4 Anything else? Dan's going to issue a new trial
5 setting order. Hold on. I've got to do math.

6 MR. MUIJE: And, Your Honor --

7 THE COURT: Wait. I'm doing math.

8 You are in August; right?

9 MR. MUIJE: I believe it's on the five-week August
10 stack, Your Honor, starting August 3rd --

11 THE COURT: So that'll move you to the October 14th
12 stack. And your motions on that are August 23rd. Dan will
13 send out a new order.

14 MR. MUIJE: Your Honor, one housekeeping matter.
15 I'm not sure --

16 THE COURT: Is it a bench trial, or a jury trial? I
17 don't know.

18 MR. MUIJE: It's a bench trial.

19 THE COURT: It's a bench trial, Mr. Edwards.

20 MR. BOSCHEE: I didn't know, either. So we were --

21 MR. MUIJE: I'm not certain whether the Court add
22 Mr. Spitz as a potential deponent based on --

23 THE COURT: I did not. Would you like me to add him
24 to my list, since we're all still here?

25 MR. MUIJE: I would like that.

1 THE COURT: Is everybody okay with that?
2 MR. BOSCHEE: Sure.
3 THE COURT: Everybody said okay.
4 MR. MUIJE: Very good.
5 THE COURT: Anything else?
6 MR. MUIJE: I'll prepare the order and run it by all
7 counsel.
8 THE COURT: That'd be lovely. Dan will prepare a
9 trial setting order for the October 15th stack. So you've got
10 about 10 weeks. Okay? Anything else?
11 MR. BOSCHEE: Thank you, Your Honor.
12 MR. MUIJE: Thank you, Judge.
13 THE COURT: All right. 'Bye.
14 THE PROCEEDINGS CONCLUDED AT 11:09 A.M.
15 * * * * *
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25

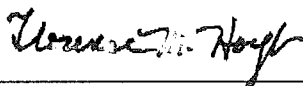
CERTIFICATION

I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT FROM THE AUDIO-VISUAL RECORDING OF THE PROCEEDINGS IN THE ABOVE-ENTITLED MATTER.

AFFIRMATION

I AFFIRM THAT THIS TRANSCRIPT DOES NOT CONTAIN THE SOCIAL SECURITY OR TAX IDENTIFICATION NUMBER OF ANY PERSON OR ENTITY.

FLORENCE HOYT
Las Vegas, Nevada 89146



FLORENCE M. HOYT, TRANSCRIBER

5/20/19

DATE

EXHIBIT “4”

John W. Muije

From: jedwards@parkeredwardsllaw.com
Sent: Wednesday, June 05, 2019 6:04 PM
To: John W. Muije
Cc: Stan Johnson
Subject: Production

John,

I am writing to request a one week extension to produce the documents requested in 16, 17, 19 and 23 and also the affidavit required by the order. We received a large deposit of documents this morning from our client, and we are going through them to see if they are responsive and/or privileged. We are hopeful the production will provide you with what is needed. Any consideration will be appreciated.

Jim

EXHIBIT "5"

From: John W. Muije <Jmuije@muijelawoffice.com>

To: jedwards@parkeredwardslaw.com <jedwards@parkeredwardslaw.com>

Subject: RE: Production

Date: Thu, Jun 6, 2019 3:09 pm

Dear Jim:

Your after hours note from yesterday popped into my mailbox on my drive up north to my Wells Nevada property. While I sympathize with your dilemma, I must reluctantly deny your request for an extension.

Your client has an ongoing pattern and habit of blowing off discovery obligations, ignoring deadlines, producing documents piecemeal, ignoring court orders, etc. History of both is present medication as well as the prior judgment litigation demonstrates that he utilizes the tactic of not paying his attorneys, having him withdraw, and having new counsel facing deadlines as a tactic to delay the fair and avoid litigation obligations and deadlines.

When the current matter, the Motion To Compel was served Garry Hayes approximately one hour prior to the entry of the Order Granting his Motion To Withdraw. Additionally, in an abundance of caution, we also served a copy of it via email to Mr. Mitchell that same day with a cc of the cover letter going to Garry. In other words, Mr. Mitchell has been aware of this Motion since at least April 12, which means he had well over nine weeks together the documents and respond. \

I try and Kanell longer afford to mass of attorneys fees, the delays, and a prejudice he has already suffered due to Mr. Mitchell's ongoing Deifel Qution's.

I wish you luck, but we can and will preserve all rights an argument deriving from Mr. Mitchell's failure to timely comply with the courts express order. Indeed, you will recall that you originally requested the court for a 30 day window to comply but that the court denied that request and gave you specifically 20 days. I am sure he reported that information directly to Mr. Mitchell today it happened.

I apologize for any inconvenience this may cause to you personally, and regrettably, your chosen client has only himself to blame. We respectfully deny your request for an extension.

Finally, please be aware that I am dictating into my iPhone while driving, and please excuse any clerical, punctuation, or other mistakes arriving from that. I felt it important to get you a timely response to your request.

Kind regards

John Mujie

From: jedwards@parkeredwardslaw.com [mailto:jedwards@parkeredwardslaw.com]

Sent: Wednesday, June 05, 2019 6:04 PM

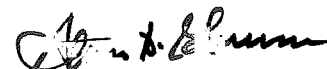
To: John W. Muije
Cc: Stan Johnson
Subject: Production

John,

I am writing to request a one week extension to produce the documents requested in 16, 17, 19 and 23 and also the affidavit required by the order. We received a large deposit of documents this morning from our client, and we are going through them to see if they are responsive and/or privileged. We are hopeful the production will provide you with what is needed. Any consideration will be appreciated.

Jim

EXHIBIT “6”


CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

CASE NO: A-07-551073

vs.

DEPT. NO: XXVIII

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

Defendants.

DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS

16 RUSSELL L. NYPE; REVENUE PLUS, LLC

DATE: October 14, 2016

TIME: 9:00 a.m.

Judgment Creditors,

vs.

18 LAS VEGAS LAND PARTNERS, LLC,

Judgment Debtor.

DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATION

Hearing Date: October 14, 2016

Hearing Time: 9:00 a.m.

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

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

Associates

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

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



I.

FINDINGS

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

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

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

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

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

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

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

....

....

....

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

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

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

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

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

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

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

1 of the following for LVLP's subsidiaries:

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

5 The Court notes that LVLP has agreed to produce such documentation at its offices ^{9 m}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. Muije 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 Muije, 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 NRC
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
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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 *videomconferencing remains an option as discussed herein.*
15 2. It is further recommended that claims of attorney-client privilege
16 previously asserted by the Judgment Debtor, LVLP, be denied,
17 the undersigned expressly finding and recommending that the items
18 in question are not privileged, and should be produced, including
19 all cancelled checks related to the payment of LVLP's attorneys
20 fees; and ¹

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

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

LAS VEGAS LAND


NYPE

A551073

10/14/16, Hearing

4. Nype's request for sanctions is denied.

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


DISCOVERY COMMISSIONER

Submitted by:

JOHN W. MUIJE & ASSOCIATES

By: 

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

Approved as to form and content by:

HAYES & WELSH

By: 

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

1
2 NOTICE

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

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

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

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

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

13 ☒ Electronically served counsel on Dec. 21, 20 14
14 Pursuant to N.E.F.C.R. Rule 9.

15 By: Notikie F. Johnson
16 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(D),~~

_____ Having received the objections thereto and the written
arguments in support of said objections, and good cause
appearing,

AND

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

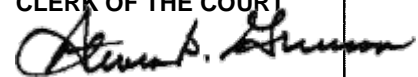
_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report
and Recommendations are affirmed and adopted as modified in the
following manner. (Attached hereto)

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

DATED this 1 day of Feb, 2017.



DISTRICT COURT JUDGE



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

DISTRICT COURT

CLARK COUNTY, NEVADA

10 RUSSELL L. NYPE AND REVENUS PLUS,
11 LLC

12 Plaintiffs,

13 vs.

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

25 Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: July 9, 2019

Time of Hearing: 9:30 a.m.

23 **SUPPLEMENT IN SUPPORT OF MONETARY SANCTIONS**
24 **AND REQUEST FOR INCREMENTAL SANCTIONS**

25 The Court's formal Order entered May 30, 2019, representing the Court's specific rulings
26 resulting from Plaintiff's Motion to Compel Discovery required Defendants, to pay the \$1,500.00
27 jointly and severally, without prejudice to further applications for fees and costs, within thirty
28

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

(30) days of the date of the Order. See Order Compelling Discovery and Awarding Sanctions as filed May 30, 2019, page 3, lines 12-15.

Attached hereto as Exhibit "1" and by this reference incorporated herein is proof of partial payment of those sanctions deriving from Defendants' Barnet Liberman and Casino Coolidge, LLC, through their attorney Elliot S. Blut.

Attached hereto as Exhibit "2" and by this reference incorporated herein is the Sworn Declaration of Counsel for Plaintiffs, John W. Muije, attesting that no amounts other than the \$500.00 paid via Mr. Blut have been received or tendered or paid.

WHEREFORE, Plaintiffs respectfully request that this Court impose incremental sanctions as to all other named defendants, with regard to their failure to comply with the monetary component of the Court's Order of May 30, 2019, as noted above.

DATED this 2nd day of July, 2019.

JOHN W. MUIJE & ASSOCIATES

By: 

JOHN W. MUIJE, ESQ.

Nevada Bar No: 2419

1840 East Sahara Avenue, Suite 106

Las Vegas, Nevada 89104

Telephone No: (702) 386-7002

Facsimile No: (702) 386-9135

Email: jmuije@muijelawoffice.com

Attorneys for Plaintiffs

EXHIBIT “1”

BLUT LAW GROUP

A PROFESSIONAL CORPORATION

Elliot S. Blut
Admitted in California
and Nevada

300 South Fourth Street
Suite 701
Las Vegas, Nevada 89101

California Office
10100 Santa Monica Blvd., Suite 300
Los Angeles, California 90067
Telephone (310) 203-0038
Facsimile (310) 203-0038

Telephone (702) 384-1050
Facsimile (702) 384-8565

June 28, 2019

John W. Muije, Esq.
John W. Muije & Associates
1840 East Sahara Avenue, Suite 106
Las Vegas, NV 89104

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

Dear Mr. Muije:

Enclosed is a check for \$500 representing one-third of the \$1,500 in sanctions issued by the Court against the three "sets" of Defendants. Inasmuch as the Court did not make any findings in her order as to my clients I am sending one-third on behalf of Barnet Liberman and Casino Coolidge, LLC.

Very truly yours,

BLUT LAW GROUP, PC

A handwritten signature in black ink, appearing to be 'ESB', is written over the printed name 'BLUT LAW GROUP, PC' and 'Elliot S. Blut'.

Elliot S. Blut

ESB:ld

Enclosure

RA 000231

CASH ONLY IF ALL CheckLock™ SECURITY FEATURES LISTED ON BACK INDICATE NO TAMPERING OR COPYING

Blut Law Group, PC IOLTA
300 S. Fourth Street, Suite 701
Las Vegas, NV 89101
702-384-1050

NEVADA STATE BANK
94-07711224

0292

6/28/19

PAY TO THE
ORDER OF

John Muje

\$ 500.00

Five hundred & 00/100

DOLLARS

Nguyen v. Liberman



⑈000292⑈ ⑆122400779⑆979364247⑈

Blut Law Group
300 South Fourth St., Suite 701
Las Vegas, NV 89101

John W. Muje, Esq
1840 East Sahara Ave., Suite 106
Las Vegas, Nevada 89104

Intuit® CheckLock™ Secure Check

Details on Back

RA 000232

EXHIBIT “2”

JOHN W. MUIJE & ASSOCIATES
JOHN W. MUIJE, ESQ.
Nevada Bar No: 2419
1840 E. Sahara Ave #106
Las Vegas, NV 89104
Phone No: (702) 386-7002
Fax No: (702) 386-9135
Email: jmuije@muijelawoffice.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

RUSSELL L. NYPE AND REVENUS PLUS,
LLC

Plaintiffs,

CASE NO: A-16-740689-B

DEPT NO: XI

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,

Mitchell Defendants.

SWORN DECLARATION OF JOHN W. MUIJE, ESQ.

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

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

- (1) My name is John W. Muije and I am the attorney for the Plaintiffs in this proceeding, and make this Declaration based on personal knowledge.
- (2) On or about June 28, 2019, in mid-afternoon, I received a hand-delivered letter from Elliot S. Blut with a check for \$500.00, a true and correct copy of which is attached to the above and foregoing Supplement as Exhibit "1".
- (3) I have checked with my office bookkeeper and staff, as well as the office's incoming mail personally, and I have determined that no other amounts were received for, from, or on behalf of any of the other defendants in this case, despite their still being \$1,000.00 in court ordered fees and costs outstanding, overdue, and unpaid pursuant to the terms of that Order.
- (4) Processing the partial payment and the preparation of this supplement, in total consumed perhaps 40 minutes, more or less, being two-thirds of an hour, and the rates charged to my client in these proceedings is \$450.00 an hour.
- (5) Therefore, immediate incremental damages of \$300.00 can and should be assessed.
- (6) Perhaps the only way to assure prompt full payment of the past due amounts, as well as any incremental sanctions the Court chooses to award, on information and belief, is to assess incremental escalating sanctions, e.g. \$100.00 per day for designated defendants, for each additional day that the defendants' fail and refuse to comply with the Court's May 30th Order, as supplemented by this request.

1 (7) The above and foregoing statements are made under penalty of perjury, except
2 as to the proposed incremental sanction, which is stated on information and
3 belief, and I do declare that everything set forth therein is true and correct.

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5 DATED this 2nd day of July, 2019.

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JOHN W. MUJE, ESQ.

CERTIFICATE OF SERVICE


I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 2nd day of July, 2019, I caused the foregoing document, **SWORN DECLARATION OF JOHN W. MUIJE, ESQ.**, to be served as follows:

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

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Attorneys for Newly Appearing Counsel
for David J. Mitchell and possibly several
other defendants


An Employee of John W. Muije & Associates

IN THE SUPREME COURT OF THE STATE OF NEVADA

DAVID J. MITCHELL; LAS VEGAS
LAND PARTNERS, LLC; MEYER
PROPERTY LTD; ZOE PROPERTY,
LLC; LEAH PROPERTY, LLC;
WINK ONE, LLC; AQUARIUS
OWNER, LLC; LVLP HOLDINGS,
LLC; AND LIVE WORKS TIC
SUCCESSOR, LLC,

Appellants,

vs.

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

Respondents.

Case No. 80693

APPEAL

from the Eighth Judicial District Court, Clark County
The Honorable ELIZABETH GONZALEZ, District Judge
District Court Case No. A-16-740689-B

**RESPONDENTS' APPENDIX – VOLUME 2
(BATES RANGE) RA 000238 – RA 000429**

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Attorney for Respondents

CHRONOLOGICAL TABLE OF CONTENTS TO
RESPONDENTS' APPENDIX

Date	Description	Volume/Bates No.
08/21/17	Amended Complaint	Volume 1, RA 1 – RA 34
03/27/19	Plaintiffs' Limited Opposition to the Mitchell Defendants' Motion to Withdraw as Counsel of Record	Volume 1, RA 35 – RA 121
04/22/19	Plaintiffs' Motion to Compel Defendants' Production of Documents on Order Shortening Time	Volume 1, RA 122 – RA 143
05/30/19	Notice of Entry of Order Compelling Discovery, Awarding Sanctions, and Briefly Extending Discovery for Limited Purposes and Continuing the Trial Date	Volume 1, RA 144 – RA 155
06/14/19	Plaintiffs' Motion for Sanctions Pursuant to NRCP 37(b) and Motion to Extend Time for Plaintiffs' Deadline for Supplemental Expert Report on Order Shortening Time	Volume 1, RA 156 – RA 227
07/02/19	Supplement in Support of Monetary Sanctions and Request for Incremental Sanctions	Volume 1, RA 228 – RA 237
08/30/19	Trial Brief Regarding Evidentiary Hearing – Discovery Sanctions	Volume 2, RA 238 – RA 314
09/20/19	Order Re: Discovery Sanctions	Volume 2, RA 315 – RA 323

09/23/19	Notice of Entry of Order Re: Discovery Sanctions	Volume 2, RA 324 – RA 336
10/07/19	Plaintiffs’ Opposition to Motion for Summary Judgment and Countermotion for Discovery Pursuant to NRCP 56(d)	Volume 2, RA 337 – RA 364
10/17/19	Plaintiffs’ Opposition to The Mitchell Defendants’ Statement of Compliance and Motion for Additional Time for Further Production and Countermotion for Case Concluding Sanctions	Volume 2, RA 365 – RA 429
11/17/19	Status Report Regarding The Mitchell Defendants’ Compliance with This Court’s Order Re: Discovery Sanctions	Volume 3, RA 430 – RA 434
12/12/19	Appendix to Plaintiffs’ Opposition to Defendants’ Motion to Dismiss Plaintiffs’ Amended Complaint Pursuant to NRCP (12(b)(2) and 12(b)(5), or in the Alternative Motion for Summary Judgment	Volume 3, RA 435 – RA 561
12/12/19	Plaintiffs’ Opposition to Defendants’ Motion to Dismiss Plaintiffs’ Amended Complaint Pursuant to NRCP (12(b)(2) and 12(b)(5), or in the Alternative Motion for Summary Judgment	Volume 3, RA 562 – RA 583
12/29/19	Defendants Barnet Liberman and Casino Coolidge, LLC’s Trial Brief	Volume 3, RA 584 – RA 594

TRIAL EXHIBITS

Date	Description	Volume/Bates No.
Undated	Plaintiffs' Trial Exhibit No. 4	Volume 4, RA 605 – RA 650
Undated	Plaintiffs' Trial Exhibit No. 6	Volume 4, RA 651 – RA 679
Undated	Plaintiffs' Trial Exhibit No. 7	Volume 4, RA 680 – RA 681
Undated	Plaintiffs' Trial Exhibit No. 8	Volume 4, RA 682 – RA 684
Undated	Plaintiffs' Trial Exhibit No. 11	Volume 4, RA 685 – RA 692
Undated	Plaintiffs' Trial Exhibit No. 16	Volume 4, RA 693 – RA 695
Undated	Plaintiffs' Trial Exhibit No. 22	Volume 4, RA 696
Undated	Plaintiffs' Trial Exhibit No. 24	Volume 4, RA 697
Undated	Plaintiffs' Trial Exhibit No. 25	Volume 4, RA 698 – RA 700
Undated	Plaintiffs' Trial Exhibit No. 28	Volume 4, RA 701
Undated	Plaintiffs' Trial Exhibit No. 39	Volume 4, RA 702 – RA 705
Undated	Plaintiffs' Trial Exhibit No. 41	Volume 4, RA 706 – RA 709

Undated	Plaintiffs' Trial Exhibit No. 42	Volume 4, RA 710 – RA 748
Undated	Plaintiffs' Trial Exhibit No. 47	Volume 5, RA 749 – RA 750
Undated	Plaintiffs' Trial Exhibit No. 48	Volume 5, RA 751 – RA 814
Undated	Plaintiffs' Trial Exhibit No. 10005	Volume 5, RA 815 – RA 826
Undated	Plaintiffs' Trial Exhibit No. 10006	Volume 5, RA 827 – RA 849
Undated	Plaintiffs' Trial Exhibit No. 10007	Volume 5, RA 850 – RA 859
Undated	Plaintiffs' Trial Exhibit No. 10008	Volume 5, RA 860 – RA 883
Undated	Plaintiffs' Trial Exhibit No. 10014	Volume 5, RA 884 – RA 887
Undated	Plaintiffs' Trial Exhibit No. 10015	Volume 5, RA 888 – RA 899
Undated	Plaintiffs' Trial Exhibit No. 10018	Volume 5, RA 900 – RA 914
Undated	Plaintiffs' Trial Exhibit No. 10022	Volume 5, RA 915 – RA 919
Undated	Plaintiffs' Trial Exhibit No. 10036	Volume 5, RA 920 – RA 923
Undated	Plaintiffs' Trial Exhibit No. 10037	Volume 5, RA 924 – RA 927

Undated	Plaintiffs' Trial Exhibit No. 10038	Volume 6, RA 928 – RA 1027
Undated	Plaintiffs' Trial Exhibit No. 10039	Volume 6, RA 1028 – RA 1077
Undated	Plaintiffs' Trial Exhibit No. 10042	Volume 6, RA 1078 – RA 1101
Undated	Plaintiffs' Trial Exhibit No. 10043 – Part 1	Volume 7, RA 1102 – RA 1350
Undated	Plaintiffs' Trial Exhibit No. 10043 – Part 2	Volume 8, RA 1351 – RA 1580
Undated	Plaintiffs' Trial Exhibit No. 10043 – Part 3	Volume 9, RA 1581 – RA 1671
Undated	Plaintiffs' Trial Exhibit No. 10044 – Part 1	Volume 10, RA 1672 – RA 1917
Undated	Plaintiffs' Trial Exhibit No. 10044 – Part 2	Volume 11, RA 1918 – RA 2162
Undated	Plaintiffs' Trial Exhibit No. 10045 – Part 1	Volume 12, RA 2163 – RA 2405
Undated	Plaintiffs' Trial Exhibit No. 10045 – Part 2	Volume 13, RA 2406 – RA 2652
Undated	Plaintiffs' Trial Exhibit No. 10045 – Part 3	Volume 14, RA 2653 – RA 2894
Undated	Plaintiffs' Trial Exhibit No. 10045 – Part 4	Volume 15, RA 2895 – RA 2905
Undated	Plaintiffs' Trial Exhibit No. 10046 – Part 1	Volume 16, RA 2906 – RA 3145

Undated	Plaintiffs' Trial Exhibit No. 10046 – Part 2	Volume 17, RA 3146 – RA 3394
Undated	Plaintiffs' Trial Exhibit No. 10046 – Part 3	Volume 18, RA 3395 – RA 3644
Undated	Plaintiffs' Trial Exhibit No. 10046 – Part 4	Volume 19, RA 3645 – RA 3749
Undated	Plaintiffs' Trial Exhibit No. 20001	Volume 20, RA 3750 – RA 3753
Undated	Plaintiffs' Trial Exhibit No. 20003	Volume 20, RA 3754 – RA 3767
Undated	Plaintiffs' Trial Exhibit No. 20004	Volume 20, RA 3768 – RA 3776
Undated	Plaintiffs' Trial Exhibit No. 20005	Volume 20, RA 3777 – RA 3800
Undated	Plaintiffs' Trial Exhibit No. 20006	Volume 20, RA 3801 – RA 3819
Undated	Plaintiffs' Trial Exhibit No. 20007	Volume 21, RA 3820 – RA 3826
Undated	Plaintiffs' Trial Exhibit No. 20008	Volume 21, RA 3827 – RA 3829
Undated	Plaintiffs' Trial Exhibit No. 20009	Volume 21, RA 3830 – RA 3834
Undated	Plaintiffs' Trial Exhibit No. 20010	Volume 21, RA 3835 – RA 3839
Undated	Plaintiffs' Trial Exhibit No. 20011	Volume 21, RA 3840 – RA 3841

Undated	Plaintiffs' Trial Exhibit No. 20012	Volume 21, RA 3842 – RA 3882
Undated	Plaintiffs' Trial Exhibit No. 20013	Volume 21, RA 3883
Undated	Plaintiffs' Trial Exhibit No. 20014	Volume 21, RA 3884 – RA 3995
Undated	Plaintiffs' Trial Exhibit No. 20015	Volume 21, RA 3996 – RA 4035
Undated	Plaintiffs' Trial Exhibit No. 20016	Volume 21, RA 4036 – RA 4041
Undated	Plaintiffs' Trial Exhibit No. 20017	Volume 21, RA 4042 – RA 4046
Undated	Plaintiffs' Trial Exhibit No. 20018	Volume 21, RA 4047 – RA 4055
Undated	Plaintiffs' Trial Exhibit No. 20019	Volume 21, RA 4056 – RA 4057
Undated	Plaintiffs' Trial Exhibit No. 20020	Volume 22, RA 4058 – RA 4122
Undated	Plaintiffs' Trial Exhibit No. 20022	Volume 22, RA 4123 – RA 4124
Undated	Plaintiffs' Trial Exhibit No. 20023	Volume 22, RA 4125 – RA 4144
Undated	Plaintiffs' Trial Exhibit No. 20025	Volume 22, RA 4145 – RA 4147
Undated	Plaintiffs' Trial Exhibit No. 20029	Volume 22, RA 4148 – RA 4149

Undated	Plaintiffs' Trial Exhibit No. 20030	Volume 22, RA 4150 – RA 4151
Undated	Plaintiffs' Trial Exhibit No. 20031	Volume 22, RA 4152 – RA 4153
Undated	Plaintiffs' Trial Exhibit No. 20032	Volume 22, RA 4154 – RA 4155
Undated	Plaintiffs' Trial Exhibit No. 20033	Volume 22, RA 4156 – RA 4174
Undated	Plaintiffs' Trial Exhibit No. 20034	Volume 22, RA 4175 – RA 4205
Undated	Plaintiffs' Trial Exhibit No. 20035	Volume 22, RA 4206 – RA 4263
Undated	Plaintiffs' Trial Exhibit No. 20036	Volume 22, RA 4264 – RA 4285
Undated	Plaintiffs' Trial Exhibit No. 20037	Volume 22, RA 4286 – RA 4293
Undated	Plaintiffs' Trial Exhibit No. 20038	Volume 22, RA 4294 – RA 4308
Undated	Plaintiffs' Trial Exhibit No. 20039	Volume 23, RA 4309
Undated	Plaintiffs' Trial Exhibit No. 20040	Volume 23, RA 4310 – RA 4318
Undated	Plaintiffs' Trial Exhibit No. 20041	Volume 23, RA 4319 – RA 4320
Undated	Plaintiffs' Trial Exhibit No. 20042	Volume 23, RA 4321 – RA 4322

Undated	Plaintiffs' Trial Exhibit No. 20043	Volume 23, RA 4323 – RA 4324
Undated	Plaintiffs' Trial Exhibit No. 20044	Volume 23, RA 4325 – RA 4330
Undated	Plaintiffs' Trial Exhibit No. 20047	Volume 23, RA 4331 – RA 4334
Undated	Plaintiffs' Trial Exhibit No. 20052	Volume 23, RA 4335 – RA 4345
Undated	Plaintiffs' Trial Exhibit No. 30009	Volume 23, RA 4346 – RA 4354
Undated	Plaintiffs' Trial Exhibit No. 30011	Volume 23, RA 4355 – RA 4358
Undated	Plaintiffs' Trial Exhibit No. 30012	Volume 23, RA 4359 – RA 4373
Undated	Plaintiffs' Trial Exhibit No. 30013	Volume 23, RA 4374 – RA 4389
Undated	Plaintiffs' Trial Exhibit No. 30014	Volume 23, RA 4390 – RA 4409
Undated	Plaintiffs' Trial Exhibit No. 30015	Volume 23, RA 4410 – RA 4434
Undated	Plaintiffs' Trial Exhibit No. 30041	Volume 23, RA 4435
Undated	Plaintiffs' Trial Exhibit No. 30042	Volume 23, RA 4436
Undated	Plaintiffs' Trial Exhibit No. 30043	Volume 23, RA 4437
Undated	Plaintiffs' Trial Exhibit No. 30044	Volume 23, RA 4438

Undated	Plaintiffs' Trial Exhibit No. 30050	Volume 23, RA 4439
Undated	Plaintiffs' Trial Exhibit No. 30051	Volume 23, RA 4440
Undated	Plaintiffs' Trial Exhibit No. 30052	Volume 23, RA 4441
Undated	Plaintiffs' Trial Exhibit No. 30053	Volume 23, RA 4442 – RA 4447
Undated	Plaintiffs' Trial Exhibit No. 30055	Volume 23, RA 4448 – RA 4449
Undated	Plaintiffs' Trial Exhibit No. 30058	Volume 23, RA 4450
Undated	Plaintiffs' Trial Exhibit No. 30059	Volume 23, RA 4451
Undated	Plaintiffs' Trial Exhibit No. 30071	Volume 23, RA 4452 – RA 4456
Undated	Plaintiffs' Trial Exhibit No. 30077	Volume 23, RA 4457
Undated	Plaintiffs' Trial Exhibit No. 30078	Volume 23, RA 4458
Undated	Plaintiffs' Trial Exhibit No. 30079	Volume 23, RA 4459
Undated	Plaintiffs' Trial Exhibit No. 30089	Volume 24, RA 4460 – RA 4512
Undated	Plaintiffs' Trial Exhibit No. 30090	Volume 24, RA 4513 – RA 4573
Undated	Plaintiffs' Trial Exhibit No. 30091	Volume 24, RA 4474 – RA 4638
Undated	Plaintiffs' Trial Exhibit No. 30092	Volume 25, RA 4639
Undated	Plaintiffs' Trial Exhibit No. 30094	Volume 25, RA 4640 – RA 4653

Undated	Plaintiffs' Trial Exhibit No. 30096	Volume 25, RA 4654 – RA 4658
Undated	Plaintiffs' Trial Exhibit No. 30097 – Part 1	Volume 26, RA 4659 – RA 4908
Undated	Plaintiffs' Trial Exhibit No. 30097 – Part 2	Volume 27, RA 4909 – RA 5158
Undated	Plaintiffs' Trial Exhibit No. 30097 – Part 3	Volume 28, RA 5159 – RA 5408
Undated	Plaintiffs' Trial Exhibit No. 30097 – Part 4	Volume 29, RA 5409 – RA 5658
Undated	Plaintiffs' Trial Exhibit No. 30097 – Part 5	Volume 30, RA 5659 – RA 5842
Undated	Plaintiffs' Trial Exhibit No. 30098 – Part 1	Volume 31, RA 5843 – RA 6092
Undated	Plaintiffs' Trial Exhibit No. 30098 – Part 2	Volume 32, RA 6093 – RA 6338
Undated	Plaintiffs' Trial Exhibit No. 30098 – Part 3	Volume 33, RA 6339 – RA 6588
Undated	Plaintiffs' Trial Exhibit No. 30098 – Part 4	Volume 34, RA 6589 – RA 6838
Undated	Plaintiffs' Trial Exhibit No. 30098 – Part 5	Volume 35, RA 6839 – RA 6995
Undated	Plaintiffs' Trial Exhibit No. 30101	Volume 36, RA 6996 – RA 7003
Undated	Plaintiffs' Trial Exhibit No. 30102	Volume 36, RA 7004 – RA 7010

Undated	Plaintiffs' Trial Exhibit No. 30103	Volume 36, RA 7011
Undated	Plaintiffs' Trial Exhibit No. 30104	Volume 36, RA 7012 – RA 7018
Undated	Plaintiffs' Trial Exhibit No. 30105	Volume 36, RA 7019 – RA 7026
Undated	Plaintiffs' Trial Exhibit No. 30106	Volume 36, RA 7027 – RA 7034
Undated	Plaintiffs' Trial Exhibit No. 30107	Volume 36, RA 7035
Undated	Plaintiffs' Trial Exhibit No. 40003	Volume 36, RA 7036
Undated	Plaintiffs' Trial Exhibit No. 40004	Volume 36, RA 7037 – RA 7038
Undated	Plaintiffs' Trial Exhibit No. 40008	Volume 36, RA 7039
Undated	Plaintiffs' Trial Exhibit No. 40009	Volume 36, RA 7040 – RA 7161
Undated	Plaintiffs' Trial Exhibit No. 40010	Volume 37, RA 7162 – RA 7254
Undated	Plaintiffs' Trial Exhibit No. 40014	Volume 37, RA 7255 – RA 7303
Undated	Plaintiffs' Trial Exhibit No. 40017	Volume 37, RA 7304
Undated	Plaintiffs' Trial Exhibit No. 40018	Volume 37, RA 7305 – RA 7308

Undated	Plaintiffs' Trial Exhibit No. 40019	Volume 37, RA 7309 – RA 7313
Undated	Plaintiffs' Trial Exhibit No. 40020	Volume 37, RA 7314 – RA 7320
Undated	Plaintiffs' Trial Exhibit No. 40021	Volume 37, RA 7321 – RA 7325
Undated	Plaintiffs' Trial Exhibit No. 40022	Volume 37, RA 7326 – RA 7330
Undated	Plaintiffs' Trial Exhibit No. 40023	Volume 37, RA 7331 – RA 7337
Undated	Plaintiffs' Trial Exhibit No. 40024	Volume 37, RA 7338 – RA 7341
Undated	Plaintiffs' Trial Exhibit No. 40025	Volume 37, RA 7342 – RA 7353
Undated	Plaintiffs' Trial Exhibit No. 40026	Volume 37, RA 7354 – RA 7357
Undated	Plaintiffs' Trial Exhibit No. 40027	Volume 37, RA 7358 – RA 7395
Undated	Plaintiffs' Trial Exhibit No. 40028	Volume 37, RA 7396 – RA 7399
Undated	Plaintiffs' Trial Exhibit No. 40029	Volume 37, RA 7400 – RA 7404
Undated	Plaintiffs' Trial Exhibit No. 40030	Volume 37, RA 7405 – RA 7409
Undated	Plaintiffs' Trial Exhibit No. 40031	Volume 38, RA 7410 – RA 7468

Undated	Plaintiffs' Trial Exhibit No. 40032	Volume 38, RA 7469 – RA 7472
Undated	Plaintiffs' Trial Exhibit No. 40033	Volume 38, RA 7473 – RA 7477
Undated	Plaintiffs' Trial Exhibit No. 40034	Volume 38, RA 7478 – RA 7483
Undated	Plaintiffs' Trial Exhibit No. 40035	Volume 38, RA 7484 – RA 7489
Undated	Plaintiffs' Trial Exhibit No. 40036	Volume 38, RA 7490 – RA 7495
Undated	Plaintiffs' Trial Exhibit No. 40037	Volume 38, RA 7496 – RA 7501
Undated	Plaintiffs' Trial Exhibit No. 40038	Volume 38, RA 7502 – RA 7508
Undated	Plaintiffs' Trial Exhibit No. 40039	Volume 38, RA 7509 – RA 7514
Undated	Plaintiffs' Trial Exhibit No. 40045	Volume 38, RA 7515 – RA 7531
Undated	Plaintiffs' Trial Exhibit No. 50003	Volume 39, RA 7532 – RA 7591
Undated	Plaintiffs' Trial Exhibit No. 50004	Volume 39, RA 7592 – RA 7608

Undated	Plaintiffs' Trial Exhibit No. 50005	Volume 39, RA 7609 – RA 7610
Undated	Plaintiffs' Trial Exhibit No. 50009	Volume 39, RA 7611 – RA 7630
Undated	Plaintiffs' Trial Exhibit No. 50010	Volume 39, RA 7631 – RA 7665
Undated	Plaintiffs' Trial Exhibit No. 50011	Volume 39, RA 7666 – RA 7676
Undated	Plaintiffs' Trial Exhibit No. 50012	Volume 39, RA 7677 – RA 7686
Undated	Plaintiffs' Trial Exhibit No. 50013	Volume 39, RA 7687 – RA 7702
Undated	Plaintiffs' Trial Exhibit No. 50014	Volume 39, RA 7703 – RA 7725
Undated	Plaintiffs' Trial Exhibit No. 50015	Volume 39, RA 7726 – RA 7751
Undated	Plaintiffs' Trial Exhibit No. 50016	Volume 39, RA 7752 – RA 7772
Undated	Plaintiffs' Trial Exhibit No. 50017	Volume 40, RA 7773 – RA 7794
Undated	Plaintiffs' Trial Exhibit No. 50018	Volume 40, RA 7795 – RA 7816
Undated	Plaintiffs' Trial Exhibit No. 50019	Volume 40, RA 7817 – RA 7840
Undated	Plaintiffs' Trial Exhibit No. 50020	Volume 40, RA 7841 – RA 7870

Undated	Plaintiffs' Trial Exhibit No. 50021	Volume 40, RA 7871 – RA 7892
Undated	Plaintiffs' Trial Exhibit No. 50022	Volume 40, RA 7893 – RA 7914
Undated	Plaintiffs' Trial Exhibit No. 50023	Volume 40, RA 7915 – RA 7935
Undated	Plaintiffs' Trial Exhibit No. 50024	Volume 40, RA 7936 – RA 7967
Undated	Plaintiffs' Trial Exhibit No. 50025 – Part 1	Volume 41, RA 7968 – RA 8092
Undated	Plaintiffs' Trial Exhibit No. 50025 – Part 2	Volume 42, RA 8093 – RA 8236
Undated	Plaintiffs' Trial Exhibit No. 50027 – Part 1	Volume 43, RA 8237 – RA 8386
Undated	Plaintiffs' Trial Exhibit No. 50027 Part 2	Volume 44, RA 8387 – RA 8574
Undated	Plaintiffs' Trial Exhibit No. 50028 – Part 1	Volume 45, RA 8575 – RA 8774
Undated	Plaintiffs' Trial Exhibit No. 50028 – Part 2	Volume 46, RA 8775 – RA 8855
Undated	Plaintiffs' Trial Exhibit No. 50034	Volume 46, RA 8856 – RA 8864
Undated	Plaintiffs' Trial Exhibit No. 50035	Volume 46, RA 8865 – RA 8870
Undated	Plaintiffs' Trial Exhibit No. 50036	Volume 46, RA 8871 – RA 8873

Undated	Plaintiffs' Trial Exhibit No. 60007	Volume 46, RA 8874
Undated	Plaintiffs' Trial Exhibit No. 60008	Volume 46, RA 8875
Undated	Plaintiffs' Trial Exhibit No. 60009	Volume 46, RA 8876
Undated	Plaintiffs' Trial Exhibit No. 60010	Volume 46, RA 8877 – RA 8888
Undated	Plaintiffs' Trial Exhibit No. 60011	Volume 46, RA 8889 – RA 8893
Undated	Plaintiffs' Trial Exhibit No. 60012	Volume 46, RA 8894 – RA 8973
Undated	Plaintiffs' Trial Exhibit No. 60014	Volume 47, RA 8974 – RA 8976
Undated	Plaintiffs' Trial Exhibit No. 60015	Volume 47, RA 8977 – RA 8979
Undated	Plaintiffs' Trial Exhibit No. 60016	Volume 47, RA 8990 – RA 8982
Undated	Plaintiffs' Trial Exhibit No. 60025	Volume 47, RA 8983
Undated	Plaintiffs' Trial Exhibit No. 60026	Volume 47, RA 8984
Undated	Plaintiffs' Trial Exhibit No. 60027	Volume 47, RA 8985
Undated	Plaintiffs' Trial Exhibit No. 60028	Volume 47, RA 8986
Undated	Plaintiffs' Trial Exhibit No. 60032	Volume 47, RA 8987 – RA 8990
Undated	Plaintiffs' Trial Exhibit No. 60033	Volume 47, RA 8991 – RA 8997

Undated	Plaintiffs' Trial Exhibit No. 60034	Volume 47, RA 8998 – RA 9004
Undated	Plaintiffs' Trial Exhibit No. 60035	Volume 47, RA 9005 – RA 9008
Undated	Plaintiffs' Trial Exhibit No. 60036	Volume 47, RA 9009 – RA 9013
Undated	Plaintiffs' Trial Exhibit No. 60037	Volume 47, RA 9014 – RA 9020
Undated	Plaintiffs' Trial Exhibit No. 60038	Volume 47, RA 9021 – RA 9025
Undated	Plaintiffs' Trial Exhibit No. 60045	Volume 47, RA 9026 – RA 9198
Undated	Plaintiffs' Trial Exhibit No. 60046	Volume 47, RA 9199 – RA 9200
Undated	Plaintiffs' Trial Exhibit No. 60047	Volume 47, RA 9201 – RA 9204
Undated	Plaintiffs' Trial Exhibit No. 60048	Volume 47, RA 9205
Undated	Plaintiffs' Trial Exhibit No. 60049	Volume 47, RA 9206 – RA 9209
Undated	Plaintiffs' Trial Exhibit No. 60050	Volume 47, RA 9210 – RA 9219
Undated	Plaintiffs' Trial Exhibit No. 60051	Volume 48, RA 9220 – RA 9243
Undated	Plaintiffs' Trial Exhibit No. 60052	Volume 48, RA 9244 – RA 9269

Undated	Plaintiffs' Trial Exhibit No. 60054	Volume 48, RA 9270 – RA 9273
Undated	Plaintiffs' Trial Exhibit No. 60057	Volume 48, RA 9274 – RA 9283
Undated	Plaintiffs' Trial Exhibit No. 60058	Volume 48, RA 9284 – RA 9296
Undated	Plaintiffs' Trial Exhibit No. 60060	Volume 48, RA 9297 – RA 9298
Undated	Plaintiffs' Trial Exhibit No. 60061	Volume 48, RA 9299 – RA 9303
Undated	Plaintiffs' Trial Exhibit No. 60062	Volume 48, RA 9304 – RA 9310
Undated	Plaintiffs' Trial Exhibit No. 60064	Volume 48, RA 9311 – RA 9314
Undated	Plaintiffs' Trial Exhibit No. 60065	Volume 48, RA 9315 – RA 9317
Undated	Plaintiffs' Trial Exhibit No. 60066	Volume 48, RA 9318 – RA 9322
Undated	Plaintiffs' Trial Exhibit No. 60068	Volume 48, RA 9323 – RA 9324
Undated	Plaintiffs' Trial Exhibit No. 60069	Volume 48, RA 9325 – RA 9331
Undated	Plaintiffs' Trial Exhibit No. 70001	Volume 48, RA 9332 – RA 9333
Undated	Plaintiffs' Trial Exhibit No. 70005	Volume 48, RA 9334 – RA 9337

Undated	Plaintiffs' Trial Exhibit No. 70008	Volume 48, RA 9338
Undated	Plaintiffs' Trial Exhibit No. 70010	Volume 48, RA 9339 – RA 9340
Undated	Plaintiffs' Trial Exhibit No. 70013	Volume 48, RA 9341 – RA 9372
Undated	Plaintiffs' Trial Exhibit No. 70014	Volume 48, RA 9373 – RA 9393
Undated	Plaintiffs' Trial Exhibit No. 70016	Volume 48, RA 9394 – RA 9409
Undated	Plaintiffs' Trial Exhibit No. 70017	Volume 48, RA 9310 – RA 9425
Undated	Plaintiffs' Trial Exhibit No. 70022	Volume 48, RA 9426 – RA 9449
Undated	Plaintiffs' Trial Exhibit No. 70024	Volume 48, RA 9450 – RA 9452
Undated	Plaintiffs' Trial Exhibit No. 70027	Volume 48, RA 9453
Undated	Plaintiffs' Trial Exhibit No. 70051	Volume 48, RA 9454 – RA 9456
Undated	Plaintiffs' Trial Exhibit No. 70057	Volume 48, RA 9457 – RA 9460
Undated	Plaintiffs' Trial Exhibit No. 70058	Volume 48, RA 9461 – RA 9463
Undated	Plaintiffs' Trial Exhibit No. 70059	Volume 48, RA 9464 – RA 9467
Undated	Plaintiffs' Trial Exhibit No. 70061	Volume 48, RA 9468

Undated	Plaintiffs' Trial Exhibit No. 70068	Volume 48, RA 9469
---------	--	--------------------

CHRONOLOGICAL TABLE OF CONTENTS
OF CONFIDENTIAL SEALED EXHIBITS

Date	Description	Volume/Bates No.
10/07/2019	Appendix to Plaintiffs' Opposition to Motion for Summary Judgment and Countermotion for Discovery Pursuant to NRCP 46(d), 100719 (Redacted)	Volume 49, RA 9470 – RA 9474
Undated	Plaintiffs' Trial Exhibit 5	Volume 49, RA 9475 – RA 9477
Undated	Plaintiffs' Trial Exhibit 13	Volume 49, RA 9478 – RA 9511
Undated	Plaintiffs' Trial Exhibit 14	Volume 49, RA 9512 – RA 9516
Undated	Plaintiffs' Trial Exhibit 15	Volume 49, RA 9517 – RA 9526
Undated	Plaintiffs' Trial Exhibit 29	Volume 49, RA 9527
Undated	Plaintiffs' Trial Exhibit 33	Volume 49, RA 9528
Undated	Plaintiffs' Trial Exhibit 36	Volume 49, RA 9529 – RA 9564
Undated	Plaintiffs' Trial Exhibit 37	Volume 49, RA 9565 – RA 9570
Undated	Plaintiffs' Trial Exhibit 46	Volume 49, RA 9571 – RA 9624
Undated	Plaintiffs' Trial Exhibit 49	Volume 49, RA 9625 – RA 9626

Undated	Plaintiffs' Trial Exhibit 50	Volume 49, RA 9627 – RA 9700
Undated	Plaintiffs' Trial Exhibit 51	Volume 50, RA 9701 – RA 9709
Undated	Plaintiffs' Trial Exhibit 53	Volume 50, RA 9710 – RA 9714
Undated	Plaintiffs' Trial Exhibit 54	Volume 50, RA 9715 – RA 9716
Undated	Plaintiffs' Trial Exhibit 55	Volume 50, RA 9717

Undated	Plaintiffs' Trial Exhibit 10001	Volume 50, RA 9718 – RA 9749
Undated	Plaintiffs' Trial Exhibit 10009	Volume 50, RA 9750 – RA 9769
Undated	Plaintiffs' Trial Exhibit 10010	Volume 50, RA 9770 – RA 9805
Undated	Plaintiffs' Trial Exhibit 10011	Volume 50, RA 9806 – RA 9826
Undated	Plaintiffs' Trial Exhibit 10012	Volume 50, RA 9827 – RA 9845
Undated	Plaintiffs' Trial Exhibit 10013	Volume 51, RA 9846 – RA 9879
Undated	Plaintiffs' Trial Exhibit 10016	Volume 51, RA 9880
Undated	Plaintiffs' Trial Exhibit 10017	Volume 51, RA 9881
Undated	Plaintiffs' Trial Exhibit 10019	Volume 51, RA 9882 – RA 9899
Undated	Plaintiffs' Trial Exhibit 10020	Volume 51, RA 9900 – RA 9905
Undated	Plaintiffs' Trial Exhibit 10021	Volume 51, RA 9906 – RA 9923
Undated	Plaintiffs' Trial Exhibit 10023	Volume 51, RA 9924 – RA 9947
Undated	Plaintiffs' Trial Exhibit 10024	Volume 51, RA 9948
Undated	Plaintiffs' Trial Exhibit 10025	Volume 51, RA 9949 – RA 9970

Undated	Plaintiffs' Trial Exhibit 10026	Volume 51, RA 9971 – RA 10016
Undated	Plaintiffs' Trial Exhibit 10027	Volume 52, RA 10017 – RA 10113
Undated	Plaintiffs' Trial Exhibit 10028	Volume 52, RA 10114 – RA 10192
Undated	Plaintiffs' Trial Exhibit 10029	Volume 52, RA 10193 – RA 10210
Undated	Plaintiffs' Trial Exhibit 10030	Volume 52, RA 10211 – RA 10232
Undated	Plaintiffs' Trial Exhibit 10031	Volume 53, RA 10233 – RA 10404
Undated	Plaintiffs' Trial Exhibit 10032	Volume 54, RA 10405 – RA 10428
Undated	Plaintiffs' Trial Exhibit 10033	Volume 54, RA 10429 – RA 10451
Undated	Plaintiffs' Trial Exhibit 10034	Volume 54, RA 10452 – RA 10471
Undated	Plaintiffs' Trial Exhibit 10035	Volume 54, RA 10472 – RA 10503
Undated	Plaintiffs' Trial Exhibit 10047	Volume 54, RA 10504 – RA 10547
Undated	Plaintiffs' Trial Exhibit 10048	Volume 54, RA 10548 – RA 10595
Undated	Plaintiffs' Trial Exhibit 10049	Volume 55, RA 10596 – RA 10646

Undated	Plaintiffs' Trial Exhibit 10050	Volume 55, RA 10647 – RA 10708
Undated	Plaintiffs' Trial Exhibit 10051	Volume 55, RA 10709 – RA 10709
Undated	Plaintiffs' Trial Exhibit 10052	Volume 55, RA 10716 – RA 10772
Undated	Plaintiffs' Trial Exhibit 20002 – Part 1	Volume 56, RA 10773 – RA 10972
Undated	Plaintiffs' Trial Exhibit 20002 – Part 2	Volume 57, RA 10973 – RA 11163
Undated	Plaintiffs' Trial Exhibit 20021	Volume 57, RA 11164 – RA 11187
Undated	Plaintiffs' Trial Exhibit 20027	Volume 58, RA 11188 – RA 11191
Undated	Plaintiffs' Trial Exhibit 20028	Volume 58, RA 11192 – RA 11195
Undated	Plaintiffs' Trial Exhibit 20045	Volume 58, RA 11196 – RA 11209
Undated	Plaintiffs' Trial Exhibit 20046	Volume 58, RA 11210 – RA 11232
Undated	Plaintiffs' Trial Exhibit 20053	Volume 58, RA 11233
Undated	Plaintiffs' Trial Exhibit 30001	Volume 58, RA 11234
Undated	Plaintiffs' Trial Exhibit 30003	Volume 58, RA 11235 – RA 11245
Undated	Plaintiffs' Trial Exhibit 30016	Volume 58, RA 11246 – RA 11282

Undated	Plaintiffs' Trial Exhibit 30017	Volume 58, RA 11283 – RA 11293
Undated	Plaintiffs' Trial Exhibit 30018	Volume 59, RA 11294 – RA 11296
Undated	Plaintiffs' Trial Exhibit 30019	Volume 59, RA 11297 – RA 11398
Undated	Plaintiffs' Trial Exhibit 30020	Volume 59, RA 11399 – RA 11416
Undated	Plaintiffs' Trial Exhibit 30021	Volume 59, RA 11417 – RA 11437
Undated	Plaintiffs' Trial Exhibit 30022	Volume 59, RA 11438 – RA 11454
Undated	Plaintiffs' Trial Exhibit 30023	Volume 59, RA 11455 – RA 11470
Undated	Plaintiffs' Trial Exhibit 30024	Volume 59, RA 11455 – RA 11470
Undated	Plaintiffs' Trial Exhibit 30025	Volume 59, RA 11471 – RA 11483
Undated	Plaintiffs' Trial Exhibit 30026	Volume 59, RA 11484 – RA 11489
Undated	Plaintiffs' Trial Exhibit 30027	Volume 60, RA 11490 – RA 11499
Undated	Plaintiffs' Trial Exhibit 30028	Volume 60, RA 11500 – RA 11534
Undated	Plaintiffs' Trial Exhibit 30029	Volume 60, RA 11535 – RA 11562

Undated	Plaintiffs' Trial Exhibit 30030	Volume 60, RA 11563 – RA 11587
Undated	Plaintiffs' Trial Exhibit 30032	Volume 60, RA 11588 – RA 11603
Undated	Plaintiffs' Trial Exhibit 30033	Volume 60, RA 11604 – RA 11618
Undated	Plaintiffs' Trial Exhibit 30034	Volume 60, RA 11619 – RA 11624
Undated	Plaintiffs' Trial Exhibit 30037	Volume 60, RA 11625 – RA 11635
Undated	Plaintiffs' Trial Exhibit 30038	Volume 60, RA 11636 – RA 11639
Undated	Plaintiffs' Trial Exhibit 30039	Volume 60, RA 11640 – RA 11646
Undated	Plaintiffs' Trial Exhibit 30045	Volume 60, RA 11647
Undated	Plaintiffs' Trial Exhibit 30046	Volume 60, RA 11648
Undated	Plaintiffs' Trial Exhibit 30047	Volume 60, RA 11649
Undated	Plaintiffs' Trial Exhibit 30048	Volume 60, RA 11650
Undated	Plaintiffs' Trial Exhibit 30049	Volume 60, RA 11651 – RA 11654
Undated	Plaintiffs' Trial Exhibit 30060	Volume 60, RA 11655 – RA 11661
Undated	Plaintiffs' Trial Exhibit 30061	Volume 60, RA 11662 – RA 11665
Undated	Plaintiffs' Trial Exhibit 30064	Volume 61, RA 11666 – RA 11669

Undated	Plaintiffs' Trial Exhibit 30065	Volume 61, RA 11670 – RA 11673
Undated	Plaintiffs' Trial Exhibit 30068	Volume 61, RA 11674 – RA 11677
Undated	Plaintiffs' Trial Exhibit 30069	Volume 61, RA 11678 – RA 11698
Undated	Plaintiffs' Trial Exhibit 30076	Volume 61, RA 11699
Undated	Plaintiffs' Trial Exhibit 30088	Volume 61, RA 11700 – RA 11702
Undated	Plaintiffs' Trial Exhibit 30099	Volume 61, RA 11703 – RA 11704
Undated	Plaintiffs' Trial Exhibit 30100	Volume 61, RA 11704 – RA 11705
Undated	Plaintiffs' Trial Exhibit 30112	Volume 61, RA 11706 – RA 11720
Undated	Plaintiffs' Trial Exhibit 30113	Volume 61, RA 11721 – RA 11734
Undated	Plaintiffs' Trial Exhibit 40011	Volume 61, RA 11735 – RA 11736
Undated	Plaintiffs' Trial Exhibit 40012	Volume 61, RA 11737 – RA 11738
Undated	Plaintiffs' Trial Exhibit 40013	Volume 61, RA 11739 – RA 11740
Undated	Plaintiffs' Trial Exhibit 40015	Volume 61, RA 11741 – RA 11747
Undated	Plaintiffs' Trial Exhibit 40016	Volume 61, RA 11748 – RA 11789

Undated	Plaintiffs' Trial Exhibit 40044	Volume 61, RA 11790
Undated	Plaintiffs' Trial Exhibit 40053	Volume 61, RA 11791
Undated	Plaintiffs' Trial Exhibit 50026	Volume 62, RA 11792 – RA 12065
Undated	Plaintiffs' Trial Exhibit 50029	Volume 62, RA 12066 – RA 12077
Undated	Plaintiffs' Trial Exhibit 50030	Volume 62, RA 12078 – RA 12087
Undated	Plaintiffs' Trial Exhibit 50031	Volume 62, RA 12088 – RA 12132
Undated	Plaintiffs' Trial Exhibit 50032	Volume 62, RA 12133 – RA 12145
Undated	Plaintiffs' Trial Exhibit 50033	Volume 62, RA 12146 – RA 12153
Undated	Plaintiffs' Trial Exhibit 50039	Volume 62, RA 12154 – RA 12183
Undated	Plaintiffs' Trial Exhibit 50041	Volume 63, RA 12184 – RA 12264
Undated	Plaintiffs' Trial Exhibit 60003	Volume 63, RA 12265 – RA 12266
Undated	Plaintiffs' Trial Exhibit 60017	Volume 63, RA 12267 – RA 12269
Undated	Plaintiffs' Trial Exhibit 60018	Volume 63, RA 12270 – RA 12272
Undated	Plaintiffs' Trial Exhibit 60041	Volume 63, RA 12273 – RA 12283

Undated	Plaintiffs' Trial Exhibit 60042	Volume 63, RA 12284
Undated	Plaintiffs' Trial Exhibit 60043	Volume 63, RA 12285 – RA 12289
Undated	Plaintiffs' Trial Exhibit 60044 – Part 1	Volume 64, RA 12290 – RA 12533
Undated	Plaintiffs' Trial Exhibit 60044 – Part 2	Volume 65, RA 12534 – RA 12634
Undated	Plaintiffs' Trial Exhibit 60063	Volume 65, RA 12635 – RA 12646
Undated	Plaintiffs' Trial Exhibit 70002	Volume 65, RA 12647 – RA 12649
Undated	Plaintiffs' Trial Exhibit 70004	Volume 65, RA 12650
Undated	Plaintiffs' Trial Exhibit 70006	Volume 65, RA 12651 – RA 12671
Undated	Plaintiffs' Trial Exhibit 70007	Volume 65, RA 12672 – RA 12674
Undated	Plaintiffs' Trial Exhibit 70011	Volume 65, RA 12675 – RA 12683
Undated	Plaintiffs' Trial Exhibit 70012	Volume 65, RA 12684 – RA 12687
Undated	Plaintiffs' Trial Exhibit 70018	Volume 65, RA 12688
Undated	Plaintiffs' Trial Exhibit 70019	Volume 65, RA 12689
Undated	Plaintiffs' Trial Exhibit 70020	Volume 65, RA 12690
Undated	Plaintiffs' Trial Exhibit 70025	Volume 65, RA 12691 – RA 12714

Undated	Plaintiffs' Trial Exhibit 70026	Volume 65, RA 12715 – RA 12733
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DATED this 28th day of October 2021.

JOHN W. MUIJE & ASSOCIATES

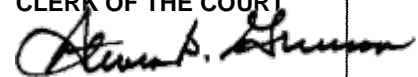
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CERTIFICATE OF SERVICE

I hereby certify that on the 28th day of October, I have caused a true and correct copy of the foregoing RESPONDENTS' APPENDIX – VOLUME 2 to be served by electronic service by the Supreme Court of Nevada Electronic Filing System to the following:

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11
12 DISTRICT COURT

13 CLARK COUNTY, NEVADA

14 RUSSELL L. NYPE AND REVENUS PLUS,
15 LLC

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;
24 MITCHELL HOLDINGS, LLC; LIBERMAN
25 HOLDINGS, LLC; 305 LAS VEGAS, LLC; LIVE
26 WORKS TIC SUCCESSOR, LLC; CASINO
27 COOLIDGE LLC; DOES I through III, and ROE
28 CORPORATIONS I through III, inclusive,

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: September 3, 2019

Time of Hearing: 10:00 a.m.

22 **TRIAL BRIEF REGARDING EVIDENTIARY HEARING – DISCOVERY SANCTIONS**

23 COME NOW, Plaintiff, RUSSELL L. NYPE and REVENUE PLUS, LLC (hereinafter
24 collectively referred to as “NYPE”) and pursuant to EDCR 7.27 file herewith their Civil Trial
25 Memorandum. The Civil Trial Memorandum is made and based upon the Points and Authorities
26 that follow, the exhibits attached hereto, the pleadings and documents on file herein, the evidence
27
28

1 Already admitted and to be admitted at the ongoing evidentiary hearing, and the arguments of
2 counsel in connection therewith.

3 DATED this 30th day of August, 2019

4 JOHN W. MUIJE & ASSOCIATES

7 By: /s/ JOHN W MUIJE
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15 *Attorneys for Plaintiffs*

16 I.

17 **PROCEDURAL STATUS**

18 The Court will recall Nype's Motion to Compel, argued in early May, whereby the Court
19 ordered the Mitchell Defendants, David Mitchell (hereinafter "Mitchell"), Las Vegas Land
20 Partners, LLC (hereinafter "LVLP"), and their affiliated defendant companies to comply with
21 their long overdue discovery obligations, including the filing of a proper certification as to efforts
22 made to comply with discovery and any reasons why said discovery might not be complete. The
23 deadline for such compliance was June 5, 2019. Sadly, Mitchell neither complied timely nor
24 even provided a timely certification.

25 For ease of reference, Mitchell and the affiliated company defendants managed and
26 operated, and legally utilizing the same attorneys, with the notable except of LVLP (as explained
27 below), shall be referred to collectively hereinafter as the "Mitchell Defendants".

28 Approximately a week thereafter, Nype filed an Application for Order to Show Cause as
to why sanctions should not issue as against the Mitchell Defendants. A hearing was held on

1 June 24, 2019, regarding the same, with no opposition being tendered and no appearance by Mr.
2 Mitchell. The Court expressly found, on the record, that sanctions were warranted, and that the
3 only unresolved question would be the nature and extent thereof. The Court scheduled an
4 evidentiary hearing to commence on June 27, 2019. The hearing did in fact commence and
5 Plaintiff presented multiple witnesses and numerous evidentiary documents regarding the
6 significant quantities of missing discovery data, and the extraordinary efforts they have been
7 forced to undertake to attempt to obtain compliance from the Mitchell Defendants. The Court did
8 not complete the hearing on that date, but continued it for further testimony on July 9, 2019.
9

10
11 Plaintiff's Forensic CPA, Mark Rich testified for approximately two hours on July 9,
12 2019, and additional evidence was admitted. Significantly, once again, neither David Mitchell
13 nor any representative of the Mitchell Defendants appeared at the hearing, and no meaningful
14 excuse was provided for their non-appearance, other than that Mr. Mitchell allegedly had other
15 commitments or could not be present.
16

17 The Court queried Mitchell's counsel, James Edwards, as to his availability in August and
18 September, and was assured that Mr. Mitchell would be available and wanted to present his
19 position on the discovery dispute. The Court agreed to allow it, but indicated on the record, that
20 the next continued hearing date would be Mr. Mitchell's last chance.
21

22 After evaluating the Court's trial scheduling and calendar for August and early September
23 at a July 30th Calendar Call, , the Court's law clerk contacted both parties and indicated that the
24 evidentiary hearing would proceed on September 3rd and 4th, as presently scheduled
25

26 The crux, however, is that despite express representations by the Mitchell Defendants'
27 attorney at the June 24th hearing that an IT expert had been retained and that all the long overdue
28 discovery Plaintiff sought would be produced in thirty (30) days, that has not occurred! Instead,
after incurring ongoing substantial additional expense, both to pursue the Mitchell Defendants'

1 CPA in New Jersey in order to obtain compliance from him with the New Jersey Court's Order
2 compelling discovery. In the interim, Nype's Nevada counsel have worked to compile and
3 analyze evidence and review the latest discovery that various defendants trickled in between May
4 and early July. Now, literally on the very eve of the continued evidentiary hearing, i.e. the late
5 afternoon of August 28, 2019, less than three working days prior to the scheduled hearing, a
6 Notice of Bankruptcy Filing was filed and electronically served through the Odyssey system,
7 indicating that LVLP had filed bankruptcy more than a week earlier, on August 19, 2019. See
8 Exhibit "30" attached hereto and by this reference incorporated herein. Even more egregiously,
9 LVLP at for the first time reinstated its revoked foreign registration, after letting it lapse in 2016,
10 also on August 19, 2019, the very day it sought bankruptcy protection!

11
12 Nype has retained distinguished bankruptcy counsel, Leonard Schwartzer, to assist in
13 dealing with what appears to be a bad faith bankruptcy filing. On its fact this last-minute filing
14 appears to be merely another stall tactic on the part of Mitchell. As will be discussed more fully
15 hereinafter, the bankruptcy stay as to LVLP applies only to LVLP, and not to David Mitchell
16 individually, nor to any of the other Mitchell Defendants.

17
18 Lest there be any doubt, it should be specifically noted that Nype is not seeking any
19 relief against LVLP at this time. Nype will defer any request for sanctions, damages, or
20 recourse as against LVLP to the appropriate future date when either relief from the stay has been
21 obtained, a dismissal of the bankruptcy has occurred, or the matter becomes ripe for adjudication
22 before the bankruptcy court itself.

23
24 Nevertheless, points and authorities demonstrating that Nype is entitled to proceed against
25 the other defendants will be set forth hereinafter, in Section II, before analyzing the relevant facts
26 and relief sought by Nype. Respectfully, the bankruptcy, if anything, further demonstrates
27 malicious bad faith conduct of Defendant Mitchell and the Mitchell Defendants. They have done
28

1 nothing whatsoever in terms of providing new discovery materials, or even attempting to
2 meaningfully comply with the Court's Order. Instead, they wait until the very eve of the
3 evidentiary hearing, and attempt to insert yet another procedural hurdle to add additional delay
4 and expense to Mr. Nype's efforts to finally obtain some form of justice and recover the money
5 awarded by Judge Israel over four years ago.

7 Section III will briefly discuss interim substantive developments, including the accrual of
8 additional discovery related fees and costs by Nype. In this regard, it should be noted that Nype
9 has prepared and will present updates of the previously admitted fees and costs at the time of the
10 resumed evidentiary hearing on September 3, 2019. If necessary, Mark Rich, Robert Warns, and
11 John Muje are all available to testify in person as to the amount and authenticity of such
12 supplemental fees and costs.

14 Finally, a brief analysis as to the appropriate sanctions will ensue. Previewing the same,
15 Nype would respectfully request that the Court enter an Order and Judgment for the payment of
16 discovery sanctions against the Mitchell Defendants, not including LVLP nor, at this time,
17 Liberman, 305 Las Vegas, LLC, or Casino Coolidge LLC. The precise amount is obviously
18 dependent upon the Court's consideration of the evidence, but will be approximately \$500,000,
19 plus additional amounts for the time value of the many months this matter has been delayed
20 (estimated at \$360,000.00), which delay is directly and proximately attributable to the bad faith
21 failure and refusal of the Mitchell Defendants to participate legitimately in the discovery process.

24 It is respectfully suggested that the Court enter an Order and Judgment for such monetary
25 sanctions, order prompt payment of the same (14 days would appear appropriate) and further
26 order, to the extent the Mitchell Defendants fail and refuse to promptly pay the discovery
27 sanctions ordered, that their answer be stricken and their default be entered, predicated upon their
28

ongoing bad faith conduct and refusal to comply with the Court's discovery rules, guidelines, and orders.

II.

BANKRUPTCY

Conducting Post-Petition Litigation Against Co-Defendants of the Debtor

Under Bankruptcy Code §362, upon the filing of a voluntary or involuntary bankruptcy petition, the automatic stay enjoins prosecution of actions against the debtor, the property of the debtor and property of the bankruptcy estate. *In re Advanced Ribbons and Office Products, Inc.*, 125 B.R. 259, 263 (9th Cir. BAP 1991); *In re Rohnert Park Auto Parts, Inc.*, 113 B.R. 610, 614 (9th Cir. BAP 1990); *In re Condel, Inc.*, 91 B.R. 79, 82 (9th Cir. BAP 1988); *In re Casgul of Nevada, Inc.*, 22 B.R. 65, 66–67 (9th Cir. BAP 1982).

The automatic stay does not enjoin litigation against co-defendants of the debtor. The law of this Circuit is well settled on this point. The Ninth Circuit Bankruptcy Appellate Panel in the case of *In Re Casgul of Nevada, Inc.*, 22 B.R. 65 (9th BAP 1982), held that the automatic stay created by Section 362(a) of the Code is for the benefit of the Debtor, the Debtor's property or the Debtor's estate. The Court reasoned:

An automatic stay is created by section 362(a) for benefit of the debtor; see, e.g., paragraphs (1), (2), (6); the debtor's property, paragraph (5); or the debtor's estate, paragraphs (2), (3), (4). **We are unable to find any provision in section 362 that creates a stay in favor of any entity other than the debtor or that protects property other than that of the debtor or trustee (i.e., estate property).** Nor can the debtor point to such a provision.

1 There is ample reason to believe that Congress' failure to afford
2 automatic stay protection to co-debtors, or to their property, was
3 deliberate. It expressly provided for a co-debtor stay in 11 U.S.C. s
4 1301, applicable to Chapter 13 cases only.

5 **We conclude that section 362(a) did not create an automatic stay**
6 22 .R. at 66. Emphasis Supplied

7 *Casgul* has been cited and followed in the following cases *In re Kalispell Feed &*
8 *Grain Supply, Inc.*, 55 B.R. 627, 628 (Bankr. D. Mont. 1985) ("I conclude that based on the
9 above authorities the rule is now well-recognized and settled that Section 362(a) of the Code
10 cannot be applied to include non-debtors who are co-defendants in any action with the Debtor.");
11 *In re Torrez*, 132 B.R. 924, 938 (Bankr. E.D. Cal. 1991) ("The protections of the automatic stay
12 only inure to the benefit of the debtor, property of the debtor, or property of the estate."); *In re*
13 *Advanced Ribbons & Office Prod., Inc.*, 125 B.R. 259, 263 (B.A.P. 9th Cir. 1991) ("Thus, section
14 362(a) does not stay actions against guarantors, sureties, corporate affiliates, or other non-debtor
15 parties liable on the debts of the debtor."); *Ingersoll-Rand Fin. Corp. v. Miller Min. Co.*, 817 F.2d
16 1424, 1427 (9th Cir. 1987) ("In the absence of special circumstances, stays pursuant to section
17 362(a) are limited to debtors and do not include non-bankrupt codefendants.").

18 *In Lynch v. Johns-Manville Sales Corp.*, 710 F.2d 1194, 1196 (6th Cir.1983), the
19 plaintiffs, who had been named as codefendants in other state and federal court actions along with
20 two debtors that had commenced bankruptcy cases under Chapter 11, sought protection under the
21 automatic stay. The *Lynch* plaintiffs theorized that because the state and federal court actions
22 against their codefendant debtors had been stayed pursuant to § 362, the actions against them
23 should also be stayed. The court rejected this theory, stating, "[i]t is universally acknowledged
24 that an automatic stay of proceeding accorded by § 362(a)(1) may not be invoked by entities such
25 as sureties, guarantors, co-obligors, or others with a similar legal or factual nexus to the ...
26
27
28

debtor.... Nothing in the legislative history counsels that the automatic stay should be invoked in a manner which would advance the interests of some third party, such as the debtor's co-defendants, rather than the debtor or its creditors.” That court went on to conclude that “it would distort congressional purpose to hold that a third party solvent co-defendant should be shielded against his creditors by a device intended for the protection of the insolvent debtor” and creditors thereof. *Id.* at 1196–97 (citations omitted).

See also Teachers Ins. and Annuity Ass'n of Am. v. Butler, 803 F.2d 61, 65 (2d Cir.1986) (“It is well-established that stays pursuant to § 362(a) are limited to debtors and do not encompass non-bankrupt co-defendants.”); *Croyden Assocs. v. Alleco, Inc.*, 969 F.2d 675, 677 (8th Cir.1992) (quoting *Maritime Elec. Co. v. United Jersey Bank*, 959 F.2d 1194, 1205 (3d Cir.1992)), (the Circuit Court was “persuaded that the stay required by section 362 should extend only to claims against [the debtor], and that the stay is not available to nonbankrupt codefendants, ‘even if they are in a similar legal or factual nexus with the debtor.’ ”).

Requiring Post-Petition Discovery From Debtor

While the automatic stay enjoins prosecuting a lawsuit against a debtor in bankruptcy, it does not enjoin discovery being required from a debtor. It was held in *In re Miller*, 262 B.R. 499 (B.A.P. 9th Cir. 2001)::

Section 362(a)(1) applies only to actions against a debtor. Here, in the action in which the subpoenas were issued, Appellants conceded that Groner's claims against Debtor were stayed. Nonetheless, Groner's claims against Henry were not stayed, and Groner was entitled to continue prosecution of those claims. *See Chugach Timber Corp. v. Northern Stevedoring & Handling Corp. (In re Chugach Forest Products, Inc.)*, 23 F.3d 241, 246 (9th Cir.1994), quoting *Advanced Ribbons and Office Products, Inc. v. U.S. Interstate Distributing, Inc. (In re Advanced Ribbons and Office Products, Inc.)*, 125 B.R. 259, 263 (9th Cir. BAP 1991) (“[The

1 automatic stay] does not protect non-debtor parties or their property.
2 [Citations omitted].

3
4 Thus, section 362(a) does not stay actions against guarantors,
5 sureties, corporate affiliates, or other non-debtor parties liable on the
6 debts of the debtor.”).

7 **Groner was therefore entitled to pursue discovery with**
8 **respect to her claims against Henry.** In that respect, Groner sought
9 to depose Debtor as a third-party witness. This panel faces an issue
10 of first impression: does the automatic stay protect a debtor from
11 complying with discovery requests in a multi-defendant case where
12 the debtor is a defendant, but where those discovery requests are
13 framed as discovery pertaining only to the claims against the other
14 non-debtor defendants?

15 262 B.R. at 503–04. Emphasis Supplied.

16 In this case, Groner issued the subpoenas to Debtor in an
17 effort to continue her prosecution of her claims against Henry, a
18 non-debtor. Section 362(a) prohibits the commencement or
19 continuation of an action against the debtor; to the extent that
20 Groner was eliciting Debtor's testimony for purposes other than to
21 continue the prosecution of her claims against Debtor, the proposed
22 discovery did not violate the automatic stay, unless the issuance of
23 subpoenas itself constitutes “issuance or employment of process”
24 against Debtor or a “judicial proceeding” against Debtor. If this
25 were true, a debtor could never be called as a witness (even in
26 actions where the debtor is not a party) without relief from the stay.
27 Such an interpretation of section 362(a) defies common sense and
28 the spirit of the Code. **Information is information, and we believe**
the discovery of it as part of the development of a case against
non-debtor parties is permissible, even if that information could
later be used against the party protected by the automatic stay.
In addition, that interpretation is inconsistent with
interpretations of a similar clause contained in section 524.

262 B.R. at 505. Emphasis Supplied

1 **In conclusion, section 362(a)(1) is inapplicable to Appellants'**
2 **subpoenas to Debtor where those subpoenas were part of**
3 **Appellants' discovery regarding claims that were not stayed.**

4 262 B.R. at 507. Emphasis Supplied.

6 **III.**

7 **INCREMENTAL DEVELOPMENTS**

8 Attached to this brief are numerous proposed exhibits for submission to the Court at the
9 continued evidentiary hearing, constituting updated fee and cost billings from the various
10 professionals engaged by Nype to assist in enforcing the \$4.5 million judgment against all
11 defendants. Attached hereto as Exhibit 31 is a spread sheet calculate the balance present owed
12 under the original judgment, I.E. \$4,493,176.90. Again, it is noted that as of the filing of the
13 bankruptcy, efforts against to recover the approximate \$4.5 million against are stayed pursuant to
14 11 U.S.C. Section 362. In addition to the documented fees and costs accrued, in order to better
15 understand the accrual of post-judgment fees and costs incurred by plaintiff in attempting to
16 obtain discovery compliance, Exhibit 32 created by Robert Warns and his office summarizes and
17 analyzes the various tasks and project areas necessary to be undertaken as caused by the Mitchell
18 Defendants defalcations.

19 To the extent the Court has already had an opportunity to hear testimony from the various
20 parties involved in pursuing discovery against the Mitchell Defendants, it is respectfully
21 requested that the individuals, if needed to lay foundation or authenticate the proposed exhibits,
22 may appear telephonically, in an effort to at least save a modicum of fees and costs at this late
23 date after having been force already to spend almost \$500,000 to resolve the flagrant discovery
24 defalcations of the Mitchell Defendants. See Exh 33, a summary of fees and costs to date,

1 derived by totaling the various invoices and summaries already admitted into evidence, plus the
2 updated expenses incurred by Nype since the start of the evidentiary hearing herein.

3
4 As noted above, to the extent the Court needs further live testimony in the courtroom,
5 Mr. Warns and Mr. Rich can be available and could testify on Tuesday, September 3, 2019, upon
6 30 minutes notice.

7 Finally, the following Exhibits are attached hereto for the Court's reference, and
8 Plaintiff will seek their admission into evidence when the evidentiary hearing resumes on
9 Tuesday, September 3, 2019.

11 Exhibit 34	Mark Rich summary and June through August Billings
12 Exhibit 35	Reisman Sorokac June through August Billings
13 Exhibit 36	New Jersey counsel and IT expert June through August Billings
14 Exhibit 37	Muije & Associates summary and June through August billings

15 IV.

16 REMEDIES

17
18 The Court has already heard multiple witnesses testify about the horrors of trying to
19 obtain meaningful discovery from the Mitchell Defendants. Discovery has been incomplete,
20 duplicative, intentionally disorganized, and sporadically produced, over a period of years, despite
21 multiple efforts by Nype and Mitchell's prior counsel to meet and confer to address and resolve
22 those disputes. In this regard, Attached hereto as Exhibit 38 is the sworn declaration of Mark
23 Rich attesting to the details and fact that the 2 Supplements supplied by the Mitchell defendants
24 on the eve of two hearings earlier this summer essentially contain nothing new. Additional Mr.
25 Rich details numerous key documents and accounting data that should have been produced, but
26 which never have.
27
28

1 Now, in September, fully four months after the latest wave of discovery motions was
2 filed by Nype, and despite the court entertaining an evidentiary hearing for sanctions and
3 allowing Plaintiff to present its case, the Mitchell Defendants have again flaunted the Court's
4 Order, blown off court appearances, failed to oppose either the motion to compel or the motion
5 for sanctions, and, at the very last minute, filed a frivolous bad faith bankruptcy filing for an
6 entity whose corporate qualification in Nevada had long been revoked, in a blatant attempt to
7 further delay and add expense to Nype's efforts to obtain justice.
8

9 Those efforts ducktail precisely the *modus operandi* previously described to the court as
10 to the Mitchell Defendants losing their knowledgeable active counsel on the eve of important
11 developments, and seeking continuances and delays based upon the need for their newest
12 attorneys to familiarize themselves with the case.
13

14 Respectfully, it is well known in the Las Vegas community that Stan Johnson, Mr.
15 Edwards' partner and co-counsel on behalf of the Mitchell Defendants, practices primarily in
16 bankruptcy law. To state that Mitchell's attorneys have done virtually nothing except appear at
17 scheduled hearings since they were retained in May, 2019, is probably an understatement.
18 Instead, Nype respectfully suggests that the Mitchell Defendants already planned this bankruptcy
19 when they first retained the Cohen Johnson law firm, and merely sought to obtain the maximum
20 possible delay, and impose the maximum possible expense, upon Nype, until they finally ran out
21 of leeway or latitude to delay any further. Then, at that point, as was anticipated by Nype, last
22 week's bogus bankruptcy filing ensued. See Exhibit 30.
23

24 Nype previously briefed the available sanctions and standards therefor. It is clear that not
25 only has Mitchell made absolutely no meaningful effort to purge himself of his contempt, but
26 further, his transparent actions suggest that he is "gaming" the system, manipulating the court,
27
28

1 and has been planning for many months to continue flaunting his discovery obligations, **knowing**
2 that he would be filing bankruptcy at the last minute.

3
4 The Court should not continece or encourage such blatant willful misconduct by a
5 litigant. Hopefully the Court will agree with the authorities regarding the bankruptcy not staying
6 efforts against non-bankrupt entities. Knowing that Mr. Mitchell has effectively controlled not
7 only LVLP, but the various affiliated entities from the inception, the only reasonable sanction
8 would be to impose on the Mitchell Defendants liability for all of the fees and costs incurred by
9 Nype attributable to the discovery delay. Indeed, that discovery delay has deferred trial by at
10 least a year, and probably closer to two by the time a new trial could be scheduled. Respectfully,
11 two years on the original judgment balance of \$2.6 million would amount to an additional
12 \$390,000 in accrued interest (at the current statutory rate of 7.5% per annum), representing the
13 lost time value of money, which delay is directly attributable to Mitchell's conscious delaying
14 tactics.
15

16
17 As suggested above, the appropriate sanction would be the imposition of all of the fees
18 and costs incurred by Nype that relate to attempting to obtain discovery compliance, **with a firm**
19 **deadline for prompt payment.** Assuming the Mitchell Defendants promptly pays the monies
20 ordered by the court within that time, the court should set an expedited schedule for the
21 completion of discovery, and schedule trial late this year or early in 2020.
22

23 On the assumption that the Mitchell Defendants will do nothing voluntarily or
24 affirmatively, but will somehow seek to delay further their obligation to pay to Plaintiff, the
25 Court's discovery sanction order can and should provide for the imposition of an Order and
26 Judgment for the payment of discovery sanctions with the deadline, and further state the
27 condition that if the monetary amounts ordered by the court are not timely paid, that the Mitchell
28 defendants' answers will be stricken, and their default entered. Once that occurs, the Court can

1 review the procedural posture of the matter and the position of the other litigants, and then
2 schedule a prove-up hearing as to the Mitchell Defendants, as appropriate, and provide for a
3 limited discovery period in anticipation of the liability trial to follow for the other defendants. It
4 should also be noted that Plaintiff pled and will seek punitive damages. Should the Court find
5 punitive damages are warranted, a second phase of the case should rapidly explore the financial
6 manipulation and misconduct of all the defendant parties, and consider an appropriate award of
7 punitive damages.

9
10 V.

11 CONCLUSION

12 Mitchell has demonstrated yet again his contempt for the Court system, and his complete
13 unwillingness to cooperate in the judicial process.

14 Instead of attempting to comply with this Court's Order compelling discovery, he retained
15 bankruptcy counsel several months ago, but waited until the very last minute to provide notice of
16 the bankruptcy, even though it had filed more than a week earlier.

17 While that was going on, his accountant in New York has totally flaunted the New Jersey
18 Court's Orders compelling Mr. Sam Spitz, the Mitchell Defendants' long-time CPA, to produce
19 his original computer hardware for inspection and copying, in part based upon assertions by Nype
20 that Mitchell and Spitz created fraudulent evidence calculated to cover up the financial
21 shenanigans engaged in by the LVLP entities during the period between 2007 and 2013. To date,
22 Spitz still hasn't made his hardware available to Nype's IT Forensic experts, despite a court order
23 in May that he do so within ten (10) days. Attached as Exhibit 39 is a letter from Nype's New
24 Jersey counsel to the Court once again seeking immediate court input in an effort to have
25 Mitchell's New Jersey CPA actually comply with the New Jersey Court Order!

1 Based upon all of the above and foregoing, Nype respectfully urges an immediate
2 monetary sanction in the amount of \$481,905.43, plus an additional sanction for the lost time and
3 value of his monetary judgment in the amount of \$360,000, to be entered against the Mitchell
4 defendants, jointly and severally (but NOT including LVLP), all to be paid within fourteen (14)
5 days. The Order and Judgment providing for sanctions should further provide that should such
6 sums not be timely paid, the answers filed on behalf of the Mitchell Defendants should be
7 stricken, and a default entered, subject to prove-up and further proceedings as appropriate
8 thereafter.
9

10 DATED this 30th day of August, 2019.
11

12 Respectfully submitted,

13 JOHN W. MUIJE & ASSOCIATES
14

15 By: /s/ JOHN W. MUIJE
16

17 JOHN W. MUIJE, ESQ.

18 Nevada Bar No: 2419

19 1840 East Sahara Avenue, Suite 106

20 Las Vegas, NV 89104

21 Telephone No: (702) 386-7002

22 Facsimile No: (702) 386-9135

23 Email: jmuije@muijelawoffice.com

24 *Attorneys for Plaintiffs*
25
26
27
28

CERTIFICATE OF MAILING

I hereby certify that I am an employee of JOHN W. MUIJE & ASSOCIATES, and that on the 30th day of August, 2019, I caused the foregoing document entitled **TRIAL BRIEF REGARDING EVIDENTIARY HEARING – DISCOVERY SANCTIONS**, to be served as follows:

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

Brian B. Boschee, Esq.
**HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON**
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101
Telephone: (702) 791-0308
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Attorneys for Defendant
305 Las Vegas, LLC

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*Attorneys for Barnet Liberman and
Casino Coolidge, LLC*

Stan Johnson, Esq.
James L. Edwards, Esq.
**COHEN JOHNSON PARKER
& EDWARDS**
375 East Warm Springs Road, Suite 104
Las Vegas, Nevada 89119
Telephone: (702) 823-3500
Facsimile: (702) 823-3400
E-Mail: jedwards@parkeredwardslaw.com
Attorneys for Mitchell Defendants



An employee of JOHN W. MUIJE & ASSOCIATES

**LIST OF EXHIBITS TO TRIAL BRIEF REGARDING
EVIDENTIARY HEARING - DISCOVERY SANCTIONS**

EXHIBIT NO.	DOCUMENT
30.	Notice of Bankruptcy Filing from Cohen, Johnson Parker & Edwards
31.	Copy of Interest Rate Spreadsheet
32.	Summary of Work Performed
33.	Fees through August 2019 re Mitchell Sanctions
34.	Fee Analysis - Rich Wightman & Company Billings 7-8-19 thru 7-31-19 and Billings 8-28-2019
35 - Part I	Part I - Reisman Sorokac – July 2019 Invoice
35 - Part II	Part II - Reisman Sorokac - August 2019 Partial Invoice
36.	LIT E GATION Invoice Billing and DeGroot Billing
37.	Supplemental Summary As to John W. Muije June Through August Fees and Costs Attributable to Mitchell Defendants Failure to Timely and Properly Comply With Discovery Obligations
38.	Declaration of Mark D. Rich, CPA, CFF
39.	Letter to the Hon. Owen C. McCarthy, J.S.C. dated August 29, 2019

EXHIBIT ‘30’



1 **COHEN|JOHNSON|PARKER|EDWARDS**

2 H. Stan Johnson, Esq.

3 Nevada Bar No. 265

4 James L. Edwards, Esq.

5 Nevada Bar No. 4256

6 375 E. Warm Springs Rd. Ste. 104

7 Las Vegas, NV 89119

8 *Attorneys for Mitchell Defendants*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

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

14 Plaintiffs,

15 vs.

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

27 Defendants.

Case No.: A-16-740689-B

Dept. No.: 11

28 **NOTICE OF BANKRUPTCY FILING**

PLEASE TAKE NOTICE that LAS VEGAS LAND PARTNERS LLC, has filed for
bankruptcy relief pursuant to Title 11 of the United States Code. A copy of the Notice of
Chapter 7 Bankruptcy Case Filing is attached hereto.

1 Dated this 28th day of August, 2019.

2 COHEN JOHNSON PARKER EDWARDS

3 By: /s/ H. Stan Johnson
4 H. STAN JOHNSON, ESQ.
5 Nevada Bar No.: 0265
6 375 E. Warm Springs Road, Suite 104
7 Las Vegas, Nevada 89119
8 *Attorney for Mitchell Defendants*

9 **CERTIFICATE OF SERVICE**

10 Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on
11 this day, I caused a true and correct copy of the **NOTICE OF BANKRUPTCY FILING** to be
12 served via the Court's Wiznet E-Filing system on all registered and active parties.

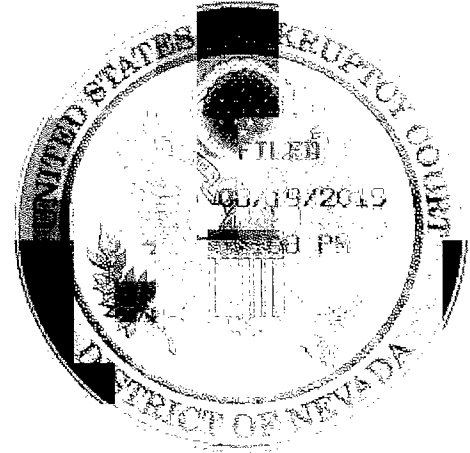
13 Dated: August 28, 2019

14
15 /s/ Sarah Gondek
16 An employee of Cohen|Johnson|Parker|Edwards
17
18
19
20
21
22
23
24
25
26
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28

United States Bankruptcy Court
District of Nevada

Notice of Bankruptcy Case Filing

A bankruptcy case concerning the debtor(s) listed below was filed under Chapter 7 of the United States Bankruptcy Code, entered on 08/19/2019 at 7:08 PM and filed on 08/19/2019.



LAS VEGAS LAND PARTNERS, LLC
375 E WARM SPRINGS ROAD, SUITE 104
LAS VEGAS, NV 89119
Tax ID / EIN: 20-1506231

The case was filed by the debtor's attorney:

H STAN JOHNSON
COHEN JOHNSON PARKER EDWARDS, LLC
375 E. WARM SPRINGS RD, STE 104
LAS VEGAS, NV 89119
(702) 823-3500

The bankruptcy trustee is:

SHELLEY D KROHN
510 S 8TH STREET
LAS VEGAS, NV 89101
(702) 421-2210

The case was assigned case number 19-15333-mkn to Judge MIKE K. NAKAGAWA.

In most instances, the filing of the bankruptcy case automatically stays certain collection and other actions against the debtor and the debtor's property. Under certain circumstances, the stay may be limited to 30 days or not exist at all, although the debtor can request the court to extend or impose a stay. If you attempt to collect a debt or take other action in violation of the Bankruptcy Code, you may be penalized. Consult a lawyer to determine your rights in this case.

If you would like to view the bankruptcy petition and other documents filed by the debtor, they are available at our *Internet* home page <http://www.nvb.uscourts.gov> or at the Clerk's Office, 300 Las Vegas Blvd., South, Las Vegas, NV 89101.

You may be a creditor of the debtor. If so, you will receive an additional notice from the court setting forth important deadlines.

Mary A. Schott
Clerk, U.S. Bankruptcy

EXHIBIT "31"

	daily int		days	accrued interest			daily int	days for costs	accrue cost int	
\$2,608,797.50	0.0525	\$375.24	266	\$99,813.31	4/10/2015	to 12/31/15				
	0.055	\$393.11	366	\$143,876.97	1/1/2016	12/31/2016	\$21.20	197	\$4,175.65	5/12/16 to 12/31/16
	0.0575	\$410.97	181	\$74,386.47	1/1/2017	6/30/2017	\$22.16	181	\$4,010.90	
	0.0625	\$446.71	184	\$82,194.99	7/1/2017	12/31/2017	\$24.09	184	\$4,431.93	
	0.065	\$464.58	181	\$84,089.05	1/1/2018	6/30/2018	\$25.05	181	\$4,534.06	
	0.07	\$500.32	184	\$92,058.39	7/1/2018	12/31/2018	\$26.98	184	\$4,963.76	
	0.075	\$536.05	181	\$97,025.82	1/1/2019	6/30/2019	\$28.90	181	\$5,231.61	
	0.075	\$536.05	64	\$34,307.47	7/1/2019	9/2/2019	\$28.90	64	\$1,849.85	
			post J Int	\$707,752.47					\$29,197.75	
Main Judgment	\$2,608,797.50									
pre-judgment	1,006,763.55									
post-judgment	\$707,752.47									
costs judgment	\$140,665.63									
costs pre-j int	\$23,927.48									
costs post t int	\$29,197.75									
	\$4,493,176.90									

EXHIBIT “32”

As noted above, the Mitchell Defendants' misconduct in this matter—their flouting and total disregard for compliance with their discovery obligations—has resulted in Nype unnecessarily incurring approximately \$\$481,905.43 in fees and costs in discovery. The following table (1) summarizes the work that Nype was required to perform as a result of the Mitchell Defendants' misconduct and (2) summarizes the causal link between the work performed and that misconduct:

<u>Project</u>	<u>Summary of Work of Work</u>	<u>Explanation of Causation</u>
Title/Escrow Co. Subpoenas	Researched, drafted and served subpoenas to title/escrow companies re: sales of subject parcels. Researched proper entities and service information. Drafted Notice of Subpoenas. Researched and begin drafting a Motion to Enforce Subpoena due to the Mitchell Defendants' business partner's (a Forest City entity) meritless—and ultimately withdrawn—objection to one of the subpoenas	The Mitchell Defendants' failure to produce accounting, sale and/or financial documents responsive to Plaintiffs' Requests for Production of Documents required the preparation and service of subpoenas to various title/escrow companies in an attempt to obtain the same information
Review of Documents Produced by First American Title Company	Reviewed and analyze the produced documents and drafted document-review summaries and indexes of the produced documents	In response to one of the above-referenced subpoenas, First American Title Co produced approximately 40,000 pages of documents (far in excess of the documents sought from the Mitchell Defendants) without any indexes, which required the review of the information to determine the limited information actually needed
Enforcement of Sam Spitz (NJ SPA) Subpoena	In conjunction with retained New Jersey counsel, researched, analyzed and drafted a Motion to Enforce New Jersey Subpoena, proposed order granting the motion and supporting Reply Brief. Preparation for and attendance at Thereafter, and in conjunction with an e-discovery vendor, spent substantial time and effort working to enforce the New Jersey Court's Order granting the Motion to Enforce and attempt to obtain a forensic	The Mitchell Defendants' failure to produce accounting and financial documents responsive to Plaintiffs' Requests for Production of Documents required the issuance of a Subpoena to the Mitchell Defendants' CPA (Sam Spitz), which then required substantial, ongoing efforts to enforce that Subpoena. Circumstantial evidence indicates that Mr. Spitz has been working in conjunction with, and at the direction of, the Mitchell Defendants to avoid producing the information sought and needed or permit the forensic imaging of Mr. Spitz's hard drives.

	<p>image of Mr. Spitz's hard drives. Such enforcement efforts have included, among other things: [Jody to insert more detail from billing]:</p>	
Enforcement of Forest City Subpoenas	<p>Researched, analyzed and drafted a motion to enforce the subpoenas as part of a lengthy discovery-dispute process with the various Forest City entities subpoenaed.</p>	<p>The Mitchell Defendants' failure to produce accounting and financial documents responsive to Plaintiffs' Requests for Production of Documents required the issuance and service of Subpoenas to various Forest City entities in an attempt to obtain the sought and needed information. The Forest City entities, who are business partners of one or more of the Mitchell Defendants initially refused to produce the subpoenaed information, which then required substantial, ongoing efforts to enforce the subpoenas</p>
Opposition to Mitchell Defendants' Counsel's Motion to Withdraw	<p>Researched, analyzed and drafted an Opposition brief (along with supporting exhibits and declarations) to the Mitchell Defendants' counsel's Motion to Withdraw.</p>	<p>The Mitchell Defendants' history of failing to pay their attorneys, and then using those attorneys' withdrawals as bases for delays (e.g., trial continuances, delayed productions, etc.) required the preparation of an Opposition Brief to attempt to avoid delays. Importantly, the Nype Parties note that the Mitchell Defendants immediately moved to continue the discovery deadlines and trial—on the basis of retaining new counsel—after the Court granted the motion to withdraw</p>
Motion to Continue Discovery	<p>Researched, analyzed drafted and argued the hearing on a Motion to Continue Discovery</p>	<p>The Mitchell Defendants' failures to produce documents responsive to Plaintiffs' Requests for Production of Documents required the preparation and arguing of a Motion to Continue Discovery</p>
Motion to Compel	<p>Researched, analyzed, drafted, and argued a Motion to Compel production of documents responsive to Plaintiffs' Requests for Production of Documents and compelling a second deposition of Defendant Mitchell. Drafted and work related to the Order granting the Motion to Compel</p>	<p>The Mitchell Defendants' failures to produce documents responsive to Plaintiffs' Requests for Production of Documents required the preparation and arguing of a Motion to Compel document production and to obtain an order permitting a second deposition of Defendant Mitchell (to depose him regarding information previously not produced)</p>

Preparation of 30(b)(6) Deposition Notices to Wink One, LLC, Livework, LLC, and Mitchell Holdings, LLC	Analyzed necessary, but missing information that could not be ascertained from defendants' fragmentary, scattered production of records; drafted and served 30(b)(6) deposition topics to obtain said information; researched legal obligations to prepare witnesses pursuant to NRCPC 30(b)(6) and drafted letters outlining the same. Attended deposition, which did not proceed as Wink One, LLC failed to appear (without any advance notice or protective order being in place)	The Mitchell Defendants' failure to produce accounting and financial documents responsive to Plaintiffs' Requests for Production of Documents, coupled with Defendant Mitchell's conduct at prior deposition (in which he almost always (conveniently) was unable to recall needed information) required the preparation of 30(b)(6) deposition notices to force the Mitchell Defendants to produce knowledgeable witnesses, so that necessary information could be obtained
Subpoenas to BNY Melon, US Bank and Riverstone Residential (successor entity)	Analyzed potential third-parties to obtain needed information from and necessary information to obtain; researched proper entities for service of subpoenas, including successor entities; researched, drafted and served Subpoenas and Notices of Subpoenas; analyzed objections and responses to certain of the subpoenas	The Mitchell Defendants' failure to produce accounting and financial documents responsive to Plaintiffs' Requests for Production of Documents required the issuance of subpoenas to entities affiliated with the Mitchell Defendants in an attempt to obtain the necessary information
Motion for Sanctions	Researched, analyzed, drafted, and argued a Motion for Sanctions to enforce defendants' failures to comply with this Court's Order granting the above-referenced Motion to Compel; substantial work preparing for and attending the initial hearing on the Motion for Sanctions	The Mitchell Defendants' failure to comply with this Court's 2019 Order granting the above-referenced Motion to Compel necessitated the preparation, drafting, filing and arguing of the Motion
Evidentiary Hearing on Motion for Sanctions	Prepared for, attended and argued the issue of sanctions, which has occurred over two days, as of the filing of this	The Mitchell Defendants' pervasive, ongoing failures to comply with their discovery obligations—including their failure to comply with this Court's Order granting the Motion to

	<p>brief, and that will require at least one additional hearing day to complete; reviewed and analyzed two (2) supplemental documents disclosures that the Mitchell Defendants made on the eve of the evidentiary hearing and prior hearing on the Motion for Sanctions</p>	<p>Compel required substantial work related to the multi-day, ongoing evidentiary hearing regarding the appropriate sanctions to issue. On the eve of two (2) separate hearings in this regard, the Mitchell Defendants made last-minute supplemental documentary disclosures, that were not accompanied by detailed indexes. Because the disclosures were produced with a detailed index, and also because of the Mitchell Defendants' course of conduct in using disclosures of purportedly new information (that largely were just regurgitation of previously disclosed documents), detailed review, analysis and drafting of document-review summaries/indexes were required to determine whether the Mitchell Defendants had complied with their discovery obligations or just, largely speaking, re-disclosed previously disclosed documents to make it appear as if they had complied. Additional work preparing for the conclusion of the evidentiary hearing, including work preparing to file a "trial" brief.</p>
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EXHIBIT "33"

Fees & Costs Incurred Through August 2019 –

The following table shows the fees and costs incurred by Plaintiffs in this matter due to the Mitchell Defendants' persistent delay tactics and their conduct in consistently failing to comply with their discovery obligations in this matter:

	Fees	Costs	Total Fees & Costs
John W. Muije, Esq. ¹	\$173,885.75	\$14,931.90	\$188,817.65
Mark Rich, CPA ²	\$136,394.55	\$0.00	\$136,394.55
Reisman Sorokac ³	\$106,677.00	\$0.00	\$106,677.00
New Jersey firm re Spitz ⁴	\$49,020.90	\$995.33	\$50,016.23
Total	\$465,978.20	\$15,927.23	\$481,905.43

¹ Fees and costs through May 2019. See, Ex. 26, and Supplemental Summary as to John W. Muije June through August Fees and Costs Attributable to Mitchell Defendants Failure to Timely and Properly Comply with Discovery Obligations.

² Fees and costs through July 8, 2019. See, Ex. 25, and Revenue Plus 8-28-19 Fee Analysis.

³ Fees and costs through July 7, 2019. See, Ex. 7, 8, 9, 29, and July and August 2019 invoices.

⁴ Fees and costs through August 27, 2019 (includes fees from e-discovery vendor). See, Ex. 13, and Aug Invoices from Robert DeGroot and LitEgation.

EXHIBIT “34”

Rich, Wightman & Company, CPAs, LLC

Month/Year	Hours	Rate/Hour	Fee Total	Causation
May-16	0.000	350	\$ -	
January-17	1.800	350	\$ 630.00	Defendant Mitchell failure to produce underlying accounting documents
February-17	2.100	350	\$ 735.00	Defendant Mitchell failure to produce underlying accounting documents
March-17	6.993	350	\$ 2,447.55	Defendant Mitchell failure to produce underlying accounting documents
May-17	1.947	350	\$ 681.45	Defendant Mitchell failure to produce underlying accounting documents
June-17	1.500	350	\$ 525.00	Defendant Mitchell failure to produce underlying accounting documents
July/August -17	0.000	350	\$ -	Defendant Mitchell failure to produce underlying accounting documents
October-17	18.350	350	\$ 6,422.50	Defendant Mitchell failure to produce underlying property schedules
November-17	54.000	350	\$ 18,900.00	Defendant Mitchell failure to produce underlying property schedules
December-17	9.000	350	\$ 3,150.00	Defendant Mitchell failure to produce underlying property schedules
January-18	12.865	350	\$ 4,502.88	Defendant Mitchell failure to produce underlying property schedules
February-18	15.890	350	\$ 5,562.91	Defendant Mitchell failure to produce underlying property schedules
March-18	0.400	130	\$ 52.00	Defendant Mitchell failure to produce accountant's records
March-18	37.165	350	\$ 13,007.75	Defendant Mitchell failure to produce accountant's records
Total March	37.565		\$ 13,059.75	Defendant Mitchell failure to produce accountant's records
April-18	5.500	350	\$ 1,925.00	Defendant Mitchell failure to produce accountant's records due to spoliation
May-18	12.510	350	\$ 4,379.00	Defendant Mitchell failure to produce accountant's records due to spoliation
June-18	12.575	350	\$ 4,401.25	Defendant Mitchell failure to produce underlying property schedules
July-18	15.325	350	\$ 5,363.75	Defendant Mitchell failure to produce underlying accounting documents
August-18	20.200	350	\$ 7,070.00	Defendant Mitchell failure to produce underlying accounting documents
September-18	4.760	350	\$ 1,666.60	Defendant Mitchell failure to produce underlying accounting documents
October-18	20.300	350	\$ 7,105.00	Defendant Mitchell failure to produce underlying accounting documents
November-18	10.950	350	\$ 3,832.50	Defendant Mitchell failure to produce underlying accounting documents
December-18	7.650	350	\$ 2,677.50	Defendant Mitchell failure to produce underlying accounting documents
December-18	1.150	90	\$ 103.50	Defendant Mitchell failure to produce underlying accounting documents
Total December	8.800		\$ 2,781.00	Defendant Mitchell failure to produce underlying accounting documents
January-19	0.433	350	\$ 151.66	Defendant Mitchell failure to produce underlying accounting documents
February-19	1.250	100	\$ 125.00	Defendant Mitchell failure to produce underlying accounting documents
February-19	5.650	350	\$ 1,977.50	Defendant Mitchell failure to produce underlying accounting documents
Total February	6.900		\$ 2,102.50	Defendant Mitchell failure to produce underlying accounting documents
March-19	10.050	100	\$ 1,005.00	Defendant Mitchell failure to produce Forest City documents
March-19	13.300	350	\$ 4,655.00	Defendant Mitchell failure to produce Forest City documents
March-19	0.850	55	\$ 46.75	Defendant Mitchell failure to produce Forest City documents
Total March	24.200		\$ 5,706.75	Defendant Mitchell failure to produce Forest City documents
April-19	3.300	100	\$ 330.00	Defendant Mitchell failure to produce Forest City documents
April-19	12.400	350	\$ 4,340.00	Defendant Mitchell failure to produce Forest City documents
Total April	15.700		\$ 4,670.00	Defendant Mitchell failure to produce Forest City documents
May-19	21.650	350	\$ 7,577.50	Defendant Mitchell failure to produce Forest City documents
May-19	5.900	100	\$ 590.00	Defendant Mitchell failure to produce Forest City documents
Total May	27.550		\$ 8,167.50	Defendant Mitchell failure to produce Forest City documents
Subtotal			\$ 115,939.55	
June-19	6.100	100	\$ 610.00	Defendant Mitchell failure to produce underlying accounting documents
June-19	21.950	350	\$ 7,682.50	Defendant Mitchell failure to produce underlying accounting documents
Total June	28.050		\$ 8,292.50	Defendant Mitchell failure to produce underlying accounting documents
July-19	2.500	100	\$ 250.00	Defendant Mitchell failure to produce underlying accounting documents
July-19	6.050	350	\$ 2,117.50	Defendant Mitchell failure to produce underlying accounting documents
Partial Total July	8.550		\$ 2,367.50	Defendant Mitchell failure to produce underlying accounting documents
Total to July 5, 2019			\$ 126,599.55	
July-19	5.000	100	\$ 500.00	Defendant Mitchell failure to produce underlying accounting documents
July-19	13.200	350	\$ 4,620.00	Defendant Mitchell failure to produce underlying accounting documents
Remaining July Total	18.200		\$ 5,120.00	Defendant Mitchell failure to produce underlying accounting documents
August-19	3.000	100	\$ 300.00	Defendant Mitchell failure to produce underlying accounting documents
August-19	12.500	350	\$ 4,375.00	Defendant Mitchell failure to produce underlying accounting documents
Total August	15.500		\$ 4,675.00	Defendant Mitchell failure to produce underlying accounting documents
Total to August 28, 2019			\$ 136,394.55	

RICH, WIGHTMAN & COMPANY

(A Limited Liability Company)

Certified Public Accountants

1301 S. JONES BLVD.

LAS VEGAS, NV 89146

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www.richwightman.com

info@richwightman.com

Invoice: 72180

Amount: \$9,784.00

Inv. Date: 07/18/19

RUSSELL NYPE/REVENUE PLUS, LLC

rnype@revenueplus.tv

This invoice is for the following services rendered for RUSSELL NYPE/REVENUE PLUS, LLC.

	Hours	Amount
07/08/2019		
JML	1.10	44.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING ASSISTANCE REGARDING DOCUMENTS		
JOR	5.00	500.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING IT		
JWG	5.60	1,960.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING HEARING PREPARATION		
MDR	6.20	2,170.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING HEARING PREPARATION		
07/09/2019		
JWG	4.50	1,575.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING PREPARATION FOR COURT HEARING AND COURT HEARING		
MDR	3.90	1,365.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING PREPARATION FOR COURT HEARING AND COURT HEARING		
07/17/2019		
MDR	1.90	665.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING DOCUMENTS AND TELEPHONE CONFERENCE WITH ATTORNEY		
07/29/2019		
MDR	1.50	525.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING DOCUMENTS		

RA 000270

07/30/2019			
MDR		1.80	630.00
	ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING DOCUMENTS		
07/31/2019			
MDR		1.00	350.00
	ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING DOCUMENTS		

Billed Amount	\$9,784.00
Invoice Total	<u>\$9,784.00</u>

08/12/2019	07/31/2019	06/30/2019	05/31/2019	04/30/2019+	Total
0.00	14,519.00	16,585.00	11,750.00	124,925.50	\$167,779.50

The Lord bless you and keep you; the Lord make His face shine on you and be gracious to you; the Lord turn His face toward you and give you peace. Numbers 6:24-26 (NIV)

Please return this portion with payment. Please make checks payable to:
RICH, WIGHTMAN & COMPANY.

Amount Due: \$167,779.50

Payment Amount: \$ _____

Payment Type: ☐ Check ☐ Credit Card

Invoice: 72180

Inv. Date: 07/31/2019

Due Upon Receipt



Card Type: _____

Card #: _____

Security Code: _____

Exp Date: _____

Signature: _____

ID: 121015 Name: RUSSELL NYPE/REVENUE PLUS, LLC 917-327-7836

Billings allocated 50% MDR, JWG for Litigation Support Services.
Billings allocated 100% JOR for IT Services.

RICH, WIGHTMAN & COMPANY

(A Limited Liability Company)

Certified Public Accountants

1301 S. JONES BLVD.

LAS VEGAS, NV 89146

Phone: (702) 878-0959

Fax: (702) 878-1325

www.richwightman.com

info@richwightman.com

Invoice: 72233

Amount: \$9,050.00

Inv. Date: 08/28/19

RUSSELL NYPE/REVENUE PLUS, LLC

rnype@revenueplus.tv

This invoice is for the following services rendered for RUSSELL NYPE/REVENUE PLUS, LLC.

	Hours	Amount
08/01/2019		
MDR	1.40	490.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, WITH ATTORNEYS, INCLUDING MITCHELL DOCUMENTS		
08/02/2019		
MDR	0.80	280.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING MITCHELL DOCUMENTS		
08/05/2019		
MDR	1.80	630.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING HEARING PREPARATION WITH ATTORNEY		
08/06/2019		
JBW	0.50	175.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING ASSISTANCE REGARDING HEARING MATTERS		
MDR	1.00	350.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING ASSISTANCE REGARDING HEARING MATTERS		
08/07/2019		
MDR	2.70	945.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, WITH ATTORNEYS, INCLUDING ASSISTANCE REGARDING SUPPLEMENT, AND NJ		
08/08/2019		
MDR	0.60	210.00
ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES REGARDING NJ MATTER		

RA 000272

08/09/2019			
MDR	0.40	140.00	
			ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING MITCHELL DOCUMENTS
08/14/2019			
MDR	1.40	490.00	
			ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING MITCHELL DOCUMENTS
08/15/2019			
MDR	1.80	630.00	
			ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, WITH ATTORNEYS, INCLUDING ASSISTANCE REGARDING NJ
08/16/2019			
MDR	1.20	420.00	
			ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING MITCHELL DOCUMENTS
08/21/2019			
MDR	2.30	805.00	
			ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, WITH ATTORNEYS, INCLUDING MITCHELL DOCUMENTS
08/22/2019			
JBW	0.50	175.00	
			ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING ASSISTANCE REGARDING HEARING MATTERS
MDR	2.20	770.00	
			ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING ASSISTANCE WITH ATTORNEY, HEARING AND DOCUMENTS
08/27/2019			
JOR	3.00	300.00	
			ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING IT
MDR	2.70	945.00	
			ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, INCLUDING MITCHELL DOCUMENTS
08/28/2019			
MDR	3.70	1,295.00	
			ACCOUNTING ASSISTANCE WITH LITIGATION SUPPORT SERVICES, WITH ATTORNEYS, INCLUDING MITCHELL DOCUMENTS
		Billed Amount	\$9,050.00
		Invoice Total	<u>\$9,050.00</u>

08/28/2019	07/31/2019	06/30/2019	05/31/2019	04/30/2019+	Total
9,050.00	14,519.00	16,585.00	11,750.00	124,925.50	\$176,829.50

The Lord bless you and keep you; the Lord make His face shine on you and be gracious to you; the Lord turn His face toward you and give you peace. Numbers 6:24-26 (NIV)

Please return this portion with payment. Please make checks payable to:
RICH, WIGHTMAN & COMPANY.

Amount Due: \$176,829.50

Payment Amount: \$ _____

Payment Type: ☐ Check ☐ Credit Card

Invoice: 72233

Inv. Date: 08/28/2019

Due Upon Receipt



Card Type: _____

Card #: _____

Security Code: _____

Exp Date: _____

Signature: _____

ID: 121015 Name: RUSSELL NYPE/REVENUE PLUS, LLC 917-327-7836

Billings allocated 50% MDR, JBW for Litigation Support Services.
Billings allocated 100% JOR for IT Services.

EXHIBIT “35”
PART 1



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

INVOICE

Invoice # 07190001-B
Date: 08/21/2019

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

18-0078 : NYPE

Judgment Enforcement

Services

Date	Attorney	Description	Hours	Rate	Discount	Total
07/04/2019	RRW	Review email from Rusty Nype regarding anticipated conclusion of the Evidentiary Hearing.	0.10	\$300.00	-	\$30.00
07/05/2019	RRW	Analyze preparation for the continued Evidentiary Hearing. Review emails from John Muije, Esq., regarding the same. Instruct Jody Hagins, Esq., regarding document review, in advance of the Evidentiary Hearing, of Mitchell's latest last-minute supplemental documentary disclosure.	0.40	\$300.00	-	\$120.00
07/07/2019	RRW	Review emails between Jody Hagins, Esq., Rusty Nype and John Muije, Esq., regarding document review of Mitchell's latest last-minute documentary disclosure and preparation for the continued Evidentiary Hearing.	0.20	\$300.00	-	\$60.00
07/08/2019	RRW	Instruct Jody Hagins, Esq., regarding review of recently produced materials for purposes of preparing to address the contents of the same at the Evidentiary Hearing. Continue preparing for Hearing.	0.50	\$300.00	-	\$150.00
07/08/2019	JWH	Continue reviewing and analyzing First American Title Company documents produced pursuant to a document subpoena, identified as NCS-741514, and drafting Summary of same. (Valued-Client Discount: 1.00 hour)	6.20	\$270.00	-\$270.00	\$1,404.00
07/09/2019	JWH	Continue reviewing and analyzing First American Title Company documents produced pursuant to a document subpoena, identified as NCS-741514, and drafting summary of same. Review and prepare indices of documents produced by Defendants to assist Robert Warns, Esq. with preparation for the Evidentiary Hearing. (Valued-Client Discount: 1.00 hour)	6.60	\$270.00	-\$270.00	\$1,512.00
07/09/2019	RRW	Prepare for Evidentiary Hearing. Emails and correspondence with John Muije, Esq., and Rusty Nype regarding the same and results from the Hearing. Analyze Hearing results and strategy for completion of the Hearing.	1.30	\$300.00	-	\$390.00
07/10/2019	JHR	Analyze whether to suggest that John Muije, Esq. resolution of Evidentiary Hearing against David Mitchel.	0.10	\$375.00	-	\$37.50
07/10/2019	JWH	Continue reviewing and analyzing First American Title Company documents produced pursuant to a document subpoena, identified as NCS-741514, and drafting Summary of the same. (Valued-Client Discount: 1.00 hour)	4.10	\$270.00	-\$270.00	\$837.00
07/11/2019	JWH	Continue reviewing and analyzing First American Title Company documents produced pursuant to a document subpoena, identified as NCS-741514, and drafting Summary of same.	1.10	\$270.00	-	\$297.00
07/12/2019	JWH	Finish review and analysis of First American Title Company documents produced pursuant to a document subpoena, identified as NCS-741514 and drafting Summary of same. Begin reviewing First American Title Company documents produced pursuant to a document subpoena, identified as NCS-757660 and drafting Summary of same. (Valued-Client Discount: 0.70 hours)	4.20	\$270.00	-\$189.00	\$945.00

★	07/17/2019	RRW	Teleconference with the Litigation Team regarding collection strategy and preparation for the conclusion of the Evidentiary Hearing, including anticipated Trial Brief and supplemental invoices.	1.10	\$300.00	-	\$330.00
★	07/22/2019	JWH	Continue reviewing and analyzing First American Title Company documents produced pursuant to a document subpoena, identified as NCS-757660, and drafting Summary of same. (Valued-Client Discount: 0.60 hours)	4.10	\$270.00	-\$162.00	\$945.00
★	07/23/2019	JWH	Finish reviewing and analyzing First American Title Company documents produced pursuant to a document subpoena, identified as NCS-757660 and drafting Summary of same. Begin revising First American Title Company document indices to highlight key financial documents for John Muije, Esq.'s and Mark Rich's review. Begin reviewing the Master Index of documents produced by the Mitchell Defendants to determine the frequency with which the same documents have been produced multiple times to assist John Muije, Esq. with preparation for the conclusion of the Evidentiary Hearing. (Valued-Client Discount: 1.00 hour)	4.70	\$270.00	-\$270.00	\$999.00
★	07/23/2019	RRW	Analyze preparation for conclusion of Evidentiary Hearing. Instruct Jody Hagins, Esq., regarding review of produced financials and documenting instances in which Mitchell has made repetitive or duplicative disclosure of documents to create the appearance he'd actually produced new information. Emails with Rusty Nype regarding hearing preparation.	0.50	\$300.00	-	\$150.00
★	07/24/2019	JWH	Continue drafting Summary highlighting First American Title Company documents containing key financial information for review by John Muije, Esq., and Mark Rich. Continue reviewing Master Index of documents produced by the Mitchell Defendants.	3.20	\$270.00	-	\$864.00
★	07/24/2019	RRW	Instruct Jody Hagins, Esq., regarding conducting a review of prior Mitchell disclosures for purposes of the upcoming conclusion to the Evidentiary Hearing.	0.20	\$300.00	-	\$60.00
★	07/25/2019	JWH	Finish drafting Summary of key First American Title Company documents for review by John Muije, Esq. and Mark Rich. Continue reviewing Master Index of documents produced by the Mitchell Defendants to determine documents that have been produced multiple times to assist John Muije, Esq., with preparation for the conclusion of the Evidentiary Hearing.	2.10	\$270.00	-	\$567.00
★	07/26/2019	JWH	Continue reviewing Master Index of documents produced by the Mitchell Defendants to assist John Muije, Esq., with preparation for the conclusion of the Evidentiary Hearing.	2.50	\$270.00	-	\$675.00
★	07/29/2019	JWH	Continue drafting Summary of documents produced multiple times by the Mitchell Defendants to assist John Muije, Esq. with preparation for hearing regarding sanctions against the Mitchell Defendants.	1.20	\$270.00	-	\$324.00
★	07/29/2019	RRW	Emails with Rusty Nype regarding setting of the conclusion of the Evidentiary Hearing.	0.20	\$300.00	-	\$60.00
Line Item Discount Subtotal							-\$1,431.00
Services Subtotal							\$10,756.50

Expenses

	Notes	Total
Parking: Evidentiary Hearing 6/27/19		\$20.00
Online Litigation Services		\$26.23
Document Reproduction/Electronic Document Filing (June and July 2019)		\$164.25
Expenses Subtotal		\$210.48

Time Keeper	Position	Hours	Rate	Discount	Total
Jody Hagins	Attorney	40.0	\$270.00	-\$1,431.00	\$9,369.00
Joshua Reisman	Attorney	0.1	\$375.00	-	\$37.50
Robert Warns	Attorney	4.5	\$300.00	-	\$1,350.00
Subtotal					\$10,966.98

Total \$10,966.98

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
04190051	06/06/2019	\$17,562.82	\$12,171.30	\$5,391.52
05190038	06/26/2019	\$16,611.20	\$0.00	\$16,611.20
06190001	06/26/2019	\$18,136.50	\$0.00	\$18,136.50
07190001	07/08/2019	\$16,948.50	\$0.00	\$16,948.50

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
07190001-B	08/21/2019	\$10,966.98	\$0.00	\$10,966.98
Outstanding Balance				\$68,054.70
Total Amount Outstanding				\$68,054.70

Payment Due Upon Receipt

PAYMENT OPTIONS:

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

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

Fees for 7/8/19-7/31/19 plus June and July 2019 costs.

EXHIBIT “35”
PART 2



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

INVOICE

Invoice # 08190002
Date: 08/29/2019

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

18-0078 : NYPE

Judgment Enforcement

Date	Attorney	Notes	Hours	Rate	Total
08/01/2019	JWH	Begin reviewing Master Index of documents produced by the Mitchell Defendants to determine documents produced multiple times and drafting index of same for use during evidentiary hearing on Motion for Sanctions against the Mitchell Defendants. Draft email to John Muije, Esq. and Mark Rich regarding indices of reviewed First American Title Company documents.	0.80	\$270.00	\$216.00
08/01/2019	RRW	Prepare for and attend call with Litigation Team regarding preparation and strategy for concluding the evidentiary hearing on the Motion for Sanctions. Analyze work needed for the same.	1.40	\$300.00	\$420.00
08/02/2019	JWH	Review emails from John Muije, Esq. regarding the upcoming evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Begin drafting summary of fees and costs incurred by Russell Nype for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Begin drafting a summary of why various discovery tasks were needed as a result of the Mitchell Defendants' conduct for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Begin drafting index comparing documents produced by the Mitchell Defendants in their First and Second Supplemental Responses to Requests for Production of Documents to documents previously produced by Sam Spitz, for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants.	2.40	\$270.00	\$648.00
08/02/2019	RRW	Instruct Jody Hagins, Esq., regarding research and analysis for conclusion of the Evidentiary Hearing and "Hearing Brief".	1.10	\$300.00	\$330.00
08/05/2019	JWH	Continue drafting summary of fees and costs incurred by Russell Nype for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Continue drafting index comparing documents produced by the Mitchell Defendants in their First and Second Supplemental Responses to Requests for Production of Documents to documents previously produced by Sam Spitz, for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants.	1.30	\$270.00	\$351.00
08/05/2019	RRW	Continue analyzing preparation for conclusion of Evidentiary Hearing. Teleconference with expert, Mark Rich, regarding the same.	1.70	\$300.00	\$510.00
08/06/2019	JWH	Continue drafting index comparing documents produced by the Mitchell Defendants in their First and Second Supplemental Responses to Requests for Production of Documents to documents previously produced by Sam Spitz, for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants.	2.20	\$270.00	\$594.00
08/06/2019	RRW	Instruct Jody Hagins, Esq., regarding document review and analysis for upcoming conclusion of the Evidentiary Hearing. Review emails regarding hearing setting.	0.50	\$300.00	\$150.00
08/07/2019	JWH	Continue drafting index comparing documents produced by the Mitchell Defendants in their First and Second Supplemental Responses to Requests for Production of Documents to documents previously produced by Sam Spitz, for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Update calculation of the judgment interest rate to include the period from July 1, 2019 through September 2, 2019.	0.50	\$270.00	\$135.00
08/07/2019	RRW	Prepare for and attend Teleconference with Litigation Team regarding setting of the conclusion of the evidentiary hearing and strategy for the same.	1.20	\$300.00	\$360.00

★	08/14/2019	JWH	Continue drafting summary of fees and costs incurred by Russell Nype for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Continue drafting index comparing documents produced by the Mitchell Defendants in their First and Second Supplemental Responses to Requests for Production of Documents to documents previously produced by Sam Spitz, for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants.	1.90	\$270.00	\$513.00
★	08/15/2019	JWH	Prepare for and attend teleconference with John Muije, Esq., Mark Rich, and Russell Nype regarding upcoming evidentiary hearing for the Motion for Sanctions against the Mitchell Defendants.	0.70	\$270.00	\$189.00
★	08/16/2019	JWH	Finish drafting index comparing documents produced by the Mitchell Defendants in their First and Second Supplemental Responses to Requests for Production of Documents to documents previously produced by Sam Spitz for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Draft email to Mark Rich regarding same. Telephone call to John Muije, Esq. regarding the summary of fees and costs incurred by Russell Nype due to the Mitchell Defendants' conduct (left voicemail).	2.30	\$270.00	\$621.00
★	08/19/2019	JWH	Continue drafting summary of fees and costs incurred by Russell Nype for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants.	2.70	\$270.00	\$729.00
★	08/20/2019	JWH	Continue drafting summary of fees and costs incurred by Russell Nype for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants.	2.60	\$270.00	\$702.00
★	08/20/2019	RRW	Review emails regarding LVP's bankruptcy filing, its use of the same to attempt to cancel the imaging of Sam Spitz's hard drive and impact upon the case. Instruct Jody Hagins, Esq., regarding incorporating the bankruptcy filing into the "Hearing Brief" for the conclusion of the evidentiary hearing.	0.40	\$300.00	\$120.00
★	08/21/2019	JWH	Continue drafting summary of fees and costs incurred by Russell Nype for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Prepare for and attend teleconference with John Muije, Esq., Mark Rich, and Russell Nype regarding evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Teleconference with John Muije, Esq. regarding fees and costs and updating the judgment calculation.	2.10	\$270.00	\$567.00
★	08/21/2019	RRW	Review emails regarding bankruptcy filing and impact on imaging of Sam Spitz's hard drives. Analyze the same for use with evidentiary hearing.	0.20	\$300.00	\$60.00
★	08/22/2019	JWH	Review and revise email to Mark Rich and John Muije, Esq. regarding the index comparing documents produced by the Mitchell Defendants in their First and Second Supplemental Responses to Requests for Production of Documents to documents previously produced by Sam Spitz, for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Review email from Mark Rich regarding same.	0.30	\$270.00	\$81.00
★	08/22/2019	RRW	Teleconference with Mark Rich regarding work and strategy for the conclusion of the Evidentiary Hearing. Analyze the same.	0.80	\$300.00	\$240.00
★	08/23/2019	JWH	Continue drafting summary of fees and costs incurred by Russell Nype for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Review and revise index comparing documents produced by the Mitchell Defendants in their First and Second Supplemental Responses to Requests for Production of Documents to documents previously produced by Sam Spitz, for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants to include additional documents previously produced by Sam Spitz.	3.90	\$270.00	\$1,053.00
★	08/26/2019	JWH	Continue drafting summary of fees and costs incurred by Russell Nype for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Finish reviewing and revising index comparing documents produced by the Mitchell Defendants in their First and Second Supplemental Responses to Requests for Production of Documents to documents previously produced by Sam Spitz, for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants to include additional documents previously produced by Sam Spitz. Draft email to Mark Rich regarding same. Begin drafting email to John Muije, Esq., Mark Rich, and the New Jersey team regarding fees and costs. Continue drafting a summary of why various discovery tasks were needed as a result of the Mitchell Defendants' conduct for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants.	2.70	\$270.00	\$729.00
★	08/26/2019	RRW	Review and revise draft arguments and materials for use at Evidentiary hearing and instruct Jody Hagins, Esq., regarding ongoing drafting and analysis of the same.	0.30	\$300.00	\$90.00
★	08/27/2019	JWH	Continue drafting summary of fees and costs incurred by Russell Nype for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Finish drafting email to John Muije, Esq., Mark Rich, and the New Jersey team regarding fees and costs. Continue drafting a summary of why various discovery tasks were needed as a result of the Mitchell Defendants' conduct for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Review and respond to emails from John Muije, Esq. regarding the summary of fees and costs and the summary of why various discovery tasks were needed as a result of the Mitchell Defendants' conduct.	3.10	\$270.00	\$837.00

08/27/2019	RRW	Teleconference with Litigation Team regarding Evidentiary Hearing. Review and revise arguments and work materials for use at the hearing. Analyze the same. Review, research and analyze caselaw regarding bankruptcy impact upon the case.	3.80	\$300.00	\$1,140.00
08/28/2019	JWH	Begin updating summary of fees and costs incurred by Russell Nye for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants to include fees and costs incurred between July and August 2019. Finish drafting a summary of why various discovery tasks were needed as a result of the Mitchell Defendants' conduct for the evidentiary hearing on the Motion for Sanctions against the Mitchell Defendants. Draft emails to John Muije, Esq. and Mark Rich regarding updated fees and costs for July and August 2019. Review and respond to emails from Mark Rich regarding same.	1.10	\$270.00	\$297.00

Time Keeper	Position	Hours	Rate	Total
Jody Hagins	Attorney	30.6	\$270.00	\$8,262.00
Robert Warns	Attorney	11.4	\$300.00	\$3,420.00
			Subtotal	\$11,682.00
			Total	\$11,682.00

Detailed Statement of Account

Other Invoices

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
04190051	06/06/2019	\$17,562.82	\$12,171.30	\$5,391.52
05190038	06/26/2019	\$16,611.20	\$0.00	\$16,611.20
06190001	06/26/2019	\$18,136.50	\$0.00	\$18,136.50
07190001	07/08/2019	\$16,948.50	\$0.00	\$16,948.50
07190001-B	08/21/2019	\$10,966.98	\$0.00	\$10,966.98

Current Invoice

Invoice Number	Due On	Amount Due	Payments Received	Balance Due
08190002	08/29/2019	\$11,682.00	\$0.00	\$11,682.00
			Outstanding Balance	\$79,736.70
			Total Amount Outstanding	\$79,736.70

Payment Due Upon Receipt

PAYMENT OPTIONS:

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

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

EXHIBIT "36"

LITeGATION™

Invoice

CONSULTING. eDISCOVERY. TRIAL TECHNOLOGY.

50 Park Place

Suite 1042

Newark, New Jersey 07102

973-732-6380 info@literation.com

Bill To

Robert J. DeGroot, Esq.

Robert J. DeGroot Law

60 Park Place

Suite 105

Newark, New Jersey 07102

LITeGATION ID
18K406J

Date	Invoice No.	Matter ID	Terms
08/27/19	10735	Rev Plus v. LV Land	Due on receipt

Item	Description	Quantity	Rate	Amount
2090 - Data Mapping	Data Mapping, Identification, Consulting, search, reporting, emails, conferences, review and pleadings (6/12/19 - 8/26/19)	9.208	295.00	2,716.36
3051 - Hosting	Doc Rev Platform - First 10GB (8/2019) - eDiscovery	1	750.00	750.00
			Subtotal	\$3,466.36
			Sales Tax (6.625%)	\$0.00
			Total	\$3,466.36

RA 000284

Date	Task	Attorney	Time
August 25, 2019	Email Snellings	Nekritin	.2
August 23, 2019	Email Snellings	Nekritin	.2
August 20, 2019	Submit letter to Court	Nekritin	.5
August 20, 2019	Conference with Court	Nekritin	.2
August 20, 2019	Memorializing Court Ruling Letter	Nekritin	.2
August 19, 2019	Research of stay Effect	Nekritin	1.0
August 19, 2019	Email with Snellings	Nekritin	.3
August 17, 2019	Emails with Snellings and Nype team about Rescheduled examination	Nekritin	.3
August 14, 2019	Emails with Snellings and team	Nekritin	.3
August 9, 2019	Emails with Snellings And team about examination	Nekritin	.3
August 7, 2019	Review Order for Examination	Nekritin	.5
August 2, 2019	Proposed order submitted to Court	Nekritin	1.5
August 2, 2019	Party conference with court	DeGroot	.5
July 31, 2019	Discussion with Snellings	Nekritin	.3

July 10, 2019	Letter to Snellings Revised Order	Nekritin	1.0
July 9, 2019	Draft Letter to Snellings Revised Order	Nekritin	3.0
July 1, 2019	Draft Letter to Spitz	Nekritin	1.0
June 20, 2019	Review redline changes Snellings	Nekritin	1.0

Nekritin (11.8 hours at \$350 hourly) \$4,130

DeGroot (.5 hours at \$500 hourly) \$250

Total: \$4,380

EXHIBIT "37"

SUPPLEMENTAL
SUMMARY AS TO JOHN W. MUIJE JUNE THROUGH AUGUST
FEES AND COSTS ATTRIBUTABLE
TO MITCHELL DEFENDANTS FAILURE TO
TIMELY AND PROPERLY COMPLY WITH
DISCOVERY OBLIGATIONS

	<u>COSTS</u>	<u>FEES</u>
PRIOR TOTALS AS SUMMARIZED IN EXHIBIT 26	\$9,147.70	\$123,800.75
<hr/>		
JUNE 2019 (EXHIBIT 27 AS AMENDED)	\$2,965.65	\$19,845.00
JULY 2019 (EXHIBIT 28 AS AMENDED AND UPDATED)	\$322.70	\$13,882.50
AUGUST 2019 THROUGH 08-29-2019 (NEW PROPOSED EXHIBIT)	\$1,495.85	\$7357.50
08-30-2019 THROUGH 09-05-2013 (ESTIMATED)	<u>\$1,000.00</u>	<u>\$9,000.00</u>
SUB-TOTAL OF NEW FEES AND COSTS	\$,5,784.20	\$50,085.00
<hr/>		
GRAND TOTALS:	\$14,931.90	\$173.885.75

John W. Muije & Associates

1840 E. Sahara Ave #106

Las Vegas, NV 89104

702-386-7002

J3792H

Nype v. Las Vegas Land H

Invoice submitted to:

Russell Nype

PO Box 805

Kennebunkport, MAINE 04046

July 09, 2019

Invoice # 48443

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
<u>LV Land Partners H</u>			
6/3/2019	JWM Review weekend emails regarding late document production, etc	0.20 \$450.00/hr	\$90.00 *
	JWM Dictate letter to Rusty regarding details of retaining Lenny	0.30 \$450.00/hr	\$135.00
	JWM Telephone call with Lenny regarding background and nuances of LVLP and discuss handling of anticipated BK filing	0.40 \$450.00/hr	\$180.00
	JWM Review texts from Rusty and do detailed responses	0.10 \$450.00/hr	\$45.00
	JWM Review further text from Rusty regarding defense expert and respond - n/c	0.10	NO CHARGE
6/4/2019	JWM Telephone call with Elliot Blut -- must have rog answers 6/14/19 on 305 rogs and confirm in writing	0.20 \$450.00/hr	\$90.00 *
6/5/2019	JWM Review texts from Rusty and respond to same	0.20 \$450.00/hr	\$90.00 *
	JWM Telephone call with Rob Warns - brainstorm misc pending issues	0.30 \$450.00/hr	\$135.00 *
	JWM Dictate letter to team regarding FATCO documents, Casino Coolidge documents, and status of compliance with Discovery Orders	0.50 \$450.00/hr	\$225.00 *

RA 000289

		<u>Hrs/Rate</u>	<u>Amount</u>	
6/5/2019	JWM	Review email from Forest City regarding balance of FATCO escrow documents and forward to team with comments	0.40 \$450.00/hr	\$180.00 *
	JWM	Review multiple emails to and from Oleg and with Rusty regarding NJ	0.50 \$450.00/hr	\$225.00 *
	JWM	Review Casino Coolidge "6th" Supplement from Blut	0.80 \$450.00/hr	\$360.00 *
6/6/2019	JWM	Telephone call with Jody regarding Forest City documents and logistics on sanction motion	0.10 \$450.00/hr	\$45.00 *
	JWM	Dictate letter to James Edwards denying request for extension and to NJ Team regarding need for conference call prior to hearing and coordinate staff regarding same	0.50 \$450.00/hr	\$225.00 *
	JWM	Review email from Edwards regarding extension, forward to team and review Rusty response	0.20 \$450.00/hr	\$90.00 *
	JWM	Telephone call -- weekly conference call and discuss Mitchell failure to comply; defendants' Experts and NJ	0.80 \$450.00/hr	\$360.00 *
6/7/2019	JWM	Review query from Oleg on timing, and do quick response	0.10 \$450.00/hr	\$45.00 *
	JWM	Dictate email regarding need for hearing details	0.10 \$450.00/hr	\$45.00 *
	JWM	Review responses regarding Spitz and send conference call invite	0.40 \$450.00/hr	\$180.00 *
	JWM	Review notes and relevant pleadings and final preparation for 3:00 EDT hearing	0.40 \$450.00/hr	\$180.00 *
	JWM	Dictate letter to Rusty and team regarding Spitz hearing and result	0.40 \$450.00/hr	\$180.00 *
	JWM	Review yesterday's notes as sent and forward my note to Mitchell's counsel to Rob for use in drafting sanction motion	0.30 \$450.00/hr	\$135.00 *
	JWM	Court appearance at Spitz Motion via phone	0.80 \$450.00/hr	\$360.00 *
	JWM	Review notes and do Pre-Hearing Conference call with Oleg, Cortopassi and Mark Rich	0.60 \$450.00/hr	\$270.00 *
6/11/2019	JWM	Review email from Jody regarding draft Motion to Compel and download draft	0.30 \$450.00/hr	\$135.00 *

		<u>Hrs/Rate</u>	<u>Amount</u>	
6/12/2019	JWM	Review note from Mark and respond regarding rescheduling progress call	0.20 \$450.00/hr	\$90.00 *
	JWM	Review multiple responses and reply; re-schedule strategy call	0.25 \$450.00/hr	\$112.50 *
	JWM	Review and carefully compile 7th (NJ depositions) and 8th (title co, st response) 16.1 Disclosures	2.40 \$450.00/hr	\$1,080.00
	JWM	Review carefully Motion for Sanctions as drafted by Jody, add multiple inserts and 2/2/17 Order and transmit back with comments and reasoning	1.80 \$450.00/hr	\$810.00 *
	JWM	Review note from Rusty regarding wedding and send felicitations - n/c	0.20	NO CHARGE
	JWM	Telephone call with Jody regarding tweaks, edits and logistics - n/c	0.10	NO CHARGE
6/13/2019	JWM	Telephone call for Attorney Blut - left message - detailed; request for brief additional time due to Mitchell lack of compliance and issue on Boschee documents	0.10 \$450.00/hr	\$45.00 *
	JWM	Telephone call Rob regarding strategy and posturing monetary sanctions	0.25 \$450.00/hr	\$112.50 *
	JWM	Review and finalize 7th 16.1 disclosures - NJ transcript	0.30 \$450.00/hr	\$135.00
	JWM	Review and revise Declaration in Support of Sanctions, compile package and oversee service and submission to court	0.50 \$450.00/hr	\$225.00 *
	JWM	Review and revise carefully, 2nd draft Motion for Sanctions including request for significant Monetary Sanctions	1.25 \$450.00/hr	\$562.50 *
6/14/2019	JWM	Review email from Blut, left message again, and further email regarding discovery developments and deadlines	0.40 \$450.00/hr	\$180.00 *
6/16/2019	JWM	Review text from Rusty and respond with quick update	0.20 \$450.00/hr	\$90.00 *
	JWM	Review note from DeGroot and convey congrats to Rusty - n/c	0.20	NO CHARGE
6/19/2019	JWM	Dictate letter to Blut regarding missing tax and P&L data on Casino Coolidge	0.30 \$450.00/hr	\$135.00 *

		<u>Hrs/Rate</u>	<u>Amount</u>	
6/19/2019	JWM Review email from DeGroot and peruse Snellings input, call to DeGroot, forward to Mark and respond to notes; set up proposed conference call	0.40 \$450.00/hr	\$180.00	*
	JWM Review carefully -- 305 and recent Casino Coolidge disc responses and documents	1.50 \$450.00/hr	\$675.00	
	JWM Draft responses to Liberman and 305 Interrogatories, transmit set to Rusty for signature	2.25 \$450.00/hr	\$1,012.50	
	JWM Review and identify specific important Casino Coolidge documents and dictate letter to Rusty and Mark regarding same	0.40 \$450.00/hr	\$180.00	
	JWM Research Liberman activities and NV presence for Jurisdiction purposes	0.50 \$450.00/hr	\$225.00	
	JWM Telephone call - weekly strategy call and email notice regarding next call on 6/25	0.80 \$450.00/hr	\$360.00	* 1/2
	JWM Review note from Rusty regarding Lenny and quick response - n/c	0.10	NO CHARGE	
6/20/2019	JWM Review email from Rusty and finalize verified Interrogatory responses	0.20 \$450.00/hr	\$90.00	
	JWM Review and revise memo to Rusty regarding Casino Coolidge documents	0.20 \$450.00/hr	\$90.00	
	JWM Review emails from Nype and Oleg and respond	0.30 \$450.00/hr	\$135.00	*
	JWM Telephone call with Jody regarding ongoing review of detailed FATCO file and logistics	0.30 \$450.00/hr	\$135.00	*
	JWM Conference call regarding NJ Order	0.70 \$450.00/hr	\$315.00	*
6/21/2019	JWM Review texts from Rusty and respond - n/c	0.10	NO CHARGE	
6/24/2019	JWM Conference with Boschee regarding problem with recent Supplements and privilege log	0.25 \$450.00/hr	\$112.50	
	JWM Review multiple weekend texts to and from Rusty, including Monday morning note	0.30 \$450.00/hr	\$135.00	*
	JWM Review file and brief preparation for hearing	0.40 \$450.00/hr	\$180.00	*
	JWM Review and revise and further tweak Live Work and Wink One PMK Notices	0.40 \$450.00/hr	\$180.00	

		<u>Hrs/Rate</u>	<u>Amount</u>	
6/24/2019	JWM Telephone call with Rusty regarding outcome of Sanctions Motion and need to prepare for evidentiary hearing	0.40 \$450.00/hr	\$180.00	*
	JWM Court appearance on Motion for Sanctions - evidentiary hearing ordered	1.00 \$450.00/hr	\$450.00	*
	JWM Review and revise detailed report regarding Sanction hearing for team	0.25 \$450.00/hr	\$112.50	*
	JWM Review documents from Mark again and respond with my input and strategy as to logistics for hearing	0.25 \$450.00/hr	\$112.50	*
	JWM Review further note from Oleg as to search terms	0.20 \$450.00/hr	\$90.00	*
	JWM Dictate multiple emails to team, ordered transcript of hearing and do detailed report to client and team regarding upcoming hearing	1.00 \$450.00/hr	\$450.00	*
	JWM Review Court's Order on Depos, calendar, etc and draft 4 renewed depo Notices and letter to defense counsel regarding scheduling	0.80 \$450.00/hr	\$360.00	
	JWM Review 2 more emails from Rusty regarding Mark, hearing logistics and respond regarding need for Mark Rich billings	0.20 \$450.00/hr	\$90.00	*
	JWM Review note back from Mark regarding beach trip - n/c	0.20	NO CHARGE	
	JWM Review email from Mark and do quick response - n/c	0.10	NO CHARGE	
6/25/2019	JWM Review text from Rusty regarding BK and Mitchell woes and respond	0.10 \$450.00/hr	\$45.00	
	JWM Telephone call with Rob Warns - follow-up and discuss logistics	0.20 \$450.00/hr	\$90.00	*
	JWM Review email from Lenny regarding checking on BK filings and respond to same	0.25 \$450.00/hr	\$112.50	
	JWM Review multiple additional emails from Oleg regarding "search terms" and respond regarding same and logistics	0.30 \$450.00/hr	\$135.00	*
	JWM Review email from Jody regarding original Judgment case; RFP and Motion to Compel tweak same and respond	0.30 \$450.00/hr	\$135.00	*
	JWM Review note from Lenny Schwartzer and respond in detail	0.40 \$450.00/hr	\$180.00	

		<u>Hrs/Rate</u>	<u>Amount</u>	
6/25/2019	JWM	Review emails and texts with Rusty, Rob and Mark Rich including copy of hearing transcript	0.50 \$450.00/hr	\$225.00 *
	JWM	Conference with Oleg and Mark Rich, emails and prepare detailed response regarding search terms and need for billing data for Evidentiary Hearing	1.00 \$450.00/hr	\$450.00 *
	JWM	Telephone call - strategy call with Mark Rich and Rob Warns	1.10 \$450.00/hr	\$495.00 *
	JWM	Review email from DeGroot and review Cortopassi invoice	0.20 \$450.00/hr	\$90.00 *
	JWM	Review and pull and organize Mark Rich invoices and send email regarding need for more details as to billings prior to Oct, 2018	0.30 \$450.00/hr	\$135.00 *
	JWM	Review and revise and finalize 8th Supp 16.1 Response regarding title company Subpoena's	0.50 \$450.00/hr	\$225.00
	JWM	Review recent 16.1 Supplements from Liberman and Mitchell, update index and organize documents in preparation for hearing	0.80 \$450.00/hr	\$360.00 * 1/2
	JWM	Review note from Cortopassi regarding itemized invoice details - n/c	0.10	NO CHARGE
6/26/2019	JWM	Review email back from Mark regarding fees and costs; respond and provide copy of last minute Mitchell BS Supplement	0.40 \$450.00/hr	\$180.00 *
	JWM	Review emails from DeGroot with billings, download same and respond	0.30 \$450.00/hr	\$135.00 *
	JWM	Review and revise draft Rich Declaration and circulate same	0.30 \$450.00/hr	\$135.00 *
	JWM	Telephone call with Oleg and review search parameters, discuss NJ invoices and producing same, update on Mitchell and discuss approach to Spitz	0.50 \$450.00/hr	\$225.00 *
	JWM	Dinner with Rusty and Rob to discuss and brainstorm upcoming hearing	2.25 \$450.00/hr	\$1,012.50 *
	JWM	Review emails from Rusty and Rob' and respond to Rob's inquiry	0.20 \$450.00/hr	\$90.00 *
	JWM	Review emails from Warns regarding Mark Rich itemized billings and follow-up with note to ask his assistant	0.20 \$450.00/hr	\$90.00 *

		<u>Hrs/Rate</u>	<u>Amount</u>	
6/26/2019	JWM Review Rich and Muije billings carefully and notate and summarize expenses caused by Discovery Defalcations	3.75 \$450.00/hr	\$1,687.50	*
	JWM Continuous time block to prepare for hearing including numerous emails, texts, and document review and preparation	7.00 \$450.00/hr	\$3,150.00	*
	JWM Social - dinner with Rusty and Rob - n/c	1.50	NO CHARGE	
6/27/2019	JWM Court appearance - final preparation for court hearing on Sanctions, attend hearing and brief discussion afterwards	5.25 \$450.00/hr	\$2,362.50	*
6/28/2019	JWM Telephone call with Elliot Blut regarding scheduling and logistics	0.10 \$450.00/hr	\$45.00	
	JWM Review note and letter from Blut and place call - left message - detailed	0.20 \$450.00/hr	\$90.00	
	JWM Telephone call with court clerk and get copy of official Exhibit List	0.20 \$450.00/hr	\$90.00	*
	JWM Review emails between Oleg and Mark; review draft letter to Snelling and comment, email to NJ team with comments and confidential Orders; query Mark regarding July 9, 2019	0.50 \$450.00/hr	\$225.00	*
SUBTOTAL:		[59.65	\$25,627.50]	
For professional services rendered		59.65	\$25,627.50	

Additional Charges :

	<u>Qty</u>	<u>Price</u>	
<u>LV Land Partners H</u>			
6/12/2019	FedEx 4/12/19 - Subpoena's to Reno Carson	1	\$53.61 *
6/24/2019	Mileage and parking	1	\$12.00 *
	Transcript Cost - Clark County Treasurer - 6/24/19 hearing	1	\$70.05 *
6/26/2019	Office Depot - binders, 3 hole punch for Evidentiary hearing, etc	1	\$142.99 *
6/27/2019	Mileage and parking	1	\$26.00 *

	<u>Qty</u>	<u>Price</u>	
6/28/2019 Copying cost (boxes of notebooks and proposed exhibits)	1	\$2,540.70	*
6/30/2019 Runner service - Legal Wings - deliver letter to District court on 6/25/2019	1	\$70.00	*
Mileage - Johnny 6/13 to court; 6/24 to court and 6/26 Office Max/binders	1	\$9.15	*
Electronic Filing	1	\$10.50	*
Veritext - Depo of Scott Taylor -- bill reduced (5/15/19)	1	\$80.00	
Postage - priority on 6/6/19 and 6/21/19 Flat	1	\$30.65	*
SUBTOTAL:		[3045.65]	
		<u>Amount</u>	
Total additional charges		\$3,045.65	
Total amount of this bill		\$28,673.15	
Previous balance		\$8,696.33	
Accounts receivable transactions			
6/10/2019 Payment - thank you. Check No. 1521		(\$8,696.33)	
6/24/2019 Void check - Bank of NY		(\$40.00)	
6/28/2019 Payment received from Blut on behalf of Liberman/sanction		(\$500.00)	
6/30/2019 Courtesy Credit - June 2019		(\$1,000.00)	
6/30/2019 Payment - thank you (rec'd 7/3)		(\$15,000.00)	
Total payments and adjustments		(\$25,236.33)	
Balance due		<u><u>\$12,133.15</u></u>	

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

June Discovery Related:

Fees equals	\$ 25,627.50
minus	\$ <u>5,782.50</u>
equals	\$ 19,845.00
Costs	\$ 3,045.65

John W. Muije & Associates

1840 E. Sahara Ave #106

Las Vegas, NV 89104

702-386-7002

J3792H

Nype v. Las Vegas Land H

Invoice submitted to:

Russell Nype

PO Box 805

Kennebunkport, MAINE 04046

July 22, 2019

Invoice # 48503

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
<u>LV Land Partners H</u>		
7/1/2019 JWM Draft letter confirming July 9 hearing	0.20 \$450.00/hr	\$90.00 *
JWM Review revised Spitz letter from Oleg	0.20 \$450.00/hr	\$90.00 *
JWM Telephone call for court's clerk and call law clerk confirming July 9th	0.20 \$450.00/hr	\$90.00 *
JWM Draft Supplement and declaration regarding unpaid sanctions	0.30 \$450.00/hr	\$135.00 *
JWM Dictate note to Mark regarding preparation for 7/9 hearing	0.30 \$450.00/hr	\$135.00 *
JWM Review further note from Oleg and respond with details as to what we would like from Snelling and Spitz	0.30 \$450.00/hr	\$135.00 *
JWM Review query from Rusty regarding posture for dealing with Spitz and respond in detail	0.30 \$450.00/hr	\$135.00 *
JWM Email dialogue with Oleg regarding revised Spitz letter and dealing with Snelling	0.30 \$450.00/hr	\$135.00 *
JWM Review note back from Rich and calendar meeting - n/c	0.20	NO CHARGE

RA 000297

		<u>Hrs/Rate</u>	<u>Amount</u>	
7/2/2019	JWM	Review and revise letter to court and coordinate court clerk and staff regarding vacating status check on 7/8	0.25 \$450.00/hr	\$112.50 *
	JWM	Review ca 8 emails from Oleg and Rusty and respond in detail to Rusty and separately to Oleg	0.70 \$450.00/hr	\$315.00 *
	JWM	Review note from Edwards and forward update to Rusty and to Mark	0.20 \$450.00/hr	\$90.00 *
	JWM	Review note from court's law clerk regarding status check, coordinate and follow-up needed activity	0.25 \$450.00/hr	\$112.50 *
7/3/2019	JWM	Review emails from Rusty	0.20 \$450.00/hr	\$90.00 *
	JWM	Review email from the court, call law clerk and respond regarding Monday status check	0.30 \$450.00/hr	\$135.00 *
	JWM	Review and download Mitchell latest last Second BS documents and arrange duplication of same	0.30 \$450.00/hr	\$135.00 *
	JWM	Conference with Mark Rich to review and discuss evidence, and to prepare for his evidentiary hearing testimony	1.40 \$450.00/hr	\$630.00 *
	JWM	Review notes, compile extra exhibits, and put together master box for 7/9 hearing	0.80 \$450.00/hr	\$360.00 *
	JWM	Review notes from 6/27/2019 Sanction Hearing, review, proof read and compile evidence log carefully, organize same and additional evidence and notes to be admitted, and prepare for meeting with Mark	1.75 \$450.00/hr	\$787.50 *
7/5/2019	JWM	Research _____ _____	0.25 \$450.00/hr	\$112.50
	JWM	Review Mitchell's recent filings and compile detailed memo and note to team regarding upcoming hearing and handling Mitchell document summaries	1.25 \$450.00/hr	\$562.50 *
	JWM	Review Rusty's 4th of July _____ emails	0.20 \$450.00/hr	\$90.00
	JWM	Review and revise carefully complex June billing - n/c	0.40	NO CHARGE
7/6/2019	JWM	Review texts from Rusty	0.25 \$450.00/hr	\$112.50 *
7/7/2019	JWM	Review Rich report carefully	0.50 \$450.00/hr	\$225.00 *

		<u>Hrs/Rate</u>	<u>Amount</u>	
7/7/2019	JWM Review Jody's indices, several emails and respond to same	0.60 \$450.00/hr	\$270.00	*
	JWM Review Spitz piecemeal production and work towards mandatory comprehensive disclosure	0.60 \$450.00/hr	\$270.00	
	JWM Review email from Jody, download Mitchell 2nd Supplement Index as drafted by Jody, and respond	0.30 \$450.00/hr	\$135.00	*
	JWM Review 2nd draft June pre-bill carefully, summarize sanction component and do detailed email to team	0.40 \$450.00/hr	\$180.00	*
7/8/2019	JWM Court appearance - via phone regarding status check proceeding	0.20 \$450.00/hr	\$90.00	*
	JWM Review Hayes letter with entities	0.20 \$450.00/hr	\$90.00	*
	JWM Notes of 7/3 meeting with Mark	0.20 \$450.00/hr	\$90.00	*
	JWM Review Jody's index of known vs. unknown financial documents	0.30 \$450.00/hr	\$135.00	*
	JWM Review Original Motion for Sanctions with exhibits	0.30 \$450.00/hr	\$135.00	*
	JWM Review JWM Jersey disclosure and exhibits	0.40 \$450.00/hr	\$180.00	*
	JWM Dictate letter to team --- report as to outcome of hearing	0.40 \$450.00/hr	\$180.00	*
	JWM Review carefully -- notes and court dockets and prepare for today's status check	0.75 \$450.00/hr	\$337.50	*
	JWM Dictate note to Mark regarding documents in Mitchell's recent 2nd Supplement	0.20 \$450.00/hr	\$90.00	*
	JWM Review hearing preparation notes and outline and Jody's index of Mitchell's 1st and 2nd Supplement	0.60 \$450.00/hr	\$270.00	*
	JWM Review Jody's memo carefully and begin careful review of documents contained in Mitchell July 3--2nd Supplemental Response	0.80 \$450.00/hr	\$360.00	*
	JWM Review and revise Oleg's latest draft letter to Snelling carefully, and do detailed note to NJ team regarding same	1.00 \$450.00/hr	\$450.00	*

		<u>Hrs/Rate</u>	<u>Amount</u>	
7/8/2019	JWM	Return to office, compile, organize and copy numerous additional exhibits for 7/9 hearing and preparations for same	2.25 \$450.00/hr	\$1,012.50 *
	JWM	Review carefully notes, dockets, exhibits, etc and preparation for hearing (with exception of Rich invoices and Muije invoice) during drive back to Vegas	2.25 \$450.00/hr	\$1,012.50 *
	JWM	Review prompt from Oleg and do quick response - n/c	0.10	NO CHARGE
	JWM	Review text from Rob and respond - n/c	0.10	NO CHARGE
7/9/2019	JWM	Review note from BNY Mellon and Lionel regarding dialogue regarding Scotus and First Republic	0.20 \$450.00/hr	\$90.00 *
	JWM	Review further emails from Rusty and respond	0.30 \$450.00/hr	\$135.00 *
	JWM	Conference call on Court regarding scheduling Mitchell testimony	0.30 \$450.00/hr	\$135.00 *
	JWM	Dictate letter to client and team -- detailed report regarding hearing outcome	0.60 \$450.00/hr	\$270.00 *
	JWM	Review texts from Rob Warns, to and from regarding standing by and then outcome of hearing	0.30 \$450.00/hr	\$135.00 *
	JWM	Court appearance on continued Evidentiary Hearing; Mark Rich testimony and finish case in chief	3.50 \$450.00/hr	\$1,575.00 *
7/10/2019	JWM	Review multiple emails regarding next strategy call and schedule same	0.30 \$450.00/hr	\$135.00 *
7/11/2019	JWM	Review text from Rusty regarding Mitchell 3rd party depos and reply - n/c	0.10	NO CHARGE
7/16/2019	JWM	Review additional emails from Rusty and respond	0.20 \$450.00/hr	\$90.00 *
	JWM	Review 2 more detailed emails regarding proceeding on Sanctions and fraud and applicable law and considerations as to same and detailed response with statutes and case law	0.80 \$450.00/hr	\$360.00 *
	JWM	Review and revise pre-bill for first half of July - n/c	0.30	NO CHARGE
7/17/2019	JWM	Review multiple overnight emails form Rusty prior to conference call	0.30 \$450.00/hr	\$135.00 * 1/2
	JWM	Conference call with team, including Bill & Lionel	1.20 \$450.00/hr	\$540.00 * 1/2

		<u>Hrs/Rate</u>	<u>Amount</u>	
7/18/2019	JWM Review more emails from Rusty	0.20 \$450.00/hr	\$90.00	*
7/19/2019	JWM Dictate letter to Boschee and Edwards and compile 5 x Exhibits (#26 - 29) that they are entitled to receive	0.30 \$450.00/hr	\$135.00	*
	JWM Review carefully admitted evidence, hearing notes from both hearings, brainstorming notes, etc so as to have complete handle on data for brief and to prepare for with anticipated Mitchell BS	1.50 \$450.00/hr	\$675.00	*
7/22/2019	JWM Review and revise letter with evidence to opposition and finalize	0.20 \$450.00/hr	\$90.00	*
	JWM Review and revise July pre-bill and do letter to Rusty regarding same - n/c	0.40	NO CHARGE	
SUBTOTAL:		[34.25	\$14,692.50]	
For professional services rendered		34.25	\$14,692.50	
Additional Charges :				
		<u>Qty</u>	<u>Price</u>	
<u>LV Land Partners H</u>				
7/9/2019	Mileage and parking	1	\$26.00	*
7/22/2019	Copying cost	1	\$296.70	*
SUBTOTAL:			[322.70]	
Total additional charges			\$322.70	
Total amount of this bill			\$15,015.20	
Previous balance			\$12,133.15	
Accounts receivable transactions				
7/15/2019	Courtesy Credit - July billing		(\$1,000.00)	
7/22/2019	Payment - thank you. Check No. 1472		(\$14,000.00)	
Total payments and adjustments			(\$15,000.00)	

	<u>Amount</u>
Balance due	<u>\$12,148.35</u>

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

July Discovery Related:

Fees equals	\$ 14,692.50
minus	<u>\$ 810.00</u>
Equals	\$ 13,882.50
Costs	\$ 322.70

John W. Muije & Associates

1840 E. Sahara Ave #106

Las Vegas, NV 89104

702-386-7002

J3792H

Nype v. Las Vegas Land H

Invoice submitted to:

Russell Nype

PO Box 805

Kennebunkport, MAINE 04046

August 30, 2019

Invoice # 48558

Professional Services

		<u>Hrs/Rate</u>	<u>Amount</u>
<u>LV Land Partners H</u>			
8/1/2019 JWM	Review email from Jody regarding FATCO documents, download, organize, review briefly and respond	0.40 \$450.00/hr	\$180.00 ✖
JWM	Telephone call with DeGroot regarding developments and status	0.20 \$450.00/hr	\$90.00 ✖
JWM	Review paperwork submitted by NJ Counsel	0.40 \$450.00/hr	\$180.00 ✖
JWM	Draft Sworn Declaration for submission to NJ Court	0.50 \$450.00/hr	\$225.00 ✖
JWM	Review overnight emails and notes; brief preparation and major strategy call with team	1.40 \$450.00/hr	\$630.00 ✖
JWM	Review texts from Rusty and respond (7/29)	0.10 \$450.00/hr	\$45.00
JWM	Review emails and texts from Nype and Candee; check with staff and follow-up same (7/31)	0.30 \$450.00/hr	\$135.00 ✖
JWM	Review texts from Rusty, respond, coordinate staff and have them check with court and notify client (7/20)	0.40 \$450.00/hr	\$180.00 ✖
JWM	Dictate letter to team -- conference call details for 8/7	0.10 \$450.00/hr	\$45.00 ✖

RA 000303

		<u>Hrs/Rate</u>	<u>Amount</u>	
8/1/2019	JWM Review and work on Evidentiary Hearing Exhibits; outline and summarize, and two emails to Warns with relevant exhibits and data for compilation and trial brief	2.00 \$450.00/hr	\$900.00	*
	JWM Research Wally-Fischer on Rusty regarding appellate issues as to judgment striking answer and appealability thereof	0.30 \$450.00/hr	\$135.00	
	JWM Review emails from Rusty twice and follow-up and do quick response - n/c (7/31)	0.10	NO CHARGE	
8/2/2019	JWM Review overnight emails from Rusty	0.20 \$450.00/hr	\$90.00	
	JWM Review latest NJ submission as filed, including my certif, proposed Order and cover letter to Judge	0.20 \$450.00/hr	\$90.00	*
	JWM Review and revise draft NJ Declaration twice, verify exhibits, carefully; review and collate recent NJ filing for submission to NV Court, emails from DeGroot and Rusty and respond, and coordinate and verify filing of NJ Supplement with NJ Court	2.00 \$450.00/hr	\$900.00	*
8/5/2019	JWM Review note from court, calendar dates and forward to team	0.30 \$450.00/hr	\$135.00	*
	JWM Review Wally-Fischer from Rusty and respond on	0.60 \$450.00/hr	\$270.00	
	JWM Review morning text from Rusty and do quick response - n/c	0.10	NO CHARGE	
8/6/2019	JWM Review note from Rusty regarding tracking number for check and do quick response - n/c	0.10	NO CHARGE	
8/7/2019	JWM Review note from James with dates and do quick response	0.10 \$450.00/hr	\$45.00	*
	JWM Review further emails from Oleg and James and respond to same	0.30 \$450.00/hr	\$135.00	*
	JWM Review email from Oleg regarding new NJ Court order and respond with detailed suggestion	0.40 \$450.00/hr	\$180.00	*
	JWM Telephone call with team - strategy conference after brief review of note	1.10 \$450.00/hr	\$495.00	*
8/8/2019	JWM Review emails and proposed letter to Spitz and respond	0.10 \$450.00/hr	\$45.00	*

		<u>Hrs/Rate</u>	<u>Amount</u>
8/9/2019	JWM Review emails from Rusty and do quick response	0.30 \$450.00/hr	<u>\$135.00</u>
	JWM Review note back from Rusty regarding morning dialogue - n/c	0.10	NO CHARGE
8/12/2019	JWM Review multiple emails from NJ team and respond regarding Spitz inspection	0.30 \$450.00/hr	\$135.00 *
8/15/2019	JWM Review multiple emails and texts from Rusty, as well as emails and responses between Rich and James	0.50 \$450.00/hr	\$225.00 *
	JWM Telephone call - weekly conference call regarding status and strategy with team	0.60 \$450.00/hr	<u>\$270.00</u> * 1/2
8/16/2019	JWM Review multiple emails and text from Rusty and do quick response	0.25 \$450.00/hr	<u>\$112.50</u>
8/19/2019	JWM Review numerous emails and do quick late night response regarding LVLP BK	0.50 \$450.00/hr	<u>\$225.00</u>
8/20/2019	JWM Review numerous additional emails regarding LVLP - BK	0.30 \$450.00/hr	<u>\$135.00</u>
	JWM Telephone call with Lenny and do follow-up email to team regarding LVLP	0.40 \$450.00/hr	<u>\$180.00</u>
8/21/2019	JWM Telephone call with Jody regarding cost accounting, logistics etc, and send multiple outgoing emails and documents	0.75 \$450.00/hr	\$337.50 *
	JWM Telephone call with Jody regarding fee, cost and judgment summaries for Trial Brief	0.30 \$450.00/hr	\$135.00 *
	JWM Review multiple post-call emails with Jody and team	0.40 \$450.00/hr	\$180.00 *
	JWM Telephone call - weekly brainstorming session with team regarding upcoming discovery hearing and issues	0.60 \$450.00/hr	\$270.00 *
8/22/2019	JWM Review emails from Jody and Mark regarding Mitchell's 2nd Supplement being mere duplicate of Spitz documents produced	0.30 \$450.00/hr	\$135.00 *
8/26/2019	JWM Telephone call with Lenny regarding LVLP corporate status and options for dealing with same	0.10 \$450.00/hr	<u>\$45.00</u>
	JWM Review DeGroot's updated billings for sanction hearing	0.20 \$450.00/hr	\$90.00 *

		<u>Hrs/Rate</u>	<u>Amount</u>	
8/27/2019	JWM Review emails from NJ and Reisman firm multiple and follow-up on work for trial brief	0.60 \$450.00/hr	\$270.00	*
8/28/2019	JWM Review and respond to additional email from Rusty	0.20 \$450.00/hr	\$90.00	*
	JWM Review multiple notes from Lenny and wrap-up for today	0.30 \$450.00/hr	\$135.00	
	JWM Telephone call - weekly call with team -- brainstorm BK, upcoming hearing, trial brief and new 305 Motion	0.80 \$450.00/hr	\$360.00	* 1/2
	JWM Review emails from Rich and Warns with updates and information for Trial Brief	0.60 \$450.00/hr	\$270.00	*
	JWM Review email from Rusty regarding next week's call and respond	0.10 \$450.00/hr	\$45.00	
8/29/2019	JWM Dictate letter to team with copies of BK and 305 pleadings recently received	0.30 \$450.00/hr	\$135.00	
	JWM Review further emails from Schwartzer, client and NJ Team	0.50 \$450.00/hr	\$225.00	*
SUBTOTAL:		[21.00	\$9,270.00]	
For professional services rendered		21.00	\$9,270.00	

Additional Charges :

	<u>Qty</u>	<u>Price</u>	
<u>LV Land Partners H</u>			
8/1/2019 Electronic Filing (July)	1	\$3.50	*
Runner service - Legal Wings - reimburse 5 discs to Mr. Rich's office (7/5 - Mitchell's supplement())	1	\$18.00	*
8/19/2019 Clark County Treasury - recording fee 7/9/19 hearing	1	\$120.00	*
Transcript Cost - JD Court Reporting - 7/9/19 hearing	1	\$506.01	*
8/22/2019 Clark County Treasurer - 6/27/19 recording fee	1	\$120.00	*
Transcript Cost - JD Reporting - 6/27/19 hearing	1	\$721.44	*

	<u>Qty</u>	<u>Price</u>
8/28/2019 Mileage - 2 court runs on 8/19 and 8/23	1	\$6.90 *
SUBTOTAL:		[1495.85]
		<u>Amount</u>
Total additional charges		\$1,495.85
Total amount of this bill		\$10,765.85
Previous balance		\$12,148.35
Accounts receivable transactions		
8/9/2019 Payment - thank you. Check No. 1473		(\$14,000.00)
8/29/2019 Courtesy Credit - August billing		(\$1,000.00)
Total payments and adjustments		(\$15,000.00)
Balance due		<u>\$7,914.20</u>

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

August Discovery Related:

Fees equals	\$	9,270.00
minus	\$	<u>1,912.50</u>
equals	\$	7,357.50
Costs	\$	1,495.85

EXHIBIT '38'

DECLARATION OF MARK D. RICH, CPA, CFF

MARK D. RICH, CPA, CFF under penalty of perjury, hereby declares, deposes and says:

1. Unless stated otherwise, I have personal knowledge of the matters set forth in this Declaration and, if called as a witness, could and would competently testify thereto.

2. I am a founding partner of Rich, Wightman & Company, CPAs, LLC, and am engaged as a testifying and consulting expert in this litigation.

3. I make this Declaration in support of *Plaintiffs' Motion for Sanctions Pursuant to NRCP 37(b) and Motion to Extend Time for Plaintiffs' Deadline for Supplemental Expert Report on Order Shortening Time* ("Sanctions Motion"), and the continued evidentiary hearing the Court has set regarding the same for September 3, 2019 (the "Evidentiary Hearing").

4. My office has performed careful and detailed reviews and analyses of the documents disclosed in *The Mitchell Defendants' Supplemental Responses to Plaintiff's First Set of Requests for Production of Documents* served on June 26, 2019 (the "1st RFP Supplement"), and *The Mitchell Defendants' Second Supplemental Responses to Plaintiff's First Set of Requests for Production of Documents* served on July 3, 2019 (the "2nd RFP Supplement").

5. As I testified at the hearing before this Court on July 9, 2019, it is my opinion that the documents disclosed in the 1st RFP Supplement are substantially the same as documents previously produced by the defendants in this action or their CPA, Sam Spitz. Indeed, many of the documents in the 1st RFP Supplement had been previously produced multiple times and the disclosed documents did not provide much, if any, new information. With respect to the 1st RFP Supplement, it is my expert opinion that over 83% of the documents contained therein had been previously produced by the defendants in this action or their CPA, Sam Spitz.

6. With respect to the 2nd RFP Supplement, it is my expert opinion that 97% of the documents contained therein had been previously produced by the defendants in this action or

1 their CPA, Sam Spitz. Moreover, 91.5% of the documents had previously been produced by
2 defendants' CPA, Sam Spitz. In that the 2nd RFP Supplement has a 97% overlap with prior
3 productions, it should go without saying that almost no new information was obtained.

4
5 7. It is my opinion that the 1st RFP Supplement and the 2nd RFP Supplement are
6 consistent with, and reflective of, a *modus operandi* on the Mitchell Defendants' part of making
7 last-minute disclosures of documents that, on their face, *appear* to (i) provide valuable, new
8 information and (ii) reflect the Mitchell Defendants' compliance with their discovery obligations,
9 but, instead, just regurgitate previously disclosed documentation and hide their ongoing discovery
10 failures.

11
12 8. It is my opinion that there are still substantial amounts of documentation that the
13 Mitchell Defendants have failed to produce that are crucial and necessary to Plaintiffs' case. Such
14 documents include, but are not limited to:

- 15 a. Electronic worksheets and word documents given to CPA by LVLP
- 16 b. LiveWork, LLC monthly management reports
- 17 c. Engagement letters
- 18 d. Accounting documents destroyed by CPA/Mitchell for 2007 to 2012
- 19 e. Details of Notes receivables to related parties and how they were repaid
- 20 f. Depreciation schedules (2007-2012)
- 21 g. Cost Basis schedules for all land parcels (2007-2012)
- 22 h. Calculation of loan amortizations for all loans
- 23 i. Support for loan balances, including related party loans
- 24 j. Support for all journal entries
- 25 k. Capital Account detail for each LLC member **by entity**
- 26 l. Details of all sales and documents provided to CPA to calculate gain/loss
- 27 m. Wink One, LLC. PQ, and HQ, detailed accountings
- 28 n. Supporting work papers that LVLP gave CPA to prepare tax returns
- o. Appraisals to support sales of real estate
- p. Forest City accountings

9. The opinion expressed herein are made to a reasonable degree of accounting
certainty.

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

1 10. I declare under penalty of perjury under the laws of the State of Nevada that the
2 foregoing is true and correct.

3 Executed this 30th day of August, 2019.

4
5 

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7 _____
8 MARK D. RICH, CPA, CFF
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EXHIBIT “39”

Robert J. DeGroot
NJ Bar #282351972
NY Bar #2921633

LAW OFFICES OF
ROBERT J. DeGROOT

Attorneys At Law

Oleg Nekritin
NJ Bar #018752009
NY Bar #4855789

August 29, 2019

Hon. Owen C. McCarthy, J.S.C.
Superior Court of New Jersey
Monmouth County Law Division
71 Monument Park
3rd Floor
Freehold, N.J. 07728

Re: Las Vegas Land Partners, LLC. vs. Russell Nype, et.
als.
Docket No.: MON-L-003827-18

Dear Judge McCarthy:

This firm represents the Judgment Creditors/Defendants
("Nype") in the above captioned matter.

On August 7, 2019, this Court entered an Order for Mr. Spitz to permit Mr. Nype's expert to conduct a forensic examination of his business server within 10 days of the Order's entry. Subsequently, Mr. Spitz made three appointments for the expert to conduct the examination, only to cancel the first two appointments on account of a "family emergency" and the third appointment on account of one of the judgment debtors declaring for bankruptcy.

On August 20, 2019, the Court held a conference and amended its August 7, 2019 Order to permit the forensic examination but to have the expert hold the results of the examination until further order of a competent court.

Since the August 20, 2019 Order, I have on numerous occasions contacted Mr. Spitz's counsel to arrange a date for the forensic examination. I have not been provided with any dates. Based on Mr. Spitz's history of delay and obfuscation, I do not think that he will make the server available.


Pursuant to the previously entered court orders, I am writing to the Court requesting permission to file a motion to

60 Park Place, Suite 105 • Newark, New Jersey 07102
973.643.1930 Phone • 973.643.7231 Fax • RobertJDeGroot@aol.com Email

RA 000313

enforce litigant's rights and with sanctions. Unfortunately, I have no choice but to request permission to file this motion as Mr. Spitz refuses once again to comply with the Court's orders.

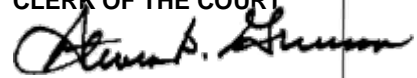
Respectfully submitted,



Oleg Nekritin, Esq.

Encl.

cc: Rob Snellings, Esq.



1 **ORD**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5
6 RUSSELL L. NYPE; REVENUE PLUS, LLC,
7 DOES I through X; DOE CORPORATIONS I
8 through X; and DOE PARTNERSHIPS I through X;

9 Plaintiffs,

10 vs.

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

22 Defendants.

Case No.: A-16-740689-B

Dept. No.: XI

23 **ORDER RE: DISCOVERY SANCTIONS**

24 This matter came on for Plaintiff's Motion for Sanctions Pursuant to NRCP 37(b) on
25 June 24, 2019 and evidentiary hearing on June 27, 2019, July 9, 2019 and September 3,
26 2019 as to Plaintiff's Motion for Sanctions Pursuant to NRCP 37(b), Plaintiffs RUSSELL L.
27 NYPE and REVENUE PLUS, LLC (collectively "Nype"), appearing by and through their
28 attorneys of record, JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE &
ASSOCIATES and LENARD SCHWARTZER, ESQ.; Defendants, DAVID J. MITCHELL,

1 individually, MEYER PROPERTY, LTD., ZOE PROPERTY, LLC, LEAH PROPERTY, LLC,
2 WINK ONE, LLC, LIVE WORK, LLC, LIVE WORK MANAGER, LLC, AQUARIUS
3 OWNER, LLC, LVLP HOLDINGS, LLC, MITCHELL HOLDINGS, LLC, LIVE WORKS TIC
4 SUCCESSOR, LLC (collectively the "Mitchell Defendants"), appearing by and through their
5 attorneys of record, H. STAN JOHNSON, ESQ. and JAMES EDWARDS, ESQ., of the firm of
6 COHEN, JOHNSON PARKER EDWARDS; LAS VEGAS LAND PARTNERS, LLC, also
7 appearing by and through its attorney of record, STAN JOHNSON, ESQ., of the firm of COHEN
8 JOHNSON PARKER EDWARDS, Defendant 305 LAS VEGAS, LLC appearing at some, but
9 not all, of the days by and through its counsel of record BRIAN BOSCHKE, ESQ. of the law
10 firm of HOLLEY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON; and Defendants
11 BARNET LIBERMAN, CASINO COOLIDGE, LLC not appearing for these motions, the Court
12 having admitted into evidence numerous exhibits relevant to the proceedings, and having heard
13 the testimony of witnesses and the written and oral arguments of counsel, and good cause
14 appearing, the Court makes the following findings of fact and conclusions of law:

15 **PROCEDURAL POSTURE**

16 1. The Mitchell Defendants' prior counsel filed a motion to withdraw as counsel
17 on or about March 13, 2019.

18 2. The minute order granting this motion was entered on April 12, 2019. The
19 written order granting the motion to withdraw was filed on April 22, 2019, and the notice of
20 entry of the order was filed on April 23, 2019.

21 3. NYPE filed and served a Motion to Compel Defendants' Production of
22 Documents, On Order Shortening Time on or about April 22, 2019, which contained an Order
23 Shortening Time to be heard on May 6, 2019.
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1 4. At the time of that hearing, all Defendants had newly retained counsel, their
2 prior counsel withdrew during the month of April. The hearing on the Motion to Compel was
3 continued to May 15, 2019 to permit new defense counsel time to prepare.

4 5. No opposition to Plaintiff's Motion to Compel was filed, nor did any of the
5 Mitchell Defendants personally appear at the hearing thereon.

6 6. At the continued hearing of May 15, 2019, the Court considered the merits of
7 Nype's Motion to Compel and made rulings as memorialized in the Order Compelling
8 Discovery, and Awarding Sanctions, entered on May 30, 2019, (the "Order Granting Motion to
9 Compel") and briefly extended discovery for limited purposes.

10 7. Nype filed a Motion for Discovery Sanctions Pursuant to NRCP 37(b), also on
11 Order Shortening Time, which was heard on June 24, 2019. At that hearing, the Court expressly
12 found, on the record, that sanctions were appropriate, and that as a result, the only unresolved
13 question would be the degree of sanctions and an evaluation of the factors under *Young v.*
14 *Ribiero*, 106 Nev. 88 (1990).

15 8. The Court scheduled an evidentiary hearing to commence on June 27, 2019.

16 9. The Mitchell Defendants filed no opposition to Nype's Motion for Sanctions,
17 nor did any Mitchell Defendant personally appear before the Court at either of the first two days
18 of the evidentiary hearing, i.e., June 27, 2019 and July 9, 2019. The Court continued the hearing
19 one additional time to permit Mitchell the opportunity to appear.

20 10. Las Vegas Land Partners, LLC filed a Notice of Bankruptcy on or about August
21 28, 2019, notifying the Court of an August 19, 2019 bankruptcy filing and submitted an
22

Emergency Motion to Stay on the morning of September 3, 2019.¹

11. At the time of the continued evidentiary hearing of September 3, 2019, Nype noted on the record, that in light of the bankruptcy filing, they were no longer proceeding as of the final hearing date, as regards the discovery issues against Las Vegas Land Partners LLC.

12. This Court recognized at the September 3, 2019 hearing that Nype's fraudulent conveyance claims may belong to the bankruptcy estate and would await communication, if any, from the Trustee.

FINDINGS OF FACT

13. Nype made ongoing efforts to obtain discovery compliance from the Mitchell Defendants, including specifically, soliciting comprehensive and complete supplements to their July 10, 2018 responses to the May 20, 2018 requests for production of documents, as directed to each of the defendants.

14. There has been a clear and knowing violation of the Order Granting the Motion to Compel.

15. The Mitchell Defendants did not comply with the terms of the Order Granting Motion to Compel requiring the production of additional documentation.

16. The Mitchell Defendants were copied on hundreds of emails produced by 305 Las Vegas, LLC during the Spring of 2019. The Mitchell Defendants failed to produce copies of those emails with no reasonable excuse or explanation.

¹ The Court heard Defendants' unfiled emergency motion to stay, marked as Court's Exhibit No. 3, prior to proceeding with the final day of evidentiary hearing. As the Plaintiff elected not to proceed against Las Vegas Land Partners, LLC, the court granted the motion as to Las Vegas Land Partners, LLC and denied the motion as to the other defendants. These Rule 37 proceedings relate to non-compliance and disobedience by non-debtor parties, and implicate the police power and official state action which are not affected by the bankruptcy law and the automatic stay.

1 17. The declaration of David J. Mitchell filed on June 27, 2019, fails to provide the
2 information and certification required by the Order Granting Motion to Compel.

3 18. The Mitchell Defendants have failed to pay their portion of the sanctions
4 awarded in the Order Granting Motion to Compel, i.e. \$1,000.

5 19. The Mitchell Defendants are still significantly out of compliance with their
6 discovery obligations and have not made good faith attempts to search their existing records for
7 documents which were subject to the Order Granting Motion to Compel.
8

9 20. Plaintiffs have documented fees and costs incurred which are fairly attributable
10 to and caused by the Mitchell Defendants discovery abuses including: (a) the Motion to
11 Compel; (b) the Motion for Sanctions; (c) the three (3) evidentiary hearing sessions held by this
12 Court; (d) preparation and service of subpoenas to third-parties seeking documents that the
13 Mitchell Defendants should have produced long ago; (e) review and analysis of said documents,
14 which were produced without indices, to determine whether they contained meaningful new
15 information actually needed from the Mitchell Defendants; (f) review and analysis of last-
16 minute disclosures made by Mitchell Defendants; and (g) preparation of NRCP 30(b)(6)
17 deposition notices and associated cover letters to certain of the Mitchell Defendants in an
18 attempt to force them to produce knowledgeable witnesses who could provide information that
19 was still missing from the Mitchell Defendants' documentary disclosures.
20
21

22 21. The Mitchell Defendants' failures have prejudiced Nype in the completion of
23 expert reports.
24

25 22. The total aggregate sanctions requested by Nype, in the balance, are not
26 excessive given the discovery abuses.
27
28

23. The professional fees and expenses incurred by Nype in conducting this additional discovery necessitated by the discovery abuses is an appropriate sanction.

24. The amount of professional fees related to the discovery abuse is \$160,086.46 as contained in the Accounting filed on September 10, 2019. The precise calculation as to the total amount of discovery related fees and costs related by Nype during the relevant time (April 22, 2019 the date of the filing of the Motion to Compel through the conclusion of the evidentiary proceedings on or about September 3, 2019) involves additional mathematical calculation, to exclude those in the litigation in New Jersey with Mr. Spitz.

CONCLUSIONS OF LAW:

Based on the factors set forth in *Young vs. Ribeiro*, 106 Nev. 88 (1990) as follows:

(a) The degree of willfulness of the Mitchell Defendants was significant.

(b) Any lesser sanction than that awarded by the Court herein would not be warranted.

(c) Nype incurred additional fees, costs and professional fees as a direct consequence of the Mitchell Defendants' discovery failures.

(d) The ongoing discovery abuses by the Mitchell Defendants have not resulted in relevant evidence being irreparably lost.

(e) In evaluating the feasibility and fairness of alternative sanctions, the Court concludes that prior measures, including the modest sanction awarded on May 15, 2019, have not sufficed to either protect Nype or encourage the Mitchell Defendants to comply with their discovery obligations.

1 (f) Nevada's policy favoring adjudication on the merits weighs in favor of
2 affording the Mitchell Defendants an opportunity to comply with their overdue discovery
3 obligations.
4

5 (g) The proposed sanctions do not operate to penalize the parties for the
6 misconduct of their attorneys, as the misconduct on the part of the Mitchell Defendants, as
7 parties, not the actions of their attorneys, have violated this Courts order.
8

9 (h) It important to deter the parties to this litigation, as well as future
10 litigation, from engaging in similar abuses, and finds that the sanctions awarded herein are a fair
11 and appropriate amount to deter future misconduct.

12 (i) The Court further concludes that given the time already passed, and the
13 ongoing prejudice to Plaintiffs, that an additional two weeks from Notice of the date of entry of
14 this Order is an appropriate, fair and reasonable amount of time for the Mitchell Defendants to
15 fully comply with their obligations
16

17 (j) The Mitchell Defendants will comply with their discovery obligations
18 under the rules, as well as their duty to supplement, and must also fully and completely comply
19 with the Court's (Order of May 30, 2019).

20 (k) The Court further concludes that the calculation of fees and expenses
21 from April 22, 2019 through the present filed on September 10, 2109, is reasonable and
22 accounts for the reductions identified by the Court during the hearing and that the total of
23 \$160,086.46 is an appropriate monetary amount to award as a sanction for the willful
24 misconduct of the Mitchell Defendants.
25

26 (l) The Court further concludes, however, having considered all of the
27 factors, that the striking of the Mitchell Defendants' answer and the entering of a default as
28

1 against said defendants is too harsh at this time, but may be considered in the future if
2 appropriate.

3 **ORDER**

4 Based upon the above and foregoing,

5
6 **IT IS FURTHER ORDERED** that Plaintiff RUSSELL NYPE AND REVENUE
7 PLUS, LLC, be and they are hereby awarded discovery sanctions against Defendants DAVID J.
8 MITCHELL, INDIVIDUALLY, MEYER PROPERTY, LTD., ZOE PROPERTY, LLC, LEAH
9 PROPERTY LLC, WINK ONE, LLC, LIVE WORK, LLC, LIVE WORK MANAGER, LLC,
10 AQUARIUS OWNER, LLC, LVLP HOLDINGS, LLC, MITCHELL HOLDINGS, LLC, AND
11 LIVE WORKS TIC SUCCESSOR, LLC, in the amount of \$160,086.46, said amount to bear
12 interest at the Nevada statutory rate from September 20, 2019 until paid;
13

14 **IT IS FURTHER ORDERED** that the Mitchell Defendants will fully, and completely
15 comply with all of their obligations hereunder as well as the requirements set forth in the Order
16 of May 30, 2019, including their duty to fully and completely supplement their discovery
17 responses and to meticulously certify, in detail their compliance efforts and results as set forth in
18 said Order within two weeks of entry of this order;
19

20 **IT IS FURTHER ORDERED** that Plaintiff shall submit a separate judgment for the
21 amount of the sanction.
22

23 DATED this 18th day of September, 2019.
24

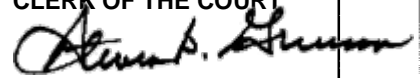
25
26 
27 Elizabeth Gonzalez, District Court Judge
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Certificate of Service

I hereby certify that on the date filed, this Order was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.


Dan Kutinac



1 **NEOJ**
2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No: 2419
5 1840 E. Sahara Ave #106
6 Las Vegas, NV 89104
7 Phone No: (702) 386-7002
8 Fax No: (702) 386-9135
9 Email: [Jmuije@muijelawoffice.com](mailto:jmuije@muijelawoffice.com)
10 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

11 RUSSELL L. NYPE AND REVENUS PLUS,
12 LLC

Plaintiffs,

vs.

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

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: June 24, 2019

Time of Hearing: 9:00 a.m.

NOTICE OF ENTRY OF ORDER RE: DISCOVERY SANCTIONS

24 TO: ELLIOT S. BLUT, ESQ., of **BLUT LAW GROUP, P.C.**, Attorneys for Defendants
25 BARNET LIBERMAN AND CASINO COOLIDGE, LLC

26 TO: Brian B. Boschec, Esq., of the Law Offices of **HOLLEY DRIGGS WALCH FINE**
27 **PUZEY STEIN & THOMPSON**, Attorneys for Defendant 305 Las Vegas, LLC

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

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

1 PLEASE TAKE NOTICE that the ORDER RE: DISCOVERY SANCTIONS, was
2 entered with the Court on the 20th day of September, 2019, a copy of which is attached hereto as
3 Exhibit "1".

4
5 DATED this 23rd day of September, 2019.

6 JOHN W. MUIJE & ASSOCIATES

7
8 By: 

9 JOHN W. MUIJE, ESQ.

10 Nevada Bar No: 2419

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12 Las Vegas, NV 89104

13 Phone No: (702) 386-7002

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16 *Attorneys for Plaintiffs*

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CERTIFICATE OF MAILING

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the
23rd day of September, 2019, I caused the foregoing document, **NOTICE OF ENTRY OF
ORDER RE: DISCOVERY SANCTIONS**, to be served as follows:

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

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305 Las Vegas, LLC

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Las Vegas, Nevada 89119
Attorneys for Mitchell Defendants

John M. Vitman
An Employee of John W. Muije & Associates

EXHIBIT “1”



1 **ORD**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5
6 RUSSELL L. NYPE; REVENUE PLUS, LLC,
7 DOES I through X; DOE CORPORATIONS I
8 through X; and DOE PARTNERSHIPS I through X;

9 Plaintiffs,

10 vs.

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

22 Defendants.

Case No.: A-16-740689-B

Dept. No.: XI

23 **ORDER RE: DISCOVERY SANCTIONS**

24 This matter came on for Plaintiff's Motion for Sanctions Pursuant to NRCP 37(b) on
25 June 24, 2019 and evidentiary hearing on June 27, 2019, July 9, 2019 and September 3,
26 2019 as to Plaintiff's Motion for Sanctions Pursuant to NRCP 37(b), Plaintiffs RUSSELL L.
27 NYPE and REVENUE PLUS, LLC (collectively "Nype"), appearing by and through their
28 attorneys of record, JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE &
ASSOCIATES and LENARD SCHWARTZER, ESQ.; Defendants, DAVID J. MITCHELL,

1 individually, MEYER PROPERTY, LTD., ZOE PROPERTY, LLC, LEAH PROPERTY, LLC,
2 WINK ONE, LLC, LIVE WORK, LLC, LIVE WORK MANAGER, LLC, AQUARIUS
3 OWNER, LLC, LVLP HOLDINGS, LLC, MITCHELL HOLDINGS, LLC, LIVE WORKS TIC
4 SUCCESSOR, LLC (collectively the "Mitchell Defendants"), appearing by and through their
5 attorneys of record, H. STAN JOHNSON, ESQ. and JAMES EDWARDS, ESQ., of the firm of
6 COHEN, JOHNSON PARKER EDWARDS; LAS VEGAS LAND PARTNERS, LLC, also
7 appearing by and through its attorney of record, STAN JOHNSON, ESQ., of the firm of COHEN
8 JOHNSON PARKER EDWARDS, Defendant 305 LAS VEGAS, LLC appearing at some, but
9 not all, of the days by and through its counsel of record BRIAN BOSCHKE, ESQ. of the law
10 firm of HOLLEY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON; and Defendants
11 BARNET LIBERMAN, CASINO COOLIDGE, LLC not appearing for these motions, the Court
12 having admitted into evidence numerous exhibits relevant to the proceedings, and having heard
13 the testimony of witnesses and the written and oral arguments of counsel, and good cause
14 appearing, the Court makes the following findings of fact and conclusions of law:

18 PROCEDURAL POSTURE

19 1. The Mitchell Defendants' prior counsel filed a motion to withdraw as counsel
20 on or about March 13, 2019.

21 2. The minute order granting this motion was entered on April 12, 2019. The
22 written order granting the motion to withdraw was filed on April 22, 2019, and the notice of
23 entry of the order was filed on April 23, 2019.

24 3. NYPE filed and served a Motion to Compel Defendants' Production of
25 Documents, On Order Shortening Time on or about April 22, 2019, which contained an Order
26 Shortening Time to be heard on May 6, 2019.
27
28

1 4. At the time of that hearing, all Defendants had newly retained counsel, their
2 prior counsel withdrew during the month of April. The hearing on the Motion to Compel was
3 continued to May 15, 2019 to permit new defense counsel time to prepare.
4

5 5. No opposition to Plaintiff's Motion to Compel was filed, nor did any of the
6 Mitchell Defendants personally appear at the hearing thereon.

7 6. At the continued hearing of May 15, 2019, the Court considered the merits of
8 Nype's Motion to Compel and made rulings as memorialized in the Order Compelling
9 Discovery, and Awarding Sanctions, entered on May 30, 2019, (the "Order Granting Motion to
10 Compel") and briefly extended discovery for limited purposes.
11

12 7. Nype filed a Motion for Discovery Sanctions Pursuant to NRCP 37(b), also on
13 Order Shortening Time, which was heard on June 24, 2019. At that hearing, the Court expressly
14 found, on the record, that sanctions were appropriate, and that as a result, the only unresolved
15 question would be the degree of sanctions and an evaluation of the factors under *Young v.*
16 *Ribiero*, 106 Nev. 88 (1990).
17

18 8. The Court scheduled an evidentiary hearing to commence on June 27, 2019.

19 9. The Mitchell Defendants filed no opposition to Nype's Motion for Sanctions,
20 nor did any Mitchell Defendant personally appear before the Court at either of the first two days
21 of the evidentiary hearing, i.e., June 27, 2019 and July 9, 2019. The Court continued the hearing
22 one additional time to permit Mitchell the opportunity to appear.
23

24 10. Las Vegas Land Partners, LLC filed a Notice of Bankruptcy on or about August
25 28, 2019, notifying the Court of an August 19, 2019 bankruptcy filing and submitted an
26
27
28

1 Emergency Motion to Stay on the morning of September 3, 2019.¹

2 11. At the time of the continued evidentiary hearing of September 3, 2019, Nype
3 noted on the record, that in light of the bankruptcy filing, they were no longer proceeding as of
4 the final hearing date, as regards the discovery issues against Las Vegas Land Partners LLC.
5

6 12. This Court recognized at the September 3, 2019 hearing that Nype's fraudulent
7 conveyance claims may belong to the bankruptcy estate and would await communication, if
8 any, from the Trustee.
9

10 **FINDINGS OF FACT**

11 13. Nype made ongoing efforts to obtain discovery compliance from the Mitchell
12 Defendants, including specifically, soliciting comprehensive and complete supplements to their
13 July 10, 2018 responses to the May 20, 2018 requests for production of documents, as directed
14 to each of the defendants.

15 14. There has been a clear and knowing violation of the Order Granting the Motion
16 to Compel.
17

18 15. The Mitchell Defendants did not comply with the terms of the Order Granting
19 Motion to Compel requiring the production of additional documentation.

20 16. The Mitchell Defendants were copied on hundreds of emails produced by 305
21 Las Vegas, LLC during the Spring of 2019. The Mitchell Defendants failed to produce copies of
22 those emails with no reasonable excuse or explanation.
23
24

25
26 ¹ The Court heard Defendants' unfiled emergency motion to stay, marked as Court's Exhibit No. 3, prior to
27 proceeding with the final day of evidentiary hearing. As the Plaintiff elected not to proceed against Las Vegas
28 Land Partners, LLC, the court granted the motion as to Las Vegas Land Partners, LLC and denied the motion as to
the other defendants. These Rule 37 proceedings relate to non-compliance and disobedience by non-debtor parties,
and implicate the police power and official state action which are not affected by the bankruptcy law and the
automatic stay.

1 17. The declaration of David J. Mitchell filed on June 27, 2019, fails to provide the
2 information and certification required by the Order Granting Motion to Compel.

3 18. The Mitchell Defendants have failed to pay their portion of the sanctions
4 awarded in the Order Granting Motion to Compel, i.e. \$1,000.

5 19. The Mitchell Defendants are still significantly out of compliance with their
6 discovery obligations and have not made good faith attempts to search their existing records for
7 documents which were subject to the Order Granting Motion to Compel.

8 20. Plaintiffs have documented fees and costs incurred which are fairly attributable
9 to and caused by the Mitchell Defendants discovery abuses including: (a) the Motion to
10 Compel; (b) the Motion for Sanctions; (c) the three (3) evidentiary hearing sessions held by this
11 Court; (d) preparation and service of subpoenas to third-parties seeking documents that the
12 Mitchell Defendants should have produced long ago; (e) review and analysis of said documents,
13 which were produced without indices, to determine whether they contained meaningful new
14 information actually needed from the Mitchell Defendants; (f) review and analysis of last-
15 minute disclosures made by Mitchell Defendants; and (g) preparation of NRCP 30(b)(6)
16 deposition notices and associated cover letters to certain of the Mitchell Defendants in an
17 attempt to force them to produce knowledgeable witnesses who could provide information that
18 was still missing from the Mitchell Defendants' documentary disclosures.

19 21. The Mitchell Defendants' failures have prejudiced Nype in the completion of
20 expert reports.

21 22. The total aggregate sanctions requested by Nype, in the balance, are not
22 excessive given the discovery abuses.

1 23. The professional fees and expenses incurred by Nype in conducting this
2 additional discovery necessitated by the discovery abuses is an appropriate sanction.

3
4 24. The amount of professional fees related to the discovery abuse is \$160,086.46 as
5 contained in the Accounting filed on September 10, 2019. The precise calculation as to the total
6 amount of discovery related fees and costs related by Nype during the relevant time (April 22,
7 2019 the date of the filing of the Motion to Compel through the conclusion of the evidentiary
8 proceedings on or about September 3, 2019) involves additional mathematical calculation, to
9 exclude those in the litigation in New Jersey with Mr. Spitz.
10

11 CONCLUSIONS OF LAW:

12 Based on the factors set forth in *Young vs. Ribeiro*, 106 Nev. 88 (1990) as follows:

13 (a) The degree of willfulness of the Mitchell Defendants was significant.

14 (b) Any lesser sanction than that awarded by the Court herein would not be
15 warranted.
16

17 (c) Nype incurred additional fees, costs and professional fees as a direct
18 consequence of the Mitchell Defendants' discovery failures.

19 (d) The ongoing discovery abuses by the Mitchell Defendants have not
20 resulted in relevant evidence being irreparably lost.
21

22 (e) In evaluating the feasibility and fairness of alternative sanctions, the
23 Court concludes that prior measures, including the modest sanction awarded on May 15, 2019,
24 have not sufficed to either protect Nype or encourage the Mitchell Defendants to comply with
25 their discovery obligations.
26
27
28

1 (f) Nevada's policy favoring adjudication on the merits weighs in favor of
2 affording the Mitchell Defendants an opportunity to comply with their overdue discovery
3 obligations.
4

5 (g) The proposed sanctions do not operate to penalize the parties for the
6 misconduct of their attorneys, as the misconduct on the part of the Mitchell Defendants, as
7 parties, not the actions of their attorneys, have violated this Courts order.
8

9 (h) It important to deter the parties to this litigation, as well as future
10 litigation, from engaging in similar abuses, and finds that the sanctions awarded herein are a fair
11 and appropriate amount to deter future misconduct.

12 (i) The Court further concludes that given the time already passed, and the
13 ongoing prejudice to Plaintiffs, that an additional two weeks from Notice of the date of entry of
14 this Order is an appropriate, fair and reasonable amount of time for the Mitchell Defendants to
15 fully comply with their obligations
16

17 (j) The Mitchell Defendants will comply with their discovery obligations
18 under the rules, as well as their duty to supplement, and must also fully and completely comply
19 with the Court's (Order of May 30, 2019).

20 (k) The Court further concludes that the calculation of fees and expenses
21 from April 22, 2019 through the present filed on September 10, 2109, is reasonable and
22 accounts for the reductions identified by the Court during the hearing and that the total of
23 \$160,086.46 is an appropriate monetary amount to award as a sanction for the willful
24 misconduct of the Mitchell Defendants.
25

26 (l) The Court further concludes, however, having considered all of the
27 factors, that the striking of the Mitchell Defendants' answer and the entering of a default as
28

1 against said defendants is too harsh at this time, but may be considered in the future if
2 appropriate.

3
4 **ORDER**

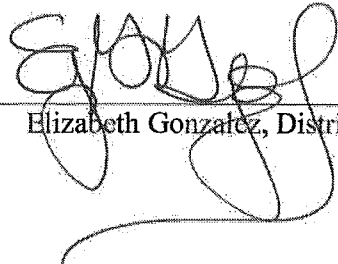
5 Based upon the above and foregoing,

6 **IT IS FURTHER ORDERED** that Plaintiff RUSSELL NYPE AND REVENUE
7 PLUS, LLC, be and they are hereby awarded discovery sanctions against Defendants DAVID J.
8 MITCHELL, INDIVIDUALLY, MEYER PROPERTY, LTD., ZOE PROPERTY, LLC, LEAH
9 PROPERTY LLC, WINK ONE, LLC, LIVE WORK, LLC, LIVE WORK MANAGER, LLC,
10 AQUARIUS OWNER, LLC, LVLP HOLDINGS, LLC, MITCHELL HOLDINGS, LLC, AND
11 LIVE WORKS TIC SUCCESSOR, LLC, in the amount of \$160,086.46, said amount to bear
12 interest at the Nevada statutory rate from September 20, 2019 until paid;

14 **IT IS FURTHER ORDERED** that the Mitchell Defendants will fully, and completely
15 comply with all of their obligations hereunder as well as the requirements set forth in the Order
16 of May 30, 2019, including their duty to fully and completely supplement their discovery
17 responses and to meticulously certify, in detail their compliance efforts and results as set forth in
18 said Order within two weeks of entry of this order;

19
20 **IT IS FURTHER ORDERED** that Plaintiff shall submit a separate judgment for the
21 amount of the sanction.
22

23 DATED this 18th day of September, 2019.
24

25
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27 
28 Elizabeth Gonzalez, District Court Judge

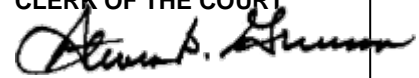
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Certificate of Service

I hereby certify that on the date filed, this Order was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.



Dan Kutinac



1 OMSJ

2 JOHN W. MUIJE & ASSOCIATES

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10 Attorneys for Plaintiffs

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

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

17 Plaintiffs.

18 vs.

CASE NO: A-16-740689-B

DEPT NO: XI

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

Defendants.

**PLAINTIFFS' OPPOSITION TO
MOTION FOR SUMMARY
JUDGMENT AND
COUNTERMOTION FOR
DISCOVERY PURSUANT TO
NRCP 56(d)**

COME NOW Plaintiffs, RUSSELL L. NYPE and REVENUE PLUS, LLC, by and
through their attorney of record, JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE
& ASSOCIATES, and hereby oppose Defendant 305 Las Vegas, LLC's Motion for Summary
Judgment ("Motion"), and also submit their Countermotion (collectively, "Opposition") in
support of a brief, limited and defined resumption of discovery, in accordance with the

1 contemplated procedure set forth in the Court's Order of May 30, 2019, in order to undertake
2 final supplementation of their expert report, and limited additional depositions.

3
4 This Opposition and Countermotion is made and based upon the points and authorities
5 that follow, exhibits contained in the contemporaneously filed supporting appendix (the
6 "Appendix"), including the Declaration of John W. Muije, Esq., attached to the Appendix as
7 exhibit 1 and the Declaration of Mark D. Rich, CPA, CFF, attached to the Appendix as exhibit 2.,
8 the pleadings and documents on file herein, and the arguments to be adduced at the hearing
9 hereon.

10
11 DATED this 7th day of October, 2019.

12 JOHN W. MUIJE & ASSOCIATES

13
14 By: /s/ John W. Muije, Esq.

15 JOHN W. MUIJE, ESQ.

16 Nevada Bar No. 2419

17 1840 E. Sahara Avenue, Suite 106

18 Las Vegas, Nevada 89104

19 *Attorneys for Plaintiffs*

20 **MEMORANDUM OF POINTS AND AUTHORITIES**

21 **I.**

22 **INTRODUCTION**

23 Defendant 305 Las Vegas, LLC, has filed a Motion for Summary Judgment asserting that
24 it is not alter ego of LVLP or its principals, further asserting that there is no basis for fraudulent
25 conveyance claims Nype asserts against it. Finally, 305 LLC contends that there is no legal basis
26 upon which this Court could find in favor of Plaintiffs civil conspiracy allegations. The subject
27 motion was supported by a short affidavit of one of the general partners of 305 Las Vegas, LLC's
28 owner, and a copy of the Promissory Note regarding the underlying transaction between
Livework, LLC (a co-defendant) and 305 Las Vegas, LLC.

1 As will be analyzed and detailed below, 305 Las Vegas, LLC has at all relevant times
2 acted at the behest of a substantial equity owner, co-defendant Barnet Liberman. It has acted in
3 ways calculated to benefit Barnet Liberman, Livework, LLC, and LVLP, at the behest and
4 direction of not only Barnet Liberman, also a general partner of the parent entity, but in collusion
5 and active concert with the other 50% owner of LVLP, David Mitchell. Effectively, Plaintiffs
6 have pointed to and raised numerous *bona fide* factual elements that give rise to serious questions
7 as to whether or not 305 Las Vegas, LLC is or is not the *alter ego* of other defendants herein.
8

9 Additionally, Plaintiffs analyze the significant underlying transaction in terms of the test
10 relevant to fraudulent conveyances and civil conspiracy, and raise significant questions as to the
11 same. Finally, pursuant to EDCR 2.20(f) and NRCPP 56(d), Plaintiffs respectfully request the
12 Court to authorize the completion of contemplated discovery (pursuant to the Court's Order of
13 May 30, 2019), which it is believed to bring out substantial additional facts and probative of
14 Plaintiffs' theories.
15

16 II.

17 STATEMENT OF FACTS

18 The following entities and persons are relevant to 305 LLC's Motion: 305 Las Vegas
19 LLC, itself; 305 Second Avenue Associates, LP ("305 Associates"); Defendant Livework, LLC
20 ("Livework"); Defendant Las Vegas Land Partners, LLC ("LVLP"); Charleston Casino Partners,
21 LLC ("Casino Partners"); Defendant David J. Mitchell ("Mr. Mitchell"); Defendant Barnet
22 Liberman ("Mr. Liberman"); Plaintiff Russell L. Nype ("Mr. Nype"); and Plaintiff Revenue Plus,
23 LLC ("RP" and collectively with Mr. Nype, "Nype").
24

25 LVLP is a Delaware limited-liability company that is registered to do business in Nevada.
26 (See Ex. 4¹ (Secretary of State information); see also Ex. 1, "Muije Decl.", ¶ 18). At all relevant
27
28

¹ All citations to exhibits in this Opposition refer to the exhibits contained in the Appendix and are authenticated by the Declarations John W. Muije, Esq., and Mark D. Rich, CPA, CFF.

1 times, LVLP was owned (50/50) and managed by Messrs. Mitchell and Liberman. (See e.g. Ex.
2 5 (table of ownership for Messrs. Mitchell and Liberman's numerous entities).) Messrs. Mitchell
3 and Liberman operate numerous entities—including Livework and certain other defendant
4 entities herein—underneath the LVLP umbrella. See e.g., id. Nype's expert, Mark Rich, CPA,
5 CFF, opines that "Defendants Liberman and Mitchell were and are the alter ego of their
6 Defendant entities." (See Ex. 3, "Rich Report", at 7.)² Among other things, such entities "use the
7 same bank accounts to deposit funds and disburse funds, including distributions to [Messrs.]
8 Liberman and Mitchell[.]" See id. at 6. The entities "use and have used the same general ledger
9 to post all entries under the name of 'Las Vegas Land Partners'[.]" Id. As many as 14 different
10 entities "filed one tax return from . . . inception in 2005 to 2016 under the name of LVLP
11 Holdings[.]" Id. Messrs. Liberman and Mitchell and the subject entities commingle funds,
12 "including personal loans from various banks which are included in the LVLP records and
13 general ledger[.]" Id. Messrs. Mitchell and Liberman also "used journal entries to post
14 comingled transactions from at least 2006 to 2016, many of which reflect millions of dollars in
15 transactions related to [Messrs.] Liberman and Mitchell[.]" Id. In 2016, shortly after Nype
16 obtained his subject judgment, "Defendants stopped using bank accounts and instead began using
17 journal entries to post entries apparently transacted personally by [Messrs.] Liberman and
18 Mitchell[.]" Id. at 6-7. At deposition, Mr. Liberman testified that he did not see a need to keep
19 separate records between the entities:
20
21
22
23

24 Q. Given that they all appear to run through one ledger and one checkbook, how
25 are you able to allocate income and expenses between those entities?

26 A. I don't know why we would.

27 . . .

28 A. Why would we? It all was part of – they were all derivative of one entity, and
al the money came in and all of the money went out. Did it matter that I took a

² Mr. Rich's expert report was admitted into evidence in this matter during the evidentiary hearing held on or about July 9, 2019. (See Ex. 1, ¶ 14.)

1 cab from one piece of property to another piece of property? No. I don't see why
2 it mattered. That's an account's question. I don't know.

3 See Ex. 35 (excerpts of Mr. Liberman's testimony).

4 As result of Messrs. Liberman and Mitchell's "dominat[ion], influence and control [over]
5 the Defendant entities", the "individuality and separateness of Defendants was and remains
6 nonexistence as evidence by Defendant entities['] comingling of funds, revenues, expenses,
7 assets, liabilities and contributed capital[.]" (See Ex. 3 at 7.) Indeed the manner in which Messrs.
8 Liberman and Mitchell operate their entities "mak[es] it virtually impossible to identify
9 transactions by purpose and/or entity." Id. at 6.

11 Livework is also a Delaware limited-liability company that was previously registered to
12 do business in Nevada and whose current status in Nevada is "permanently revoked". (See Ex. 6
13 (Secretary of State information).) Livework is wholly owned by LVLP and is managed by LVLP
14 (through an intermediary entity, Livework Manager, LLC, of which LVLP is the managing
15 member). (See Ex. 5 (table of ownership).) LVLP treats Livework as a "disregarded entity" on
16 its tax returns. (See Ex. 7.) Livework claims no separate bank accounts or financials from LVLP
17 and its financials and accounting records are completely subsumed within LVLP. (See Ex. 8 at
18 13 (Livework Response to Request for Production 9); see also Ex. 3 at 6-9.)

21 Casino Partners is a Delaware limited-liability company that was formed on April 20,
22 2007, was registered to do business in Nevada and whose current status in Nevada is
23 "permanently revoked." (See Ex. 9 (Secretary of State information); see also Ex. 10 at
24 FATCOSUB 4875-4884 (Casino Partners corporate documents).) Casino Partners is wholly
25 owned and managed by LVLP. (See Ex. 5; Ex. 10; see also Ex. 11 (Audited Independent
26 Accountants' Report for 305 Associates for Year Ending 2012 ("Barnet Liberman, a principal of
27 [305] Associations, is also a principal of [Casino Partners].")).) LVLP's initial capital
28 contribution to Casino Partners was \$10.00. (See Ex. 10.)

1 305 LLC is a Delaware limited-liability company that is registered to do business in
2 Nevada. (See Ex. 12 (Secretary of State information).)_ 305 LLC "was created in April of 2007
3 for the express purpose of purchasing property at or around 300 East Charleston[, Las Vegas,
4 Nevada]." (Mot. at 4:2-3.) "The sole member of 305 [LLC] is 305 [Associates], a New York
5 limited partnership" Id. at 4:3-4. 305 LLC and 305 Associates file one, combined tax
6 return. (See Ex. 2, ¶ 6(a).) 305 LLC's managing member is 305 Associates. (See Ex. 12; but see
7 Ex. __13 (305 LLC corporate filing naming Mr. Liberman and Winthrop Chamberlin as 305
8 LLC's managing members).) Mr. Liberman, along with a gentleman named Winthrop
9 Chamberlin ("Mr. Chamberlin"), are "[t]he general partners of 305 [Associates]." (Mot. at 4:5-6.)
10 Messrs. Liberman and Chamberlin own "a 65% interest in [305 Associates]." (See Ex. 11 at
11 305LV05818.) "The remaining 35% is owned by various limited partners,³ 10% of which are
12 class 'A' and 25% as class 'B'." Id. "The general partners, in addition to advancing loans to [305]
13 Associates, guarantee to lend [305] Associates any negative cash flow." Id. at 305LV05823.
14 Although Mr. Mitchell does not appear to have an ownership interest in 305 LLC, his entity
15 Mitchell Holdings, LLC, has exercised control over it. (See Ex. 15 at 305LV25065-67 (emails in
16 which Mitchell Holdings, LLC instructs that certain payments not be made to 305 LLC's
17 "Signature Bank" account, but to another account).) For tax year 2017, 305 Associates reported
18 the "book value" of its assets at \$33,324,563. (See Ex. 14 at 305LV02360 (excerpt of 305
19 Associates' tax return for tax year 2017).)

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23
24 In 2005, LVLP's principals, Messrs. Mitchell and Liberman requested Nype's assistance
25 with finding a development partner to assist them in developing certain real property in
26 Downtown Las Vegas. (See Ex. 16, at 2, ¶¶ 6-7 (3/26/15 Findings of Fact, Conclusions of Law
27

28

³ 305 Associates has approximately 79 limited partners, one of whom is Mr. Liberman. (See Ex. 14 (excerpt of 305 Associates' 2017 tax return.)

1 and Decision in Case No. A-07-551073).⁴ The properties were owned, in part, by Livework.
2 Id., ¶ 6. Ultimately, Nype successfully introduced Messrs. Mitchell and Liberman to Forest City
3 Enterprises ("Forest City" or "FC"), deep-pocketed, nationally-recognized developer. Id. at 14-
4 15, ¶¶ 5-8. Messrs. Mitchell and Liberman, through various entities including Livework, closed a
5 transaction with Forest City. Id. At the initial closing of the transaction, "Forest City invested
6 approximately 101 million dollars into the Project." Id. at 8, ¶ 52. "At least \$10,500,000 in cash
7 went directly to Mr. Mitchell and Mr. Liberman's entity, Plaintiff Live Work, LLC." Id. LVLP
8 "saved millions of dollars in interest payments on the Project's existing loan financing" and
9 "shared liability on its debt financing with a multi-billion dollar company[.]" Id.; see also id. at
10 14-15, ¶ 8. And, "Messrs. Liberman and Mitchell were able to extinguish more than \$19,484,000
11 in personal loan guarantees." Id. "Nype was a significant, contributing factor in Forest City's
12 investment in the Project." Id. at 14, ¶ 7. Because of his "close, personal relationships with
13 Forest City's key decision makers and his insider's knowledge of how Forest City operated[.]"
14 Nype was able to "facilitate[] a transaction that LVLP had attempted to develop for years, without
15 success." Id. at 21, ¶ 59.

19 Prior to closing the transaction with Forest City, a dispute arose between LVLP, Messrs.
20 Mitchell and Liberman and Nype in late 2006/early 2007 over the amount Nype was entitled to
21 from the anticipated transaction. (See Ex. 17.) Messrs. Mitchell and Liberman were aware that
22 Nype was expecting to receive at least several million dollars for his efforts. Id. Instead of
23 paying Nype, on November 2, 2007, LVLP, along with Livework, sued Nype, seeking primarily a
24 declaratory judgment that they did not owe any fee or other compensation to Nype because Nype
25 lacked necessary real-estate licensure. (See Ex. 18 (LVLP and Livework's 2007 Complaint).)
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28

⁴ The findings of Fact, Conclusion of Law and Decision were entered by Judge Israel in Case Number A-07-551073, i.e., the action from which Nype obtained its judgment against LVLP. The findings and conclusions therein are collateral and/or issue preclusive in this action.

1 Nype counterclaimed seeking compensation for services rendered. (See Ex. 19.) Trial in that
2 action began in October of 2014. (See Ex. 20 (excerpt of register of actions).) More than 7 years
3 later—and after spending millions of dollars in attorney's fees—Nype was finally awarded
4 judgment against LVLP in April of 2015, for the principal amount of \$2,608,797.50, plus costs
5 and pre- and post-judgment interest. (See Ex. 32 (excerpt of register of actions).) As of
6 September 2, 2019, LVLP's liability on the judgment is approximately \$4,493,176.90, plus
7 additional post-judgment interest accruing at a rate of approximately \$565 per day. (See Ex. 21
8 (calculation of amounts owed on the judgment).)
9

10
11 On or about May 2, 2007, Livework, 305 LLC and Casino Partners entered into the
12 following, related transactions. Livework sold certain real property, and the improvements
13 thereon, located at 300 and 320 Charleston Blvd, Las Vegas, Nevada (the "305 Properties") to
14 305 LLC for \$25,029,850. (See Ex. 3 at 3; see also Ex. 11 at 305LV05818.) Messrs. Mitchell
15 and Liberman received distributions from this sale totaling at least \$1,096,374 (\$313,730.90 to
16 Mr. Mitchell and \$782,643.10 to Mr. Liberman). (See Ex. 22 at SPZ000974 (excerpts of LVLP's
17 general ledger); see also Ex. 2, ¶ 6(b).) LVLP contributed \$700,672.65 in funds for closing—on
18 Livework's behalf. (See Ex. 23 at FATCOSUB_00004324-25; see also Ex. 24 at
19 FATCOSUB_00004577-78.) 305 LLC transferred \$2,800,000 directly to Livework, "[o]utside
20 [c]losing[.]" Id. at FATCOSUB_00004577. The \$2,800,000 was deposited into LVLP's bank
21 account. (See Ex. 25 at SPZ000976 (excerpt of LVLP general ledger).) As part of the sale, on
22 May 2, 2007, 305 LLC entered into a Deed of Trust Note, in Livework's favor, for the principal
23 amount of \$5,000,000, plus 14.7% interest, per annum (the "Livework Note"). (See Ex. 26 at
24 305LV05970 (note).) The Livework Note was to be repaid by 305 LLC, through 36 equal
25 monthly installments of \$181,579.658 beginning June 2, 2007. (See Ex 27, ¶ 8 (5/31/13
26 Livework Complaint).) The entire principal balance, if any, together with all unpaid interest and
27
28

1 other amounts due on the Livework Note were due and payable on May 2, 2010. (See Ex. 26 at
2 305LV05970.) The Livework Note was secured by the 305 Properties, i.e., the real property
3 Livework sold to 305 LLC for \$25,000,000. Id. "There were no written agreements between
4 [Livework] and [305 LLC] extending the maturity date beyond May 2, 2010." (See Ex. 27, ¶ 10.)
5

6 On the same day it acquired them, 305 LLC immediately transferred its possessory rights
7 in the 305 Properties back to Livework, through Livework's related entity, Casino Partners, in the
8 form of a 49 year "triple net" lease (the "Casino Partners Lease"). (See Ex. 11 at 305LV05818
9 ("concurrent with the purchase, [305] Associates and the seller [(i.e., Livework)], under the name
10 Charleston Casino Partners, LLC, entered into a forty nine 49 [sic] year 'triple net' lease").
11 Among other amounts owed by Livework to 305 LLC, rental payments were due to 305 LLC in
12 equal monthly installments based upon escalating, yearly amounts beginning at \$2,179,955 per
13 year and rising to \$10,710,779 per year in the final year of the lease term. (See Ex. 28 (lease).)
14 Messrs. Liberman and Mitchell personally guaranteed, in 305 LLC's favor, Casino Partners'
15 obligations under the subject lease. (See Ex. 29 (personal guaranty).) Messrs. Liberman and
16 Mitchell's personal guaranty was also made in favor of 305 LLC's other purchase-money lender,
17 Heartland Bank, to further secure 305 LLC's obligation to Heartland Bank. (See Ex. 30 (Audited
18 Independent Accountants' Report for 305 Associates for Year Ending 2014 at 305LV05853).)
19 305 LLC accounted—on 305 Associates' tax returns—for Casino Partners' rental liabilities as
20 being due from Livework—not Casino Partners. (See Ex. 31 (excerpt of 305 Associates' tax
21 returns for tax years 2010, 2011 and 2012)).
22
23
24

25 Despite the monthly rental and note payments, it appears that no such payments were
26 actually made.⁵ (See Ex. 2, ¶ 6(c).) Specifically, it appears that Casino Partners never made any
27 of its rental payments under its lease with 305 LLC; and 305 LLC never made a single monthly
28

1 payment on the Livework Note to Livework. Id.; (see also Ex. 33 (complaint filed by 305 LLC in
2 2013).) Accordingly, as of December 31, 2012, Casino Partners' liability for "unpaid rent totaled
3 \$10,473,863." (See Ex. 11 at 305LV05824.) Including interest thereon as of December 31, 2012,
4 Casino Partners' debt to 305 LLC "totaled \$11,835,058." (See Ex. 30 at 305LV05854.) "The
5 total amount in arrears [on the Livework Note] at December 31, 2012, was \$6,980,518." (See Ex.
6 11 at 305LV05820.)

7
8 There is no evidence that either 305 LLC or Livework took any action to enforce their
9 respective rights under the Casino Partners Lease or the Livework Note until in or around 2013,
10 years and years after material defaults had occurred. (See Ex. 27; see also Ex 33.) Although
11 Livework had a deed of trust in the 305 Properties, it never sought to foreclose. (See Ex. 27.)
12 Despite purported enforcement of the Livework Note, there is no evidence that Livework ever
13 received any payments, value or other consideration with respect to the Livework Note. (See Ex.
14 2, ¶ 6(d).) Instead, 305 LLC simply wrote off its liabilities on the Livework Note in the amount
15 of \$6,980,518. (See Ex. 3 at 3; Ex. 30 at 305LV05848.) Livework's financial records, on the
16 other hand, reflected that it had been receiving payments on the Livework Note and that the
17 Livework Note had been repaid in 2010. (See Ex. 34; see also Ex. 2, ¶ 6(e).) Casino Partners'
18 \$12,000,000 liability to 305 LLC was resolved as follows:
19
20

21 [E]ffective September 15, 2014, the parties entered into a Surrender and
22 Termination agreement whereby the tenant agreed to surrender the premises in
23 consideration for the waiver of all unpaid amounts due. Pursuant to the
24 agreement, the full arrears of \$11,835,058, previously recorded on the books of
25 accounts, was charged to Bad Debts expense.

26 (See Ex. 30 at 305LV05854.) While 305 LLC sued Mr. Mitchell on his personal guaranty of the
27 lease, it did not sue Mr. Mitchell's co-guarantor—Mr. Liberman. (See Ex. 33.)
28

⁵ 305 LLC appears to have made an initial \$700,000 payment on the Livework Note on or about May 2,

1 **Procedural History**

2 As the Court is aware from the above Statement of Facts, the present litigation derives
3 from prior litigation between Nype and LVLP, resulting in a judgment in the Spring of 2015
4 against LVLP. Shortly thereafter, the undersigned counsel was engaged by Nype given the
5 undersigned's substantial experience and reputation collecting large difficult judgments.
6

7 The undersigned promptly undertook sworn examinations and commenced steps to
8 attempt to enforce Nype's judgment. During the course of the approximate next year, vigorous
9 collection efforts led to the inescapable conclusion that LVLP, knowing of the existence of
10 Nype's claims against it, had dissipated virtually all of its attachable or available assets to
11 various affiliates and subsidiaries, and to its principals. That led to the filing of this litigation in
12 the latter part of 2016.
13

14 After preliminary procedural motions, including a motion to dismiss and the filing of an
15 amended complaint were concluded by the Fall of 2017 (in the meantime Plaintiffs have taken
16 the deposition of LVLP and its affiliates' long-time CPA, Sam Spitz, only to discover that
17 significant accounting data was missing or destroyed, and that Spitz refused to provide access to
18 the originally electronic media regarding the same), additional discovery efforts ensued.
19

20 Plaintiffs pursued such discovery efforts over time, only to be greeted with waves of
21 duplicative, unorganized, and incomplete documentation, slowly but incrementally adding
22 somewhat to Plaintiffs' knowledge regarding exactly what the defendants had done in terms of
23 transactions and activity, both from a business standpoint and secondarily, in an effort to defeat
24 and avoid Plaintiffs' judgment rights.
25

26 Ultimately, Nype filed a comprehensive motion to compel as to significant data which
27 remained missing, incomplete, and otherwise not available. At approximately that time, all of
28

2007 as part of the sale. There is no evidence of any other payments on the note.

1 the defense attorneys withdrew for non-payment of their fees and costs. Shortly thereafter, the
2 Court granted Plaintiff's Motion to Compel, by formal Order entered on May 30, 2019.

3
4 Shortly thereafter, when it became apparent that the Mitchell Defendants had failed and
5 refused to comply with the Court's Order compelling discovery, Plaintiff filed a Motion for
6 Sanctions which resulted in this Court's Order of September 20, 2019. The deadline for
7 compliance with the Court's Order passed on October 4, 2019, and the Mitchell Defendants have
8 not been forthcoming with any certification, any additional documentation, or any funds to even
9 partially address the substantial sanctions imposed by the Court.
10

11 Finally, from a procedural standpoint, the Court's Order of May 30, 2019, contemplated a
12 three-week window for Plaintiffs' expert witness to supplement his report, followed by thirty
13 (30) days to complete certain important but necessary depositions. Regarding the same,
14 Defendants Liberman and Livework were particularly germane to the issues involving 305 Las
15 Vegas, LLC. It should also be noted that Defendant 305 Las Vegas, LLC finally produced over
16 25,000 pages of emails and financial document production in April and May, 2019, on the very
17 eve of the nominal closure of discovery, and at a time when Plaintiff's Motion to Compel was
18 pending.
19

20 Completion of the discovery items contemplated in the May 30, 2019 Order was deferred
21 and delayed as a consequence of the Mitchell Defendants' abject non-compliance with the
22 Court's Order, and the pendency of proceedings regarding the imposition of appropriate
23 sanctions. It is the intention of the undersigned to raise these issues with the Court at the time of
24 the presently scheduled Calendar Call, i.e., 9:30 a.m. on October 8, 2019.
25

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III.

ARGUMENT

A. As Movant, Plaintiffs Have the Burden of Proving the Absence of Genuine Issues of Material Fact.

"Summary judgment is appropriate . . . when the pleadings and other evidence on file demonstrate that no 'genuine issue as to any material fact [remains] and that the moving party is entitled to a judgment as a matter of law.'" Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005) (quoting NRCP 56(c)) (alteration in the original). "A factual dispute is genuine when the evidence is such that a rational trier of fact could return a verdict for the nonmoving party." Id. at 731, 121 P.3d 1031.

"To prevail on a summary judgment motion, the moving party has the burden of proving the absence of genuine issues of fact and must 'show that one of the elements is clearly lacking as a matter of law.'" Joynt v. California Hotel & Casino, 108 Nev. 539, 542, 835 P.2d 799, 801 (1992) (quoting Sims v. General Telephone and Electric, 107 Nev. 516, 521, 815 P.2d 151, 154 (1991)) (emphasis added). "[W]hen reviewing a motion for summary judgment, the evidence, and any reasonable inferences drawn from it, must be viewed in a light most favorable to the nonmoving party." Wood, 121 Nev. at 729, 121 P.3d at 1029. Indeed, "the trial court is precluded from drawing inferences favorable to the moving party." Berge v. Fredericks, 95 Nev. 183, 186, 591 P.2d 246, 247 (1979). "Properly supported factual allegations and all reasonable inferences of the party opposing summary judgment must be accepted as true." Michaels v. Sudeck, 107 Nev. 332, 334, 810 P.2d 1212, 1213 (1991).

B. 305 LLC Has Failed to Meet its Burden of Proving That There Are No Genuine Issues of Fact Regarding Whether 305 LLC Is The Alter Ego Of Mr. Liberman

The elements for alter ego are:

(1) the corporation must be influenced and governed by the person asserted to be the alter ego; (2) there must be such unity of interest and ownership that one is inseparable from the other; and (3) the facts must be such that adherence to the corporate fiction of a separate entity would, under the circumstances, sanction [a] fraud or promote injustice.

1 LFC Mktg. Grp., Inc. v. Loomis, 116 Nev. 896, 904, 8 P.3d 841, 846-47 (2000). "[T]he
2 following factors, though not conclusive, may indicate the existence of an alter ego relationship:
3 (1) commingling of funds; (2) undercapitalization; (3) unauthorized diversion of funds; (4)
4 treatment of corporate assets as the individual's own; and (5) failure to observe corporate
5 formalities." Id. at 904, 8 P.3d at 847. These factors are not exclusive, however, Lorenz v.
6 Beltio, Ltd., 114 Nev. 795, 808, 963 P.2d 488, 497 (1988), and the Nevada Supreme Court has
7 emphasized that "there is no litmus test for determining when the corporate fiction should be
8 disregarded; the result depends on the circumstances of each case." Loomis, 116 Nev. 904, 8
9 P.3d at 846-47 (quoting Polaris Indus. Corp. v. Kaplan, 103 Nev. 598, 602, 747 P.2d 884, 887
10 (1987)). "It is not necessary that the plaintiff prove actual fraud. It is enough if the recognition of
11 the two entities as separate would result in an injustice." Id., 103 Nev. at 601, 747 P.2d at 886.
12 "The essence of the alter ego doctrine is to do justice." Id., 103 Nev. at 603, 747 P.2d at 888.

13
14 Complete ownership of an entity is not required in order to find an alter ego relationship.
15
16 Loomis, 116 Nev. at 905, 8 P.3d at 847. Indeed, the doctrine does not even require an individual
17 or entity to have any ownership interest at all. See id. (finding a corporation to be the alter ego
18 of an individual who "d[id] not own a single share of" the corporation); see also id. ("Although
19 ownership of corporate shares is a strong factor favoring unity of ownership and interest, the
20 absence of corporate ownership is not automatically a controlling event. Instead, the
21 'circumstances of each case' and the interests of justice should control."); accord State v. Easton,
22 169 Misc. 2d 282, 647 N.Y.S.2d 904, 909 (App. Div. 1995) (allowing a corporation's assets to be
23 reached through reverse piercing where the debtor did not own a single share of the corporation's
24 stock).

25
26 Nevada recognizes application of the alter ego doctrine in reverse, in which a creditor is
27 permitted to reach "the assets of a corporation to satisfy the debt of a corporate insider based on a
28

1 showing that the corporate entity is really the alter ego of the individual." Loomis, 116 Nev. at
2 903, 8 P.3d at 846. Application of the alter ego doctrine in reverse "is appropriate where the
3 particular facts and equities show the existence of an alter ego relationship and require that the
4 corporate fiction be ignored so that justice may be promoted." Id., at 904, 8 P.3d at 846. The
5 presence of "innocent shareholders" is also not dispositive. See id., at 905-06, 8 P.3d at 847.
6 Rather, the Court considers and weighs any harm an alter-ego finding would impose against the
7 harm to the creditor. See id.; see also C.F. Tr., Inc. v. First Flight Ltd. P'ship, 266 Va. 3, 12-13,
8 580 S.E.2d 806, 811 (2003) ("a court considering reverse veil piercing must weigh the impact of
9 such action upon innocent investors, in this instance, innocent limited partners
10 or innocent general partners").
11

12
13 At its core, 305 LLC's Motion argues that there is no evidence that 305 LLC is the alter
14 ego of either LVLP or Mr. Liberman. (See Mot. at 7.) According to 305 LLC, since "LVLP
15 clearly is not an alter ego of 305 Las Vegas, [Nype] would have to provide evidence that one of
16 the members of LVLP is the alter ego not of 305 Las Vegas, but of the member of 305 Las
17 Vegas, where [Mr. Liberman] is merely one of many partners." Id.
18

19 305 LLC has actually hit the nail on the head of Nype's theory: Liberman and LVLP are
20 each others' alter egos,⁶ and 305 LLC is the alter ego of Mr. Liberman.⁷ 305 LLC argues that
21 "[t]here is no evidence that [Mr.] Liberman has any control over 305 Las Vegas, and there is no
22 evidence that [Mr.] Liberman has ever managed 305 Las Vegas." Id. It further asserts that there
23 is "no evidence that Liberman shares a 'unity of interest' with 305 Las Vegas." Id.
24
25

26
27 ⁶ 305 LLC makes no argument that Mr. Liberman and LVLP are not each others' alter egos and the matter
28 does not appear to actually be in dispute. Indeed, the evidence is overwhelming that Mr. Liberman and
LVLP are the alter egos of each other. (See discussion, supra.)

⁷ Nype's Complaint asserts that all of the defendants in this action, "and each of them, were and remain the
alter-egos of each other[.]" (See 1st Am. Compl., ¶ 149.)

1 305 LLC is just flat wrong. 305 LLC is wholly owned and managed by 305 Associates,
2 which itself is managed by Mr. Liberman as a general partner. There can be no question that a
3 general partner has managerial control over a partnership. It is undisputed that Mr. Liberman has
4 a significant ownership interest in 305 Associates.
5

6 There can also be no doubt that Mr. Liberman influences 305 Associates and that his
7 influence and control over it is such that they are inseparable from each other. Mr. Liberman
8 caused his entity Livework to sell the 305 Properties to 305 LLC. Mr. Liberman simultaneously
9 caused 305 LLC to lease out those properties to his newly created entity, Casino Partners. Both
10 Messrs. Liberman and Mitchell personally guaranteed Casino Partners' lease obligations, not just
11 in 305 LLC's favor, but also favor of 305 LLC's lender (Heartland). When his entity, Casino
12 Partners, failed to pay rent,⁸ Mr. Liberman did not cause 305 LLC to immediately pursue
13 summary eviction on 5 days' notice under NRS 40.253. Instead, Mr. Liberman permitted Casino
14 Partners to get away without paying rent for approximately 7 years—accruing nearly \$12,000,000
15 in liability for unpaid rent. When Mr. Liberman finally caused 305 LLC to sue to enforce the rent
16 default, it sued Mr. Mitchell (as personal guarantor) for the entirety of the \$12,000,000.
17 Shockingly, Mr. Liberman did not permit 305 LLC to sue Mr. Mitchell's co-guarantor—
18 himself—even though he had unconditionally guaranteed the same liability. The resolution of
19 that liability, exchanging right to possession for waiver of nearly \$12,000,000 in liability, is
20 nothing short of outrageous. Obtaining possession of property from a tenant who has failed to
21 pay rent for several months—let alone nearly 7 years—is a virtual certainty. No entity, acting
22 solely in its own interests and not for the benefit of its general partner (who is acting on all sides
23 of the transaction), would ever waive \$12,000,000 in past-due rent just to obtain possession. It's
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28 ⁸ It's unsurprising that Casino Partners was unable to make its rental payments as Mr. Liberman only
capitalized Casino Partners with an initial contribution of \$10.00.

1 reasonable to infer that Mr. Liberman also released Casino Partners of liability for future damages
2 owing under the lease as well. This resolution is even more galling considering that 305 LLC
3 didn't need to waive a penny of past due rent—it could and should have sued Mr. Liberman on
4 his unconditional, personal guarantee.
5

6 When 305 LLC failed to make its monthly payments on the Livework Note—which was
7 secured by \$25,000,000 in real property—Mr. Liberman did not cause Livework to immediately
8 move to foreclose or otherwise enforce the note. Instead, Mr. Liberman exercised his control
9 over Livework to have it refrain from enforcing the Livework Note for nearly 7 years. The
10 resolution of which was Mr. Liberman causing 305 LLC to write off that liability in or around
11 September of 2014—which was \$6,980,518, as of 2012—and in which no value or consideration
12 was provided to Livework in exchange. This is unsurprising in that Mr. Liberman was on the
13 verge of facing judgment day vis-à-vis Nype (i.e., Nype's claims against LVLP went to trial in
14 October of 2014). The fact that 305 LLC failed to make any payments on the Livework Note for
15 so many years indicates a likelihood that it was undercapitalized. It is also indicative of an
16 affirmative decision by Mr. Liberman (and presumptively Mr. Chamberlain as well) not to honor
17 its obligations to 305 LLC to guarantee to lend to 305 any negative cash flow.
18
19

20 These facts demonstrate a pervasive pattern of Mr. Liberman engaging in unauthorized
21 diversion of funds, treating corporate assets as his own and rampant failures to observe corporate
22 formalities. A reasonable jury could easily find that the first two factors of the alter-ego test (i.e.,
23 influence and control and unity of interest) are present.
24

25 Notably, 305 LLC's Motion does not attack the third factor of the test. As such, this Court
26 should not consider this factor as it has not been raised. Regardless, however, adherence to the
27 corporate fiction, in this instance, would work serious injustice. Mr. Liberman, through his
28 carefully designed business dealings and transactions (that have benefitted himself personally)

1 has materially contributed to Nype's inability to collect on their judgement. But for Mr.
2 Liberman's involvement and conduct, Livework would have received millions of dollars in
3 payments on the Livework Note that—given their corporate arrangements—would necessarily
4 have gone to LVLP, its sole equity member. Instead, Mr. Liberman has ensured that millions of
5 dollars never made it to LVLP's accounts.
6

7 The harm to Nype really can't be overstated. On top of the nearly \$5,000,000 that he is
8 owed in damages and interest, Nype has spent millions of dollars obtaining his judgment and in
9 attempting to collect on it. To date, he has received almost nothing. Unless this Court holds
10 LLC liable as an alter ego on the judgment—Nype very likely may never recover. The harm such
11 a finding may cause to 305 Associates' other partners is far less impactful. First, this Court
12 should not accept the implied assertion that Mr. Chamberlin is an innocent investor. Indeed, the
13 only reasonable inference is that Mr. Chamberlin has moving in lockstep with Mr. Liberman,
14 every step of the way. If he were not, these transactions would not have been structured as they
15 were, and the resolution of the rent and note liabilities would never have occurred as they did—
16 i.e., in ways that so clearly benefitted Mr. Liberman. As to the ostensibly innocent limited
17 partners, they would suffer very little—if any harm. First, a multi-million dollar liability to Nype
18 must be weighed against the size of 305 Associates. For tax year 2017, 305 Associates reported
19 the "book value" of its assets at \$33,324,563.⁹ Second, the impact on any one limited partner
20 would be very small. 305 Associates has approximately 75 limited partners with a collective
21 35% ownership interest. If each of the 75 limited partners shared equally in a loss 305 Associates
22 would incur if found liable on Nype's judgment, their 1/75th share of 35% of the liability would
23 be very, very small. Finally, any loss the limited partners suffers can and should be recouped
24
25
26
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28 ⁹ As the book value is calculated as cost, less amortization and depreciation, the fair market value is most likely significantly greater. (See Ex. 2, ¶ 6 (f); see also Ex. 31.)

1 from the wrongdoer—Mr. Liberman. As the person creating the facts that would lead to an alter
2 ego finding, the limited partners can sue him Mr. Liberman for any harm not already
3 compensated by Mr. Liberman's guarantee of any negative cashflows 305 Associates may incur.
4 Under these circumstances, adherence to the corporate fiction of a separate entity would sanction
5 a fraud or promote injustice. See LFC Mktg. Group, Inc., 116 Nev. at 905-06, 8 P.3d at 847
6 (finding that "adherence to the corporate fiction would sanction a fraud or promote injustice"
7 where the alter-ego's conduct in manipulating the "carefully designed business arrangements
8 between the LFC entities, William, and NLRC contributed to the Loomises' inability to collect
9 their judgment"); Polaris Indus. Corp., 103 Nev. at 603, 747 P.2d at 888 (finding fraud or
10 injustice where "CRI's officers treated corporate funds as their own by making ad hoc
11 withdrawals at the bank in the form of advances to themselves at a time when the corporation's
12 debt to Polaris was not being paid, and that Polaris was damaged because these actions left the
13 corporation without funds to repay the debt."); Flynt Distrib. Co. v. Harvey, 734 F.2d 1389, 1393-
14 94 (9th Cir. 1984) (concluding that the defendants' conversion and transfer of corporate assets,
15 which left the corporations undercapitalized, constituted a "prima facie showing that it would be
16 unjust to shield the [defendants] behind the corporate veil").

17
18 Viewing the evidence and all reasonable inferences in a light most favorable to Nype, and
19 accepting the factual allegations and reasonable inferences as true—as this Court must do—this
20 Court should easily find that genuine issues of material fact preclude summary judgment on
21 Nype's alter ego claim against 305 LLC.

22
23 **C. 305 LV, LLC Has Failed to Meet Its Burden of Proving That There Are No
24 Genuine Issues of Fact Regarding Nype's Fraudulent Transfer Claims Against
25 305 LLC.**

26
27 305 LLC asserts that Nype has not asserted fraudulent transfer claims against it. (See
28 Mot. at 5 ("the only claim in the Amended Complaint actually pending against 305 [LLC] is alter

ego"). Nype's Amended Complaint is replete, however, with fraudulent transfer allegations against 305 LLC. (See e.g., 1st Am. Compl., ¶ 61 ("Plaintiff is informed and believes, that the Entity Defendants¹⁰ are the recipients of fraudulent transfers"); id. ¶¶ 123-127 (alleging that the "Defendants", i.e., all of the defendants in the action, made transfers with the intent of removing assets from Nype's purview and also alleging a right to a judgment against the defendants on Nype's fraudulent-transfer claims).

305 LLC next argues that there "is absolutely no evidence before this Court that 305 [LLC] did anything in 2007 to effectively render LVLP insolvent . . . , nor is there any evidence before this Court that LVLP and 305 Las Vegas engaged in conduct to allow LVLP to avoid payment of the judgment owed to Plaintiff." (See Mot. at 8.) Finally, 305 LLC asserts that "305 [LLC] has [n]ever obtained any asset that could have belonged to LVLP." Id. at 4.

As with 305 LLC's alter-ego arguments, it has failed to meet its burden of demonstrating the absence of genuine issues of material fact that 305 LLC is not a proper defendant on Nype's fraudulent-transfer claims.

Under NRS 112.180(1),¹¹ "[a] transfer made or obligation incurred by a debtor is fraudulent as to a creditor, **whether the creditor's claim arose before or after the transfer was made or the obligation was incurred**, if the debtor made the transfer or incurred the obligation: (a) With actual intent to hinder, delay or defraud any creditor of the debtor[.]" (Emphasis added). "[A] creditor may recover judgment for the value of the asset transferred" against a "first transferee of the asset or the person for whose benefit the transfer was made." NRS 112.220(2)(a). A creditor may also generally obtain "[a]voidance of the transfer or obligation[.]" NRS 112.210(1).

¹⁰ The Amended Complaint defines "Entity Defendants" to include 305 LLC. See id., ¶ 55.

¹¹ NRS Chapter 112 is referred to as the Uniform Fraudulent Transfer Act ("UFTA"). See NRS 112.140.

1 NRS 112.150(6) defines a "debtor" as "a person who is liable on a claim." NRS
2 112.150(3) broadly defines a "claim" as "a right to payment, whether or not the right is reduced to
3 judgment, liquidated, unliquidated, fixed, contingent, matured, unmatured, disputed, undisputed,
4 legal, equitable, secured, or unsecured." NRS 112.150(7)(d) defines an "insider" to "include"
5 "[a]n affiliate, or an insider of an affiliate as if the affiliate were the debtor[.]" NRS 112.150(2)
6 defines an "asset" as "property of a debtor[.]" NRS 112.150(10) defines "property" as "anything
7 that may be the subject of ownership." NRS 112.150(12) broadly defines a "transfer" as "every
8 mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or
9 parting with an asset or an interest in an asset, and includes payment of money, release, lease and
10 creation of a lien or other encumbrance."

11 As shown below, genuine issues of material facts exist as to whether 305 LLC is a proper
12 fraudulent-transfer defendant on multiple transactions. Specifically:
13

- 14 1. When Livework transferred the 305 Properties to 305 LLC;
- 15 2. When 305 LLC waived \$12,000,000 in rent owed to it from Casino Partners; and
- 16 3. When Livework released 305 LLC of its obligations under the Livework Note.

17 With respect to the first and third transactions, Livework is a debtor because it: (1) is
18 LVLP's alter ego and thus jointly liable with LVLP on Nype's judgment; and (2) also conspired
19 with LVLP, Messrs. Liberman and Mitchell and the other entity defendants to engage in the
20 asset-protection scheme to avoid satisfaction of Nype's judgment. With respect to the second
21 transaction, 305 LLC is a debtor for the same reasons. It is irrelevant that Nype did not have his
22 judgment yet at the time the transfers were made as the UFTA includes fraudulent transfers
23 regardless of "whether the creditor's claim arose before or after the transfer was made or
24 obligation incurred," NRS 112.180(1), and defines claims to include rights of payment that are
25 unliquidated, contingent, disputed, and/or unmatured.
26

27 There is substantial evidence that the three-identified transfers were made with actual
28 intent to hinder, delay or defraud creditors. NRS 112.180(2) sets forth certain factors, often

1 referred to as "badges of fraud," that this Court may consider in determining whether transfers
2 were made with the actual intent to hinder, delay or defraud creditors. These factors, include,
3 whether:

- 4 (a) The transfer or obligation was to an insider;
- 5 (b) The debtor retained possession or control of the property transferred
- 6 after the transfer;
- 7 (c) The transfer or obligation was disclosed or concealed;
- 8 (d) Before the transfer was made or obligation was incurred, the debtor had
- 9 been sued or threatened with suit;
- 10 (e) The transfer was of substantially all the debtor's assets;
- 11 (f) The debtor absconded;
- 12 (g) The debtor removed or concealed assets;
- 13 (h) The value of the consideration received by the debtor was reasonably
- 14 equivalent to the value of the asset transferred or the amount of the
- 15 obligation incurred;
- 16 (i) The debtor was insolvent or became insolvent shortly after the transfer
- 17 was made or the obligation was incurred;
- 18 (j) The transfer occurred shortly before or shortly after a substantial debt
- 19 was incurred; and
- 20 (k) The debtor transferred the essential assets of the business to a lienor
- 21 who transferred the assets to an insider of the debtor.

22 NRS 112.180(2).

23 "[A] court is not limited to only those factors or 'badges' enumerated [in the UFTA], but is
24 free to consider any other factors bearing upon the issue of fraudulent intent." In re Sholdan, 217
25 F.3d 1006, 1010 (8th Cir. 2000) (interpreting Minnesota's version of the UFTA). "Courts
26 construing UFTA have found that when several badges of fraud are established, **a presumption**
27 **of fraud exists**. When one or more of these badges is present, fraudulent intent can be inferred."
28 McCain Foods USA, Inc. v. Cent. Processors, Inc., 275 Kan. 1, 14, 61 P.3d 68, 77 (2002)
(emphasis added) (interpreting Kansas' version of the UFTA) (citing In re Taylor, 133 F.3d 1336,
1338 (10th Cir. 1998)). Indeed, Courts have found that "the confluence of several [badges of
fraud] in one transaction generally provides **conclusive evidence of an actual intent to**
defraud." Gilchinsky v. Nat'l Westminster Bank N.J., 159 N.J. 463, 477, 732 A.2d 482, 490

(1999) (emphasis added) (citing Max Sugarman Funeral Home, Inc. v. A.D.B. Investors, 926 F.2d 1248, 1254–55 (1st Cir. 1991)).

The circumstances surrounding the transfers and the defendants' conduct in this litigation demonstrate, at a minimum, that genuine issues of material fact exist as to whether the transfers were made with actual intent to hinder, delay or defraud creditors. The transfers were made to insiders or other entities of which Messrs. Liberman and Mitchell own and control (in whole or in part). Messrs. Liberman and Mitchell were aware that Nype would be suing to seek the compensation he was owed for the work he provided to them. Indeed, the second and third transfers were made on the eve of the start of Nype's trial against LVLP and Livework. 305 LLC received no true consideration (and certainly inadequate value) in exchange for waiving \$12,000,000 of unpaid rent and releasing Casino Partners of future damages. Livework received no consideration at all for releasing 305 LLC of its obligations under the Livework Note. Through the sale of the 305 Properties and immediate leaseback to it (through Casino Partners), Liveowork maintained possession and control of the 305 Properties. Defendants attempted to conceal the transfers and other assets through their discovery misconduct,¹² which, as the Court knows, required enormous efforts on Nype's part to attempt to obtain full and proper disclosure. To date, Nype has received almost nothing on his judgment, and Defendants appear dedicated to ensuring that this remains the case.¹³ Indeed, the effect of the transfers was to keep millions of dollars away from Nype's purview.

¹² Nype has extensively documented Defendants' discovery and other misconduct and game playing in this action in, and in connection with, Nype's: March 2019 oppositions to the Mitchell Defendants' and Liberman Defendants' counsels' motions to withdraw; April 2019 motion to extend discovery; April 2019 motion to compel; and June 2019 motion for sanctions (and the related evidentiary hearings). Nype incorporates the evidence and arguments contained therein as if fully set forth herein.

¹³ The deadline for the Mitchell Defendants to comply with this Court's Order of September 20, 2019, has passed without even a scintilla of compliance by the Mitchell Defendants!

1 Thus, as many as six (6) of the badges of fraud are present: factors (a), (b), (c), (d), (g),
2 and (h). Accordingly, a presumption exists—if not conclusive proof—that three identified
3 transfers were made with actual intent to hinder, delay or defraud creditors.

4
5 With respect to the first and third transfers, Nype is entitled to a judgment against 305
6 LLC, as a first transferee. See NRS 112.220(2)(a). And 305 LLC must be a party to the extent
7 that the remedy is avoidance of the transfers. See NRS 112.210(1). With respect the second
8 transfer, 305 LLC is the fraudulent transferor and must be a party to the action.

9
10 Viewing the evidence and all reasonable inferences in a light most favorable to Nype, and
11 accepting the factual allegations and reasonable inferences as true—as this Court must do—this
12 Court should easily find that genuine issues of material fact preclude summary judgment on
13 Nype's fraudulent-transfer claims against 305 LLC.

14 **D. 305 LV, LLC Has Failed to Meet Its Burden of Proving That There Are No**
15 **Genuine Issues of Fact Regarding Nype's Civil Conspiracy Claim Against 305**
16 **LLC.**

17 Notably, while the participants in a fraudulent conveyance claim are not necessarily
18 subject to the tort of civil conspiracy, the same underlying facts, probative of the misconduct of
19 305 in this matter, establish the elements of the separate tort of civil conspiracy. Significantly, as
20 noted by the Nevada Supreme Court:

21
22 An actual civil conspiracy “consist of a combination
23 of two or more persons who, by some concerted
24 action, intend to accomplish a lawful objective for
the purpose of harming another, and damage results
from the act or acts.”

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

26 *Consolidated Generated vs. Cumminsenging*, 114 Nev. 1304, 1311, 971 P.2d 1251 (1998).

27
28 Notably, as discussed above, Mr. Liberman's interactions with David Mitchell, in terms of
leasing the subject property to an affiliated entity with no rent payment for over seven years,

1 coupled by Barnet Liberman's role as one of two general partners for 305's parent entity (and the
2 acquiescence of the other general partner, Mr. Chamberlin), 305 LLC's failing to pay or provide
3 for payment on a promissory note (also for seven years), if not deemed a fraudulent conveyance,
4 certainly constitute concerted action between two or more people and entities, calculated to
5 deprive Livework, and in turn LVLP, of the monies necessary to pay the judgment to Nype.
6

7 Viewing the evidence and all reasonable inferences in a light most favorable to Nype, and
8 accepting the factual allegations and reasonable inferences as true—as this Court must do—this
9 Court should easily find that genuine issues of material fact preclude summary judgment on
10 Nype's civil-conspiracy claim against 305 LLC.
11

12 **E. Under NRCP 56(d), This Court Must Permit Plaintiffs Discovery Before Ruling**
13 **on 305 LV, LLC's Motion for Summary Judgment.**

14 "NRCP 56(f)¹⁴ permits a district court to grant a continuance when a party opposing a motion
15 for summary judgment is unable to marshal facts in support of its opposition." Aviation
16 Ventures, Inc. v. Joan Morris, Inc., 121 Nev. 113, 117-18, 110 P.3d 59, 62 (2005). Specifically,
17 NRCP 56(d) provides:

18 If a nonmovant shows by affidavit or declaration that, for specified reasons, it
19 cannot present facts essential to justify its opposition, the court may:

- 20 1) defer considering the motion or deny it;
21 (2) allow time to obtain affidavits or declarations or to take discovery; or
22 (3) issue any other appropriate order.

23 This Court has discretion to grant such a motion and should do so where the movant has
24 explained how further discovery will lead to the creation of a genuine issue of material fact. See
25 Aviation Ventures, Inc., 121 Nev. at 118, 110 P.3d at 62.

26 This Court should do likewise. To the extent it finds that Plaintiffs have failed to
27 demonstrate genuine issues of fact in opposition to 305 LLC's Motion, it should continue the
28 Motion to permit Nype to take the follow-up depositions of Messrs. Liberman, Mitchell, and

1 Livework (as this Court has authorized Nype to do in its order of May 30, 2019) and to complete
2 his discovery after receiving Mr. Mitchell's ostensibly forthcoming supplemental disclosure of
3 documents pursuant to this Court's recent Order re: Discovery Sanctions. Nype did not have
4 many of the documents upon which this opposition is based at the time it previously deposed
5 Messrs. Liberman and Mitchell; and Nype wasn't even aware of the second and third transfers
6 until 2019, when Nype finally obtained documentation related to the same from 305 LLC on the
7 eve of the prior discovery cutoff. Such discovery is likely to reveal additional information related
8 to intent and the relationship between the parties, which will reveal genuine issues of material
9 facts related to Nype's claims. (See Ex. 1, at ¶¶ 3-13.)

10
11 **IV.**

12 **CONCLUSION**

13 This Court should deny 305 LLC's Motion as there are numerous genuine issues of
14 material fact which preclude summary judgment. Alternatively, the Court should continue the
15 Motion to permit Nype to take discovery pursuant to NRCP 56(d).

16 DATED this 7th day of October, 2019.

17 JOHN W. MUIJE & ASSOCIATES

18
19 By: /s/ John W. Muije, Esq.

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28

¹⁴ The 2019 amendments to the Nevada rules of Civil Procedure revised NRCP 56 to provide for the continuance/deferment of the motion in NRCP 56(d), rather than 56(f). There appears to be no substantive difference between the old and new versions of the rule.

CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 7th day of October, 2019, I caused the foregoing document, **PLAINTIFFS' OPPOSITION TO MOTION FOR SUMMARY JUDGMENT AND COUNTERMOTION FOR DISCOVERY PURSUANT TO NRCP 56(d)** to be served as follows:

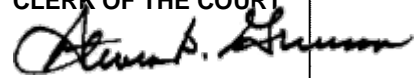
- by placing a copy of the same for mailing in the United States mail, with first class postage prepaid addressed as follows; and/or
- X — by electronically filing and serving with the Clerk of the Court via the Odyssey E-File and Serve System; and/or
- by placing a copy of the same for mailing in the United States mail, with first class postage prepaid marked certified return receipt requested addressed as follows; and/or
- Via E-Mail at the addresses listed below; and/or
- pursuant to EDCR 7.26, by causing a copy to be sent via facsimile at the number(s) listed below; and/or
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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; AQUARIUS OWNER, LLC; LVLV
25 HOLDINGS, LLC; MITCHELL HOLDINGS,
26 LLC; LIBERMAN HOLDINGS, LLC; 305 LAS
27 VEGAS, LLC; LIVE OWRS TIC SUCCESSOR,
28 LLC; CASINO COOLIDGE, LLC; DOES I
through III, and ROE CORPORATIONS I through
III, inclusive,

Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

**PLAINTIFFS' OPPOSITION TO
THE MITCHELL DEFENDANTS'
STATEMENT OF COMPLIANCE
AND MOTION FOR
ADDITIONAL TIME FOR
FURTHER PRODUCTION and
COUNTER-MOTION FOR CASE-
CONCLUDING SANCTIONS**

Hearing Date: October 21, 2019

Hearing Time: 9:00 a.m.

COMES NOW Plaintiffs, RUSSELL L. NYPE ("Nype") and REVENUE PLUS, LLC
("RP") (Nype and RP are, collectively, "Plaintiffs"), by and through their attorney of record,
JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE & ASSOCIATES, and hereby
submit their Opposition to the Mitchell Defendants' Statement of Compliance and Motion for

1 Additional Time for Further Production (the "Opposition") and Counter-Motion for Case-Ending
2 Sanctions ("Counter-Motion").

3 Plaintiffs further move this Court pursuant to Nevada Rule of Civil Procedure ("NRCP")
4 37 for an order for case-concluding sanctions against the Mitchell Defendants¹ for failing to
5 comply with this Court's order entered on September 20, 2019.

6 This Opposition and Countermotion is made and based upon the points and authorities
7 that follow, the exhibits attached hereto, including the Declaration of John W. Muije, Esq.,
8 attached hereto as Exhibit 1, the pleadings and documents on file herein, and the arguments to be
9 adduced at the hearing hereon.
10

11 DATED this 17th day of October, 2019.

12 JOHN W. MUIJE & ASSOCIATES

13 By: /s/ John W. Muije, Esq.

14 JOHN W. MUIJE, ESQ.

15 Nevada Bar No. 2419

16 1840 E. Sahara Avenue, Suite 106

17 Las Vegas, Nevada 89104

18 *Attorneys for Plaintiffs*

19
20 **1. OPPOSITION**

21 **A. MEMORANDUM OF POINTS AND AUTHORITIES**

22 The Mitchell Defendants' Statement of Compliance and Motion for Additional Time for
23 Further Production ("Motion") seeks an additional 30 days to comply with this Court's September
24 20, 2019, Order Re: Discovery Sanctions (the "Sanctions Order"). The Mitchell Defendants
25 argue, no doubt with tongues firmly implanted in cheeks, that "good cause for the 30 days exists,"
26 due to "the significant amount of data that has been recovered," the need to vet the data to
27

28
¹ Plaintiffs are **not** seeking relief, in any way, against Las Vegas Land Partners, LLC ("LVLP") due to LVLP's bankruptcy filing on or about August 19, 2019. As such, all references to the "Mitchell Defendants" herein does not and shall not include LVLP.

1 determine whether it is responsive to Plaintiffs' discovery requests, and the need to determine
2 whether any of the data is privileged. (See Mot. at 6:6-13.)

3
4 Notably, the Mitchell Defendants do not even commit to complying with the Sanctions
5 Order at the end of the requested additional 30 days, stating, instead, merely that, "[i]t is
6 anticipated that 30 days is necessary to review the data has [sic] been produced for privilege and
7 responsiveness." Id. at 14-15 (emphasis added). The Mitchell Defendants' misconduct and
8 cavalier attitude displayed throughout this litigation with regard to their discovery obligations and
9 this Court's discovery orders demonstrates that their use of "anticipated" is simply an attempt to
10 create leeway to seek yet another extension when they inevitably fail to comply with any
11 extension obtained through their present Motion.

12
13 The Mitchell Defendants' conduct in this action demonstrates that this Court absolutely
14 should not grant the requested extension. The Mitchell Defendants have had more than ample
15 time to produce the documents sought by Plaintiffs and to finally come into compliance with their
16 discovery obligations. This Court should remember that the Mitchell Defendants should have
17 produced all of the purportedly to-be-produced documents more than a year ago, in response to
18 Plaintiffs' Requests for Production of Documents served in May 2018. (See Ex.2, Sanction
19 Order, at 4:10-14). They failed to do so. Despite numerous "meet and confer" efforts, the
20 Mitchell Defendants still failed to produce any documents responsive to Plaintiffs' discovery
21 requests. (See Ex. 1, ¶ 1.) Even after Plaintiffs filed a motion to compel on April 22, 2019, the
22 Mitchell Defendants failed to produce any responsive documents. See id., ¶ 4. Even after the
23 Court granted the motion to compel in May, and provided additional time for the Mitchell
24 Defendants to finally get their act together, they failed to produce any responsive documents.
25 (See Ex. 2 at 4:18-19.) Indeed, that order gave the Mitchell Defendants until June 5, 2019, to,

1 "fully and completely comply with this Order compelling discovery and requiring them to
2 produce the sought after emails and financial data, including full responses to [...] Plaintiffs'
3 discovery requests." (See Ex. 3, "May 30th order", at 4:6-12.)

4
5 The Court's May 30th order further required that, "on or before June 5, 2019, David
6 Mitchell, shall submit sworn affidavits to Plaintiff's counsel and file the same with the Court,
7 stating under oath, that they and each defendant entity have fully and completely searched all
8 available files and document repositories, both physical and electronic, and that such sworn
9 affidavits shall further set forth specifically the efforts undertaken and what was done to assure
10 full compliance with said defendant's discovery obligations." Id. at 4:13-19. Said affidavits were
11 also to state under oath that "defendants have fully and completely complied with all of their
12 discovery obligations and produced all relevant and available documents." Id. at 4:19-23.
13 Regarding documents not found or not produced, the affidavit was to explain why in specific
14 detail. Id. at 4:23-25. The May 30th order also imposed a \$1,500.00 award of sanctions against
15 all defendants, to be paid within 30 days from the date of the order. Id. at 3:12-16. Although the
16 Liberman Defendants have paid \$500.00 of this sanction award, the Mitchell Defendants have yet
17 to pay a penny. (See Ex. 1, ¶ 5.)

18 Despite this Court's May 30th order, the Mitchell Defendants did not produce any
19 necessary documents by the June 5, 2019, deadline. (See Ex. 2 at 4:18-19.) Neither did they
20 submit the required sworn affidavits to Plaintiffs' counsel and file said affidavits with the Court
21 by June 5, 2019. Id. at 5:1-2. To date, the Mitchell Defendants have still not paid their share of
22 the \$1,500.00 sanction award. (See Ex. 1, ¶ 6.) Rather, they unabashedly and contemptuously
23 disregarded this Court's order.² (See Ex. 2 at 4:15-16 ("[t]here has been a clear and knowing
24 violation of the Order Granting the Motion to Compel."); id. at 6:12:13 ("[t]he degree of
25 willfulness of the Mitchell Defendants was significant.").)

26
27
28 ² Notably, the Liberman Defendants produced an additional 30,000 pages (approximately) of documents
by the June 5th deadline, indicating that, had the Mitchell Defendants desired to comply with this Court's
order, they could—and should—have done so!

1 As a result of the Mitchell Defendants' failure to comply with this Court's May 30th order,
2 Plaintiffs were forced to file, on June 14, 2019, a Motion for Sanctions Pursuant to NRCP 37(b).
3 (See Ex. 1, ¶ 7.) After a preliminary hearing on the sanctions motion on June 24, 2019, and an
4 evidentiary hearing occurring over three days (June 27, 2019, July 9, 2019, and September 3,
5 2019), the Court orally granted the motion on September 3, 2019. Id., ¶ 8. The Court entered its
6 written Sanctions Order on September 20, 2019. (See Ex. 2.) The Sanctions Order required that
7 the Mitchell Defendants

8 fully, and completely comply with all of their obligations hereunder as well as
9 the requirements set forth in the **Order of May 30, 2019**, including their duty to
10 fully and completely supplement their discovery responses and to
11 meticulously certify, in detail their compliance efforts and results as set forth
in said Order within two weeks of entry of this order[.]

12 Id. at 8 (emphasis added).³

13 Based on the literal wording of the Court's Order of September 20, 2019 (which was
14 drafted and filed by the Court itself), compliance was due on Friday, October 4, 2019. Needless
15 to say, no compliance occurred by that date. Written notice of entry of the Sanctions Order was
16 made on September 23, 2019. (See Ex. 4.) The Sanctions Order also required the Mitchell
17 Defendants to pay to Plaintiffs an amount of \$160,086.46, plus interest, in sanctions for their
18 willful discovery failures. (See Ex. 2 at 8:6-13.) Notably, while the Court refrained from
19 striking the Mitchell Defendants' answer, at that time, it specifically concluded that such sanction
20 "may be considered in the future if appropriate." Id. at 7:26 through 8:2.

21 Unsurprisingly, the Mitchell Defendants failed to comply with the Sanctions Order by the
22 October 4, 2019, deadline. (See Ex. 1, ¶ 9.) Rather, on October 7, 2019, the Mitchell Defendants
23 filed their Motion seeking an additional 30 days to comply with this Court's Sanctions Order.
24 The Mitchell Defendants also made a supplemental production of approximately 4,000 pages of
25

26
27
28 ³ The broad scope of the Sanctions Order is extremely important as the Mitchell Defendants appear to be
attempting to limit their efforts to producing additional documents responsive to just 4 of Plaintiffs'
requests for production of documents—rather than ensuring full and complete compliance and production
with regard to all discovery requests.

1 documents in response to four specific requests for production. Id., ¶ 10.⁴ Plaintiffs have
2 reviewed this production, however, and it was, almost entirely, yet another regurgitation of
3 documents previously produced (in some cases many times previously). Id., ¶ 11. Moreover, the
4 Statement of Compliance aspect of the Motion is woefully non-compliant with the Sanctions
5 Order. Among other things, it: (1) fails to meticulously detail their efforts to comply; (2) fails to
6 specify in meticulous detail, the methods and details of their searches and investigations; and (3)
7 it fails to account, in detail, for any documents that were not found or produced. (See Mot. at Ex.
8 B.) Instead, the Motion just states that an e-discovery vendor has pulled an enormous amount of
9 data off servers and that the same must be reviewed and produced. See id. at 6:6-16.

12 The simple reality is that the Mitchell Defendants have had at least an extra **four months**
13 of opportunity to comply—and that does not even take into account the fact that their documents
14 should have been produced in July, 2018! Moreover, it flies in the face of reason that the
15 Mitchell Defendants, after already being sanctioned to the tune of \$160,000.00, waited until **after**
16 their compliance deadline to inform Plaintiffs and the Court that there was an enormous amount
17 of data that they needed more time to sort through. They should have known that in 2018. It is
18 illuminating to note that David Mitchell's 50% partner, Barnet Liberman, appears to have been
19 consciously aware of that obligation and produced well over 30,000 pages of documentation in
20 approximately 10 different 16.1 supplements between October 8, 2018, and June 3, 2019.

23 Indeed, the Mitchell Defendants' counsel stated at the July 8, 2019, hearing that he was
24 prevailing upon his clients to retain an IT vendor to assist with getting into compliance and, at
25 that time, sought 30 days of leniency. (See Ex. 5 (Court Minutes dated July 8, 2019).) Instead,
26 the Mitchell Defendants waited until August 8, 2019, to finally retain an IT vendor and begin that
27 process. (See Ex. 6, Declaration of Ira Victor, ¶ 4.) At that time, the vendor estimated that he
28

⁴ As the Mitchell Defendants failed to act within the deadline, NRCP 6 requires a showing of excusable

1 could complete his analysis by September 30, 2019. Id. at ¶ 6. If the Mitchell Defendants truly
2 wished to comply with their discovery obligations, there has been more than sufficient time for
3 that to have occurred long, long ago. The record demonstrates, however, that the Mitchell
4 Defendants are either not serious about coming into compliance or are intentionally slow-playing
5 this process to continue prejudicing Plaintiffs. Given this Court's prior findings of willfulness,
6 the latter is most likely. Trial is a mere 74 days away and, apparently, there's an enormous
7 amount of new documentation to review and analyze. Who knows how little time Plaintiffs will
8 have to review this documentation when the Mitchell Defendants finally—if ever—produce it. If
9 they do, the Mitchell Defendants will undoubtedly produce the materials without detailed indices
10 or in the manner the materials were kept. It is also almost a guarantee that the Mitchell
11 Defendants will be asking for yet more time. Plaintiffs will be forced either to proceed to trial
12 without adequate preparation or endure yet another trial continuance caused by the Mitchell
13 Defendants. Granting the Mitchell Defendants' requested extension would only serve to reward
14 them—at Plaintiffs' expense—for their blatant, willful and continuous disregard for their
15 discovery obligations and this Court's orders.

19 Based on the foregoing, the Mitchell Defendants have failed to demonstrate excusable
20 neglect supporting their Motion, and Plaintiffs respectfully request that this Court deny the
21 Mitchell Defendants' Motion for additional time.

23 DATED this 17th day of October, 2019.

24 JOHN W. MUIJE & ASSOCIATES

26 By: /s/ John W. Muije, Esq.
27 JOHN W. MUIJE, ESQ.
28 Nevada Bar No: 2419
Email: jmuije@muijelawoffice.com
Attorneys for Plaintiffs

neglect, rather than merely good cause. See NRCP 6(b)(1)(B)(ii).

1 **II. COUNTER-MOTION FOR CASE-CONCLUDING SANCTIONS AGAINST THE**
2 **MITCHELL DEFENDANTS**

3 **MEMORANDUM OF POINTS AND AUTHORITIES**

4
5 **I.**

6 **INTRODUCTION AND STATEMENT OF FACTS**

7 This Counter-Motion concerns Plaintiffs' lengthy and ongoing efforts to overcome the
8 Mitchell Defendants' incessant, willful and repetitive attempts to delay this litigation by, among
9 other things, refusing to produce relevant documents in this matter. Plaintiffs have extensively
10 documented the Mitchell Defendants' delay tactics in other filed pleadings in this matter and in
11 the above Opposition, which arguments and facts are incorporated herein by this reference.

12 Now, on the eve trial, and after being given chance after chance after chance, the Mitchell
13 Defendants have failed to comply with this Court's Sanctions Order and seek even more time to
14 finally get into compliance with their discovery obligations. Apparently, the Mitchell Defendants
15 have just now discovered more than 600 gigabytes of responsive emails and other documents, see
16 Mot. at 5:9-13, despite repeatedly representing through their predecessor counsel (Garry Hayes)
17 that they had searched their records and produced everything they had!! (See Ex. 1, ¶ 16.)

18 The Mitchell Defendants fail to explain why they didn't discover and produce this
19 enormous amount of information over a year ago, by their prior June 5, 2019, deadline to comply
20 with this Court's May 30th order, prior to any of the three evidentiary hearing days the Court held
21 in June, July and September (regarding sanctions) or by the October 4, 2019, deadline to comply
22 with the Sanctions Order—which was supposed to be their final deadline. Instead, the Mitchell
23 Defendants submitted an untimely bare-bones, back-of-the-hand Motion and supporting
24 declaration and ask the Court for more time. (See Mot.)

25
26 **II.**

27 **ARGUMENT**

28 **A. Failure To Obey A Court's Order Granting A Motion To Compel Discovery Is Sanctionable.**

NRCP 37(b)(1) provides that,

1 If a party or a party's officer, director, or managing agent — or a witness
2 designated under Rule 30(b)(6) or 31(a)(4) — fails to obey an order to provide or
3 permit discovery, including an order under Rule 35 or 37(a), the court may issue
further just orders that may include the following:

4 (A) directing that the matters embraced in the order or other
5 designated facts be taken as established for purposes of the action, as the
6 prevailing party claims;

7 (B) prohibiting the disobedient party from supporting or
8 opposing designated claims or defenses, or from introducing designated matters in
9 evidence;

10 (C) striking pleadings in whole or in part;

11 (D) staying further proceedings until the order is obeyed;

12 (E) dismissing the action or proceeding in whole or in part;

13 (F) rendering a default judgment against the disobedient
14 party; or

15 (G) treating as contempt of court the failure to obey any order
16 except an order to submit to a physical or mental examination.

17 Furthermore, NRCP 37(b)(3) states that,

18 Instead of or in addition to the orders above, the court must order the disobedient
19 party, the attorney advising that party, or both to pay the reasonable expenses,
20 including attorney fees, caused by the failure, unless the failure was substantially
21 justified or other circumstances make an award of expenses unjust.

22 Moreover, "courts have 'inherent equitable powers to dismiss actions or enter default
23 judgments for ... abusive litigation practices.'" Young v. Johnny Ribiero Bldg., 106 Nev. 88, 92,
24 787 P.2d 777, 779 (1990) (quoting Televideo Systems, Inc. v. Heidenthal, 826 F.2d 915, 916 (9th
25 Cir. 1987)). The Nevada Supreme Court has found that, "entries of complete default are proper
26 where 'litigants are unresponsive and engaged in abusive litigation practices that cause
27 interminable delays.'" Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243, 253-54, 235 P.3d
28 592, 599 (2010) (rehearing denied, 126 Nev. 606, 245 P.3d 1182) (quoting Foster v. Dingwall,
126 Nev. 56, 227 P.3d 1042, 1048 (2010)). "[S]uch sanctions '[are] necessary to demonstrate to
future litigants that they are not free to act with wayward disregard of a court's orders." Id.

When a court dismisses an action with prejudice as a discovery sanction, the court is
required to support such an order with "express, careful and preferably written explanation of the
court's analysis of the pertinent factors." Young v. Johnny Ribeiro Bldg., 106 Nev. 88, 93, 787

1 P.2d 777, 780 (1990). The factors the court may consider include, without limitation, the
2 following:

3 the degree of willfulness of the offending party, the extent to which the non-
4 offending party would be prejudiced by a lesser sanction, the severity of the
5 sanction of dismissal relative to the severity of the discovery abuse, whether any
6 evidence has been irreparably lost, the feasibility and fairness of alternative, less
7 severe sanctions, such as an order deeming facts relating to improperly withheld
8 or destroyed evidence to be admitted by the offending party, the policy favoring
adjudication on the merits, whether sanctions unfairly operate to penalize a party
for the misconduct of his or her attorney, and the need to deter both the parties
and future litigants from similar abuses. Id.

9 For the reasons stated below, the Court should order case-concluding sanctions against the
10 Mitchell Defendants pursuant to NRCP 37(b).

11 **B. The Mitchell Defendants Have Again Failed To Obey This Court's Orders And The**
12 **Court Should Enter Case-Concluding Sanctions.**

13 This Court previously considered the Young factors in its Sanctions Order and found,
14 among other things, that (i) the degree of willfulness of the Mitchell Defendants was significant,
15 (ii) Nevada's policy favoring adjudication on the merits weighed in favor of providing the
16 Mitchell Defendants with an opportunity to comply with their overdue discovery obligations, (iii)
17 it is important to deter parties to this litigation, as well as future litigants, from engaging in
18 similar abuses, and (iv) given the time already passed and the continuing prejudice to Plaintiffs,
19 that two weeks from notice of entry of the Sanctions Order was an appropriate, fair and
20 reasonable amount of time for the Mitchell Defendants to finally and fully comply with their
21 obligations. (See Ex. 2 at 6:12 – 7:16). Notably, while the Court refrained from striking the
22 Mitchell Defendants' answer, at that time, it specifically concluded that such sanction "may be
23 considered in the future if appropriate." Id. at 7:26 through 8:2.

24 As demonstrated above, the Mitchell Defendants' deadline for full compliance and
25 submission of appropriate affidavits was October 4, 2019. Unfortunately, and all too predictably
26 in this matter, the Mitchell Defendants once again failed to comply with their discovery
27
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1 obligations and this Court's clear orders. Instead, the Mitchell Defendants seek to, once again,
2 kick the can down the road, and either force Plaintiffs to go to trial without all necessary
3 documentation, or endure yet another trial continuance.

4
5 The bottom-line is as follows:

6 1. The Mitchell Defendants failed to be in full compliance with the Sanctions
7 Order by the October 4, 2019, deadline;

8 2. Defendant David Mitchell's declaration contains 3 substantive paragraphs
9 that completely fail to comply with the Sanctions Order's specific requirements. Among
10 other things, it: (1) fails to meticulously detail their efforts to comply; (2) fails to specify
11 in meticulous detail the methods and details of their searches and investigations; and (3) it
12 fails to account, in detail, for any documents that were not found or produced. It also
13 limits his statement regarding the materials copied and produced to those in his possession
14 or control, rather than custody as well;

15 3. The Mitchell Defendants have failed to pay their share of the \$1,500
16 sanction awarded to Plaintiffs in the Court's May 30, 2019, order;

17 4. The Mitchell Defendants have failed to pay this Court's \$160,000 sanction
18 awarded in the Sanctions Order;

19 5. The Mitchell Defendants, had they desired, could easily have come into
20 full compliance with their discovery obligations at any point between July of 2018, and
21 the numerous opportunities presented them in 2019—they have had months and months
22 and months of chances. Indeed, it has been more than four months since the prior June
23 5, 2019, deadline to comply with this Court's May 30th order. And the Mitchell
24 Defendants apparently decided to wait until the veritable last minute to retain an e-
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discovery vendor despite their counsel purportedly prevailing upon them to do so far earlier;

6. The Mitchell Defendants' October 7, 2019, production of an additional 3,953 pages was merely yet another ruse to make it appear that they had done something meaningful, but, instead, was just (almost entirely) a regurgitation of previously produced documents.⁵ Id. at 1, ¶ 12;

7. Trial was supposed to begin—after the second-most recent trial continuance—on October 14, 2019, but is now set to begin just 74 days from now on December 30, 2019; and

8. Plaintiffs are still missing an enormous amount of documentation from the Mitchell Defendants, including, among other things:

- a. Tax returns for LVLP for tax years 2017 and 2018;⁶
- b. General Ledgers for LVLP for 2017, 2018, and 2019;
- c. Adjusted-journal entries for LVLP for 2007-2012, 2017, 2018 and 2019;
- d. Trial-balance ledgers for LVLP for 2007-2010 and 2015 through 2019;
- e. Balance sheets for LVLP for 2007-2010, 2017, 2018 and 2019;
- f. Cash-account-activity statements for LVLP for 2007-2010, and 2015-2019;
- g. Bank statements for LVLP for 2017-2019;
- h. Income statements for LVLP for 2007-2012 and 2017-2019;

⁵ The Mitchell Defendants have attempted this same trick on multiple prior occasions, including just recently during the evidentiary hearing preceding this Court's Sanctions Order. (See Ex. 1, ¶ 13.); see also Ex. 7, Excerpt of Hearing Transcript, at 63:1-64:5 (testimony of Plaintiffs' expert that approximately 91% of those documents had been previously produced).

⁶ As previously noted to the Court, numerous of the defendants, e.g., Livework, LLC, Wink One, LLC, Meyer Property, LLC, etc., in this case do not maintain their own accounting records, have their own bank statements or file their own tax returns and, instead, all of the same are wrapped up in LVLP's books, records and tax returns.

- i. Tax returns for FC/LW Vegas, LLC (of which Livework, LLC is a member) for tax years 2010, and 2016-2018 and accounting records or other statements and related information for FC/LW Vegas, LLC for 2007 through the present;
- j. Tax returns for PQ Las Vegas, LLC (of which Livework, LLC is a member) for tax years 2007 through 2012, 2013, and 2018, and accounting records or other statements and related information for PQ Las Vegas, LLC, for 2007 through the present;
- k. Tax returns for QH Las Vegas, LLC (of which Stella Property, LLC is a member) for tax years 2007 through 2011, 2013, 2016 and 2018, and accounting records or other statements and related information for QH Las Vegas, LLC, for 2007 through the present;
- l. Tax returns for Mitchell Holdings, LLC for tax years 2007-2011 and 2016-2018;
- m. General ledgers, adjusted-journal entries, trial-balance ledgers, balance sheets, cash-account-activity statements, bank statements, income statements or other similar accounting/financial records for Mitchell Holdings, LLC, for 2007 through the present;
- n. Tax returns for David Mitchell for tax years 2007-2011 and 2017-2018;
- o. General ledgers, K-1s, adjusted-journal entries, trial-balance ledgers, balance sheets, cash-account-activity statements, bank statements, income statements or other similar accounting/financial records for Mitchell Holdings, LLC, for 2007 through the present;

- p. Electronic worksheets and Word documents provided by LVLP to its New Jersey CPA, Sam Spitz;
- q. Monthly and year-end management for Livework and full bank statements for the identified bank account for Livework Manager, LLC;
- r. Engagement letters with the New Jersey CPA, Sam Spitz;
- s. Depreciation and cost-basis schedules from 2007 through 2012;
- t. Calculations regarding loan amortizations;
- u. Supporting documentation for all journal entries and to support LVLP's tax returns;
- v. Capital-account details for the various entities;
- w. Supporting real-property appraisals; and
- x. Details of sales documents provided to the New Jersey CPA, Sam Spitz.

(See Ex. 1, ¶¶ 14-15; see also Ex. 7 at 64-67.)

The Mitchell Defendants' conduct in this matter demonstrates that it is a near certainty that they will not comply with any additional extension they obtain through their Motion. The Mitchell Defendants have and will continue to stymie every attempt by Plaintiffs to fairly try this matter on the merits. And the only way to prevent this is for the Court to enter an order granting case-concluding sanctions against the Mitchell Defendants.

This Court has already determined that the degree of the Mitchell Defendants' prior willfulness in disregarding the Court's May 30th order was significant, and that, given the ongoing prejudice to Plaintiffs, only a short amount (two weeks) of additional time was reasonable for the Mitchell Defendants to fully and finally comply with their discovery obligations. (See Ex. 2 at 6:12 – 7:16.). Neither these findings, the prior May 30th discovery

1 order, the prior sanctions, the new sanctions of \$160,000.00, or anything else has been enough to
2 get the Mitchell Defendants to comply with their discovery obligations and this Court's orders.

3 Absent case-concluding sanctions, Plaintiffs will be forced to prepare for trial with little
4 time to examine the purportedly vast amount of additional documentation the Mitchell
5 Defendants are "working" toward producing. This will severely prejudice Plaintiffs' trial
6 preparation and force them to spend their time doing discovery (i.e., document review and
7 analysis) rather than focusing on pre-trial motions and trial. That, of course, assumes that the
8 Mitchell Defendants fully comply with the Sanctions Order in the near future. Alternatively,
9 Plaintiffs will be forced to endure yet another trial continuance (either when they have sufficient
10 time to prepare for trial or the Mitchell Defendants—inevitably—seek even more time to
11 comply).

12 The Mitchell Defendants are practically begging this Court to enter case-concluding
13 sanctions; and now is the time to do it. Such sanction is the only appropriate remedy and must be
14 ordered to demonstrate to future litigants that they are not free to act with wayward disregard of
15 this Court's orders.

16 Accordingly, Plaintiffs request that, pursuant to NRCP 37(b)(1)(C) and (F), this Court an
17 enter an order striking the Mitchell Defendants' Answer(s) and entering a default against them.

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III.

CONCLUSION

For the reasons set forth above, Plaintiffs respectfully request that this Court deny the Mitchell Defendants' Motion, grant the Counter-Motion and enter an order striking the Answer(s) of the Mitchell Defendants and entering default.

DATED this 17th day of October, 2019.

JOHN W. MUIJE & ASSOCIATES

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

JOHN W. MUIJE, ESQ.

Nevada Bar No: 2419

Email: jmuije@mujelawoffice.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the 17th day of October, 2019, I caused the foregoing document, **PLAINTIFFS' OPPOSITION TO THE MITCHELL DEFENDANTS' STATEMENT OF COMPLIANCE AND MOTION FOR ADDITIONAL TIME FOR FURTHER PRODUCTION and COUNTER-MOTION FOR CASE-CONCLUDING SANCTIONS** to be served as follows:

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

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James L. Edwards, Esq.
**COHEN JOHNSON PARKER
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6 *Attorney for Barnet Liberman and*
7 *Casino Coolidge*

8 /s/ Fern Vitman
9 An employee of JOHN W. MUIJE & ASSOCIATES
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EXHIBIT 1

**DECLARATION OF JOHN W. MUIJE, ESQ. IN SUPPORT OF PLAINTIFFS'
OPPOSITION TO THE MITCHELL DEFENDANTS' STATEMENT OF COMPLIANCE
AND MOTION FOR ADDITIONAL TIME FOR FURTHER PRODUCTION and
COUNTER-MOTION FOR CASE-CONCLUDING SANCTIONS**

JOHN W. MUIJE, under penalty of perjury, hereby declares, deposes and says:

1. My name is John W. Muije, Esq. and I have been primary counsel for Nype since approximately May of 2015, in efforts to enforce his judgment as to LVLP as entered in Nype's prior case decided on before the Honorable Ronald Israel in Case No. A-07-551073.

2. I make this declaration in support of Plaintiffs' Opposition to The Mitchell Defendants' Statement of Compliance and Motion for Additional Time for Further Production ("Opposition") and Counter-Motion for Case-Concluding Sanctions (Counter-Motion")¹.

3. Despite numerous "meet and confer" efforts, the Mitchell Defendants still failed to produce all documents responsive to Plaintiffs' discovery requests.

4. Even after Plaintiffs filed a motion to compel on April 22, 2019, the Mitchell Defendants failed to produce any responsive documents.

5. Although the Liberman Defendants have paid \$500.00 of this sanction award, the Mitchell Defendants have yet to pay a penny.

6. To date, the Mitchell Defendants have still not paid their share of the \$1,500.00 sanction award.

7. As a result of the Mitchell Defendants' failure to comply with this Court's May 30th order, Plaintiffs were forced to file, on June 14, 2019, a Motion for Sanctions Pursuant to NRCP 37(b).

¹ Capitalized terms not further defined herein shall have the meanings ascribed to them in the Opposition and/or Counter-Motion.

1 8. After a preliminary hearing on the sanctions motion on June 24, 2019, and an
2 evidentiary hearing occurring over three days (June 27, 2019, July 9, 2019, and September 3,
3 2019), the Court orally granted the motion on September 3, 2019.

4
5 9. Unsurprisingly, the Mitchell Defendants failed to comply with the Sanctions Order
6 by the October 4, 2019, deadline.

7 10. The Mitchell Defendants also made a supplemental production of approximately
8 4,000 pages of documents in response to four specific requests for production.

9
10 11. I am informed from Plaintiffs' counsel, Reisman Sorokac, who are assisting me in
11 this matter, that they have reviewed this production, and that it was, almost entirely, yet another
12 regurgitation of documents previously produced (in some cases many times previously).

13 12. On information and belief, the Mitchell Defendants' October 7, 2019, production
14 of an additional of 3,953 pages was merely yet another ruse to make it appear that they had done
15 something meaningful, but, instead, was just (almost entirely) a regurgitation of previously
16 produced documents.

17
18 13. The Mitchell Defendants have attempted this same trick on multiple prior
19 occasions, including just recently during the evidentiary hearing preceding this Court's Sanctions
20 Order.

21
22 14. Plaintiffs are still missing an enormous amount of documentation from the
23 Mitchell Defendants, including, among other things:

- 24 a. Tax returns for LVLP for tax years 2017 and 2018;²
25 b. General Ledgers for LVLP for 2017, 2018, and 2019;
26 c. Adjusted-journal entries for LVLP for 2007-2012, 2017, 2018 and 2019;
27
28

² As previously noted to the Court, numerous of the defendants, e.g., Livework, LLC, Wink One, LLC, Meyer Property, LLC, etc., in this case do not maintain their own accounting records, have their own bank

- d. Trial-balance ledgers for LVLP for 2007-2010 and 2015 through 2019;
- e. Balance sheets for LVLP for 2007-2010, 2017, 2018 and 2019;
- f. Cash-account-activity statements for LVLP for 2007-2010, and 2015-2019;
- g. Bank statements for LVLP for 2017-2019;
- h. Income statements for LVLP for 2007-2012 and 2017-2019;
- i. Tax returns for FC/LW Vegas, LLC (of which Livework, LLC is a member) for tax years 2010, and 2016-2018 and accounting records or other statements and related information for FC/LW Vegas, LLC for 2007 through the present;
- j. Tax returns for PQ Las Vegas, LLC (of which Livework, LLC is a member) for tax years 2007 through 2012, 2013, and 2018, and accounting records or other statements and related information for PQ Las Vegas, LLC, for 2007 through the present;
- k. Tax returns for QH Las Vegas, LLC (of which Stella Property, LLC is a member) for tax years 2007 through 2011, 2013, 2016 and 2018, and accounting records or other statements and related information for QH Las Vegas, LLC, for 2007 through the present;
- l. Tax returns for Mitchell Holdings, LLC for tax years 2007-2011 and 2016-2018;
- m. General ledgers, adjusted-journal entries, trial-balance ledgers, balance sheets, cash-account-activity statements, bank statements, income statements or other similar accounting/financial records for Mitchell Holdings, LLC, for 2007 through the present;

statements or file their own tax returns and, instead, all of the same are wrapped up in LVLP's books,

- n. Tax returns for David Mitchell for tax years 2007-2011 and 2017-2018;
- o. General ledgers, K-1s, adjusted-journal entries, trial-balance ledgers, balance sheets, cash-account-activity statements, bank statements, income statements or other similar accounting/financial records for Mitchell Holdings, LLC, for 2007 through the present;
- p. Electronic worksheets and Word documents provided by LVLP to its New Jersey CPA, Sam Spitz;
- q. Monthly and year-end management for Livework and full bank statements for the identified bank account for Livework Manager, LLC;
- r. Engagement letters with the New Jersey CPA, Sam Spitz;
- s. Depreciation and cost-basis schedules from 2007 through 2012;
- t. Calculations regarding loan amortizations;
- u. Supporting documentation for all journal entries and to support LVLP's tax returns;
- v. Capital-account details for the various entities;
- w. Supporting real-property appraisals; and
- x. Details of sales documents provided to the New Jersey CPA, Sam Spitz.

15. The list of missing documentation is supported in part by my own personal knowledge, information provided to me by Reisman Sorokac, and the testimony of Mark Rich, CPA, at the September 3, 2019, evidentiary hearing.

16. Apparently, the Mitchell Defendants have just now discovered more than 600 gigabytes of responsive emails and other documents, see Mot. at 5:9-13, despite repeatedly

records and tax returns.

1 representing through their predecessor counsel (Garry Hayes) that they had searched their records
2 and produced everything they had!!

3 17. Attached to the Opposition and Counter-Motion as Exhibit 2 is a true and correct
4 copy of the Sanctions Order.
5

6 18. Attached to the Opposition and Counter-Motion as Exhibit 3 is a true and correct
7 copy of the May 30, 2019 Order Compelling Discovery, Awarding Sanctions, and Briefly
8 Extending Discovery for Limited Purposes and Continuing the Trial Date.
9

10 19. Attached to the Opposition and Counter-Motion as Exhibit 4 is a true and correct
11 copy of an excerpt of the Notice of Entry of Order Re: Discovery Sanctions, filed on September
12 23, 2019.

13 20. Attached to the Opposition and Counter-Motion as Exhibit 5 is a true and correct
14 copy of a printout dated October 17, 2019, of the court minutes from the July 8, 2019 status
15 check.
16

17 21. Attached to the Opposition and Counter-Motion as Exhibit 6 is a true and correct
18 copy of the Declaration of Ira Victor.

19 22. Attached to the Opposition and Counter-Motion as Exhibit 7 is a true correct copy
20 of an excerpt of the hearing transcript for the hearing held before this Court on or about
21 September 3, 2019.)
22

23 I declare under penalty of perjury under the laws of the State of Nevada that the foregoing
24 is true and correct.

25 Executed this 7th day of October, 2019.
26
27

28 /s/ John W. Muije, Esq.
JOHN W. MUIJE, ESQ.

EXHIBIT 2



1 **ORD**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

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5
6 RUSSELL L. NYPE; REVENUE PLUS, LLC,
7 DOES I through X; DOE CORPORATIONS I
8 through X; and DOE PARTNERSHIPS I through X;

9 Plaintiffs,

10 vs.

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

22 Defendants.

Case No.: A-16-740689-B

Dept. No.: XI

23 **ORDER RE: DISCOVERY SANCTIONS**

24 This matter came on for Plaintiff's Motion for Sanctions Pursuant to NRCP 37(b) on
25 June 24, 2019 and evidentiary hearing on June 27, 2019, July 9, 2019 and September 3,
26 2019 as to Plaintiff's Motion for Sanctions Pursuant to NRCP 37(b), Plaintiffs RUSSELL L.
27 NYPE and REVENUE PLUS, LLC (collectively "Nype"), appearing by and through their
28 attorneys of record, JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE &
ASSOCIATES and LENARD SCHWARTZER, ESQ.; Defendants, DAVID J. MITCHELL,

1 individually, MEYER PROPERTY, LTD., ZOE PROPERTY, LLC, LEAH PROPERTY, LLC,
2 WINK ONE, LLC, LIVE WORK, LLC, LIVE WORK MANAGER, LLC, AQUARIUS
3 OWNER, LLC, LVLV HOLDINGS, LLC, MITCHELL HOLDINGS, LLC, LIVE WORKS TIC
4 SUCCESSOR, LLC (collectively the "Mitchell Defendants"), appearing by and through their
5 attorneys of record, H. STAN JOHNSON, ESQ. and JAMES EDWARDS, ESQ., of the firm of
6 COHEN, JOHNSON PARKER EDWARDS; LAS VEGAS LAND PARTNERS, LLC, also
7 appearing by and through its attorney of record, STAN JOHNSON, ESQ., of the firm of COHEN
8 JOHNSON PARKER EDWARDS, Defendant 305 LAS VEGAS, LLC appearing at some, but
9 not all, of the days by and through its counsel of record BRIAN BOSCHKE, ESQ. of the law
10 firm of HOLLEY DRIGGS WALCH FINE PUZEY STEIN & THOMPSON; and Defendants
11 BARNET LIBERMAN, CASINO COOLIDGE, LLC not appearing for these motions, the Court
12 having admitted into evidence numerous exhibits relevant to the proceedings, and having heard
13 the testimony of witnesses and the written and oral arguments of counsel, and good cause
14 appearing, the Court makes the following findings of fact and conclusions of law:

18 PROCEDURAL POSTURE

19 1. The Mitchell Defendants' prior counsel filed a motion to withdraw as counsel
20 on or about March 13, 2019.

21 2. The minute order granting this motion was entered on April 12, 2019. The
22 written order granting the motion to withdraw was filed on April 22, 2019, and the notice of
23 entry of the order was filed on April 23, 2019.

24 3. NYPE filed and served a Motion to Compel Defendants' Production of
25 Documents, On Order Shortening Time on or about April 22, 2019, which contained an Order
26 Shortening Time to be heard on May 6, 2019.
27
28

1 4. At the time of that hearing, all Defendants had newly retained counsel, their
2 prior counsel withdrew during the month of April. The hearing on the Motion to Compel was
3 continued to May 15, 2019 to permit new defense counsel time to prepare.
4

5 5. No opposition to Plaintiff's Motion to Compel was filed, nor did any of the
6 Mitchell Defendants personally appear at the hearing thereon.

7 6. At the continued hearing of May 15, 2019, the Court considered the merits of
8 Nype's Motion to Compel and made rulings as memorialized in the Order Compelling
9 Discovery, and Awarding Sanctions, entered on May 30, 2019, (the "Order Granting Motion to
10 Compel") and briefly extended discovery for limited purposes.
11

12 7. Nype filed a Motion for Discovery Sanctions Pursuant to NRCP 37(b), also on
13 Order Shortening Time, which was heard on June 24, 2019. At that hearing, the Court expressly
14 found, on the record, that sanctions were appropriate, and that as a result, the only unresolved
15 question would be the degree of sanctions and an evaluation of the factors under *Young v.*
16 *Ribiero*, 106 Nev. 88 (1990).
17

18 8. The Court scheduled an evidentiary hearing to commence on June 27, 2019.

19 9. The Mitchell Defendants filed no opposition to Nype's Motion for Sanctions,
20 nor did any Mitchell Defendant personally appear before the Court at either of the first two days
21 of the evidentiary hearing, i.e., June 27, 2019 and July 9, 2019. The Court continued the hearing
22 one additional time to permit Mitchell the opportunity to appear.
23

24 10. Las Vegas Land Partners, LLC filed a Notice of Bankruptcy on or about August
25 28, 2019, notifying the Court of an August 19, 2019 bankruptcy filing and submitted an
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1 Emergency Motion to Stay on the morning of September 3, 2019.¹

2 11. At the time of the continued evidentiary hearing of September 3, 2019, Nype
3 noted on the record, that in light of the bankruptcy filing, they were no longer proceeding as of
4 the final hearing date, as regards the discovery issues against Las Vegas Land Partners LLC.
5

6 12. This Court recognized at the September 3, 2019 hearing that Nype's fraudulent
7 conveyance claims may belong to the bankruptcy estate and would await communication, if
8 any, from the Trustee.

9 **FINDINGS OF FACT**

10 13. Nype made ongoing efforts to obtain discovery compliance from the Mitchell
11 Defendants, including specifically, soliciting comprehensive and complete supplements to their
12 July 10, 2018 responses to the May 20, 2018 requests for production of documents, as directed
13 to each of the defendants.
14

15 14. There has been a clear and knowing violation of the Order Granting the Motion
16 to Compel.
17

18 15. The Mitchell Defendants did not comply with the terms of the Order Granting
19 Motion to Compel requiring the production of additional documentation.

20 16. The Mitchell Defendants were copied on hundreds of emails produced by 305
21 Las Vegas, LLC during the Spring of 2019. The Mitchell Defendants failed to produce copies of
22 those emails with no reasonable excuse or explanation.
23
24

25
26 ¹ The Court heard Defendants' unfiled emergency motion to stay, marked as Court's Exhibit No. 3, prior to
27 proceeding with the final day of evidentiary hearing. As the Plaintiff elected not to proceed against Las Vegas
28 Land Partners, LLC, the court granted the motion as to Las Vegas Land Partners, LLC and denied the motion as to
the other defendants. These Rule 37 proceedings relate to non-compliance and disobedience by non-debtor parties,
and implicate the police power and official state action which are not affected by the bankruptcy law and the
automatic stay.

1 17. The declaration of David J. Mitchell filed on June 27, 2019, fails to provide the
2 information and certification required by the Order Granting Motion to Compel.

3 18. The Mitchell Defendants have failed to pay their portion of the sanctions
4 awarded in the Order Granting Motion to Compel, i.e. \$1,000.

5 19. The Mitchell Defendants are still significantly out of compliance with their
6 discovery obligations and have not made good faith attempts to search their existing records for
7 documents which were subject to the Order Granting Motion to Compel.
8

9 20. Plaintiffs have documented fees and costs incurred which are fairly attributable
10 to and caused by the Mitchell Defendants discovery abuses including: (a) the Motion to
11 Compel; (b) the Motion for Sanctions; (c) the three (3) evidentiary hearing sessions held by this
12 Court; (d) preparation and service of subpoenas to third-parties seeking documents that the
13 Mitchell Defendants should have produced long ago; (e) review and analysis of said documents,
14 which were produced without indices, to determine whether they contained meaningful new
15 information actually needed from the Mitchell Defendants; (f) review and analysis of last-
16 minute disclosures made by Mitchell Defendants; and (g) preparation of NRCP 30(b)(6)
17 deposition notices and associated cover letters to certain of the Mitchell Defendants in an
18 attempt to force them to produce knowledgeable witnesses who could provide information that
19 was still missing from the Mitchell Defendants' documentary disclosures.
20
21

22 21. The Mitchell Defendants' failures have prejudiced Nype in the completion of
23 expert reports.
24

25 22. The total aggregate sanctions requested by Nype, in the balance, are not
26 excessive given the discovery abuses.
27
28

23. The professional fees and expenses incurred by Nype in conducting this additional discovery necessitated by the discovery abuses is an appropriate sanction.

24. The amount of professional fees related to the discovery abuse is \$160,086.46 as contained in the Accounting filed on September 10, 2019. The precise calculation as to the total amount of discovery related fees and costs related by Nype during the relevant time (April 22, 2019 the date of the filing of the Motion to Compel through the conclusion of the evidentiary proceedings on or about September 3, 2019) involves additional mathematical calculation, to exclude those in the litigation in New Jersey with Mr. Spitz.

CONCLUSIONS OF LAW:

Based on the factors set forth in *Young vs. Ribeiro*, 106 Nev. 88 (1990) as follows:

(a) The degree of willfulness of the Mitchell Defendants was significant.

(b) Any lesser sanction than that awarded by the Court herein would not be warranted.

(c) Nype incurred additional fees, costs and professional fees as a direct consequence of the Mitchell Defendants' discovery failures.

(d) The ongoing discovery abuses by the Mitchell Defendants have not resulted in relevant evidence being irreparably lost.

(e) In evaluating the feasibility and fairness of alternative sanctions, the Court concludes that prior measures, including the modest sanction awarded on May 15, 2019, have not sufficed to either protect Nype or encourage the Mitchell Defendants to comply with their discovery obligations.

1 (f) Nevada's policy favoring adjudication on the merits weighs in favor of
2 affording the Mitchell Defendants an opportunity to comply with their overdue discovery
3 obligations.
4

5 (g) The proposed sanctions do not operate to penalize the parties for the
6 misconduct of their attorneys, as the misconduct on the part of the Mitchell Defendants, as
7 parties, not the actions of their attorneys, have violated this Courts order.
8

9 (h) It important to deter the parties to this litigation, as well as future
10 litigation, from engaging in similar abuses, and finds that the sanctions awarded herein are a fair
11 and appropriate amount to deter future misconduct.

12 (i) The Court further concludes that given the time already passed, and the
13 ongoing prejudice to Plaintiffs, that an additional two weeks from Notice of the date of entry of
14 this Order is an appropriate, fair and reasonable amount of time for the Mitchell Defendants to
15 fully comply with their obligations
16

17 (j) The Mitchell Defendants will comply with their discovery obligations
18 under the rules, as well as their duty to supplement, and must also fully and completely comply
19 with the Court's (Order of May 30, 2019).

20 (k) The Court further concludes that the calculation of fees and expenses
21 from April 22, 2019 through the present filed on September 10, 2109, is reasonable and
22 accounts for the reductions identified by the Court during the hearing and that the total of
23 \$160,086.46 is an appropriate monetary amount to award as a sanction for the willful
24 misconduct of the Mitchell Defendants.
25

26 (l) The Court further concludes, however, having considered all of the
27 factors, that the striking of the Mitchell Defendants' answer and the entering of a default as
28

1 against said defendants is too harsh at this time, but may be considered in the future if
2 appropriate.

3
4 **ORDER**

5 Based upon the above and foregoing,

6 **IT IS FURTHER ORDERED** that Plaintiff RUSSELL NYPE AND REVENUE
7 PLUS, LLC, be and they are hereby awarded discovery sanctions against Defendants DAVID J.
8 MITCHELL, INDIVIDUALLY, MEYER PROPERTY, LTD., ZOE PROPERTY, LLC, LEAH
9 PROPERTY LLC, WINK ONE, LLC, LIVE WORK, LLC, LIVE WORK MANAGER, LLC,
10 AQUARIUS OWNER, LLC, LVLV HOLDINGS, LLC, MITCHELL HOLDINGS, LLC, AND
11 LIVE WORKS TIC SUCCESSOR, LLC, in the amount of \$160,086.46, said amount to bear
12 interest at the Nevada statutory rate from September 20, 2019 until paid;

14 **IT IS FURTHER ORDERED** that the Mitchell Defendants will fully, and completely
15 comply with all of their obligations hereunder as well as the requirements set forth in the Order
16 of May 30, 2019, including their duty to fully and completely supplement their discovery
17 responses and to meticulously certify, in detail their compliance efforts and results as set forth in
18 said Order within two weeks of entry of this order;

20 **IT IS FURTHER ORDERED** that Plaintiff shall submit a separate judgment for the
21 amount of the sanction.

23 DATED this 18th day of September, 2019.

26
27 
28 Elizabeth Gonzalez, District Court Judge

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Certificate of Service

I hereby certify that on the date filed, this Order was electronically served, pursuant to N.E.F.C.R. Rule 9, to all registered parties in the Eighth Judicial District Court Electronic Filing Program.


Dan Kutinac

EXHIBIT 3



1 **ORDR**

2 JOHN W. MUIJE & ASSOCIATES

3 JOHN W. MUIJE, ESQ.

4 Nevada Bar No: 2419

5 1840 East Sahara Avenue, Suite 106

6 Las Vegas, NV 89104

7 Telephone No: (702) 386-7002

8 Facsimile No: (702) 386-9135

9 Email: jmuije@muijelawoffice.com

10 *Attorneys for Plaintiffs*

DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs.

vs.

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

Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

DATE: May 15, 2019

TIME: 10:30- a.m.

ORDER COMPELLING DISCOVERY. AWARDING SANCTIONS.

AND

BRIEFLY EXTENDING DISCOVERY FOR LIMITED
PURPOSES-

AND

CONTINUING THE TRIAL DATE

1 This matter came on for hearing on May 15, 2019 at the hour of 10:30 a.m., Plaintiffs
2 represented by John W. Muije, Esq., of the Law Firm of JOHN W. MUIJE & ASSOCIATES,
3 Defendant 305 Las Vegas, LLC represented by Brian W. Boschee, Esq., of the Firm of HOLLEY
4 DRIGGS WALCH FINE PUZEY STEIN & THOMPSON, Defendants Barnet Liberman and
5 Casino Coolidge, LLC represented by Elliot S. Blut, Esq., of BLUT LAW GROUP, P.C., and
6 Defendants, DAVID J. MITCHELL; BARNET LIBERMAN; LAS VEGAS LAND PARTNERS,
7 LLC; MEYER PROPERTY, LTD.; ZOE PROPERTY, LLC; LEAH PROPERTY, LLC; WINK
8 ONE, LLC; LIVE WORK, LLC LIVE WORK MANAGER, LLC; AQUARIUS OWNER, LLC;
9 LVLV HOLDINGS, LLC; MITCHELL HOLDINGS, LLC; LIBERMAN HOLDINGS, LLC; 305
10 LAS VEGAS, LLC; LIVE OWRKS TIC SUCCESSOR, LIVE WORK, LLC, appearing by and
11 through their attorney of record, JAMES EDWARDS, ESQ., in association with the Firm of
12 COHEN, JOHNSON, PARKER & EDWARDS, and CPA Michael Rosten appearing in Proper
13 Person, and the Court having reviewed and considered the pleadings papers and documents on
14 file herein, and the arguments and representations of counsel and Mr. Rosten, and good cause
15 appearing,
16

17
18
19
20 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that the Court finds that
21 Plaintiffs' Motion to Compel Defendant's Production of Documents on Order Shortening Time as
22 filed on April 22, 2019, was originally convened on May 6, 2019, but was continued for nine (9)
23 days due to the retention of newly appearing counsel for the Mitchell Defendants, James Edwards
24 in association with the firm of Cohen Johnson Parker & Edwards et al.
25

26 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court finds that
27 there has been no written opposition to Plaintiff's Motion;
28

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the Court further
finds, based upon the representations of counsel for Plaintiff and counsel for 305 Las Vegas,

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Las Vegas, Nevada 89104
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1 LLC, that 305 Las Vegas, LLC has made a substantial and good faith effort, producing well over
2 10,000 pages of new materials between the date of the filing of the motion and the time and date
3 noted above;

4
5 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, however, that there
6 remain unresolved discovery issues as more fully explained in Plaintiff's Motion of April 22,
7 2019, and that all defendants are expressly ordered to make an expeditious and diligent search for
8 all of the additional documentation and information noted and sought by Plaintiffs, insofar as the
9 Court hereby expressly **GRANTS** and approves Plaintiff's Motion to Compel and further awards
10 sanctions, as noted hereinafter;

11
12 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court awards
13 Plaintiffs as against all defendants, jointly and severally, the sum of \$1,500.00 at this time,
14 without prejudice to further application for fees and costs, and that defendants shall pay said sum
15 to the Trust Account of John W. Muje & Associates 30 days from the date of this Order. *only \$500 payable by Librarian*

16
17 **IT IS FURTHER ORDERD, ADJUDGED AND DECREED** in light of the above and
18 foregoing, that the presently scheduled depositions of CPA's Rosten and Taylor be vacated at the
19 present time, subject to resetting at a mutually convenient time and date subsequent to May 30,
20 2019;

21
22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court
23 recognizes that Plaintiff have numerous subpoenas, noticed depositions, and a pending motion to
24 compel against the New Jersey CPA, Sam Spitz, already in progress, and that a brief extension
25 of time would benefit the parties so as to allow those already promulgated and authorized
26 discovery efforts by the Plaintiffs to come to fruition;

27
28 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that in granting
Plaintiff's Motion to Compel, at least a modest amount of time must be afforded to the

1 defendants to adequately search, research, and carefully examine their physical and electronic
2 files to assure that all relevant discoverable information and documentation, including but not
3 limited to the information already requested by the Plaintiffs, may be located, produced, and
4 disclosed, and the Court's hereby expressly authorizes three weeks from the date of the hearing,
5 i.e. through and including Wednesday, June 5, 2019, for all defendants to fully and completely
6 comply with this Order compelling discovery and requiring them to produce the sought after
7 emails and financial data, including full responses to Requests for Production 16, 17, 19 and 23,
8 and the rest of Plaintiff's specific discovery requests to defendants, including all emails and the
9 backup and supporting financial data, accounting back-up, and financial details, schedules and
10 reports sought by Plaintiffs.

11 **IT IS FURTHER ORDERD, ADJUDGED AND DECREED** that on or before June 5,
12 2019, David Mitchell, shall submit sworn affidavits to Plaintiff's counsel and file the same with
13 the Court, stating under oath, that they and each defendant entity have fully and completely
14 searched all available files and document repositories, both physical and electronic, and that such
15 sworn affidavits shall further set forth specifically the efforts undertaken and what was done to
16 assure full compliance with said defendant's discovery obligations. The said affidavit shall also
17 state under oath, (after describing the research, investigation and search methods used), that said
18 defendants have fully and completely complied with all of their discovery obligations, and
19 produced all relevant and available documentation. As to any documentation not found or
20 produced, the affidavits shall explain in specific detail why such documentation, (e.g. financial
21 and accounting work papers spanning 2007 through 2012), has not been produced;

22 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that once the defendants
23 have satisfied this Order and their discovery obligations hereunder, on or before June 5, 2019,
24 that Plaintiffs and their designated expert witness, Mark Rich, CPA, shall have three weeks

1 thereafter, through and including June 26, 2019, within which to supplement Plaintiff's
2 previously disclosed expert witness report, in light of the many thousands of pages of newly
3 discovered and disclosed documentation first available to the Plaintiffs subsequent to the prior
4 depositions of Messrs Liberman and Mitchell, which occurred in October, 2018;

5
6 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, if any residual
7 discovery dispute continues to exist after the Defendants' deadline of June 5, 2019 as set forth
8 above, Plaintiffs' June 26th deadline to supplement their expert's report will be tolled while the
9 Court and parties work out the issue;

10
11 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, given that the deadline
12 for expert witness reports and rebuttal witness reports has already passed, that Defendants shall
13 not be authorized to supplement their prior expert witness report, rebut Mr. Rich's contemplated
14 supplement or designate any different expert, particularly insofar as the current authorization for
15 Plaintiffs to supplement their expert witness report derives specifically, directly, and proximately
16 from discovery defalcations on the part of the defendants;

17
18 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that subsequent to the
19 aforesaid June 26, 2019, deadline for Plaintiffs' expert to supplement his expert witness report,
20 the Court will authorize four weeks (through and including July 24, 2019) for the parties to
21 conduct the depositions of already identified pertinent witnesses, limited to the following:

- 22
- 23 1. David Mitchell;
- 24 2. Barnet Liberman;
- 25 3. Russell Nype;
- 26 4. Michael Rosten, CPA;
- 27 5. Scott W. Taylor, CPA;
- 28 6. Mark Rich, CPA
7. An appropriate 30(b)(6) deposition of Defendant Wink One, LLC, as previously noticed (with no appearance or attendance by the defendant or any Representative of said defendant);
8. An appropriate 30(b)(6) deposition of Live Work, LLC;
9. The deposition of Defendants' New Jersey CPA, Sam Spitz

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1
2 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that Plaintiffs
3 previously served subpoenas and records depositions, currently in progress, including the
4 proceedings incident to Plaintiff's New Jersey Motion to Compel versus CPA Spitz, may be seen
5 through to fruition during this briefly extended discovery period;

6
7 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, however, absent
8 specific Order of the Court, that no new or additional depositions or discovery efforts shall be
9 undertaken.

10 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** that the Court will issue
11 a separate Scheduling Order setting forth the new dispositive motion deadline, estimated to be on
12 or about August 23, 2019, and further setting appropriate trial scheduling dates and procedures, in
13 contemplation of the trial of this matter occurring during the Court's October 14th calendar stack;

14
15 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED** in light of the above and
16 foregoing, that the presently scheduled deposition of CPA's Rosten and Taylor be vacated at the
17 present time, subject to resetting at a mutually convenient time and date subsequent to May 30,
18 2019;

19
20 **IT IS FURTHER ORDERED, ADJUDGED AND DECREED**, in light of the Court's
21 decision and disposition of Plaintiff's Motion to Compel, and the brief limited extension of both
22 discovery and a trial date which result in part therefrom, that the hearing on the Mitchell
23 Defendants Motion to Extend Discovery and Continue Trial presently set for June 17, 2019 be
24 vacated as moot.

25
26 DATED this 30th day of May, 2019.

27
28 
DISTRICT COURT JUDGE

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

1 Submitted by:

2 JOHN W. MUIJE & ASSOCIATES

3
4 By: _____

5 John W. Muije, Esq.
6 Nevada Bar No: 2419
7 1840 East Sahara Avenue, Suite 106
8 Las Vegas, NV 89104
9 Telephone No: (702) 386-7002
Facsimile No: (702) 386-9135
Email: jmuije@muijelawoffice.com
Attorneys for Plaintiff

10 DATED this ____ day of May, 2019

11 APPROVED AS TO FORM AND
12 AND CONTENT

13 BLUT LAW GROUP, P.C.

14
15 By: _____

16 /s/ Elliot S. Blut

17 Elliot S. Blut, Esq.
18 Nevada Bar No: 006570
19 300 So. Fourth Street, Ste 701
20 Las Vegas, Nevada 89101
21 E-Mail: eblood@blutlaw.com
Attorneys for Defendants
Barnet Liberman and Casino
Coolidge, LLC

22 DATED this ____ day of May, 2019

DATED this ____ day of May, 2019

APPROVED AS TO FORM AND
CONTENT

HOLLEY DRIGGS WALCH FINE
PUZEY STEIN & THOMPSON

By: _____

Brian B. Boschee, Esq.
Nevada Bar No. 007612
400 So. 4th Street, Third Floor
Las Vegas, Nevada 89101
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Attorneys for Defendant
305 Las Vegas, LLC

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1 APPROVED AS TO FORM AND
2 CONTENT

3 COHEN JOHNSON PARKE
4 & EDWARDS

5 By: _____

6 H. Stan Johnson, Esq
7 Nevada Bar No: 000265
8 James L. Edwards, Esq
9 Nevada Bar No. 004256
10 375 E. Warm Springs Rd., #104
11 Las Vegas, Nevada 89119
12 *Attorneys for Mitchell Defendants*
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EXHIBIT 4



1 NEOJ
2 JOHN W. MUIJE & ASSOCIATES
3 JOHN W. MUIJE, ESQ.
4 Nevada Bar No: 2419
5 1840 E. Sahara Ave #106
6 Las Vegas, NV 89104
7 Phone No: (702) 386-7002
8 Fax No: (702) 386-9135
9 Email: jmuije@muijelawoffice.com
10 Attorneys for Plaintiffs

DISTRICT COURT
CLARK COUNTY, NEVADA

9 RUSSELL L. NYPE AND REVENUS PLUS,
10 LLC

11 Plaintiffs,

12 vs.

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

19 Mitchell Defendants.

CASE NO: A-16-740689-B

DEPT NO: XI

Date of Hearing: June 24, 2019

Time of Hearing: 9:00 a.m.

NOTICE OF ENTRY OF ORDER RE: DISCOVERY SANCTIONS

23 TO: ELLIOT S. BLUT, ESQ., of BLUT LAW GROUP, P.C., Attorneys for Defendants
24 BARNET LIBERMAN AND CASINO COOLIDGE, LLC

25 TO: Brian B. Boschee, Esq., of the Law Offices of HOLLEY DRIGGS WALCH FINE
26 PUZEY STEIN & THOMPSON, Attorneys for Defendant 305 Las Vegas, LLC

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

JOHN W. MUIJE & ASSOCIATES
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1 PLEASE TAKE NOTICE that the ORDER RE: DISCOVERY SANCTIONS, was
2 entered with the Court on the 20th day of September, 2019, a copy of which is attached hereto as
3 Exhibit "1".

4
5 DATED this 23rd day of September, 2019.

6 JOHN W. MUIJE & ASSOCIATES

7
8 By: 

9 JOHN W. MUIJE, ESQ.

10 Nevada Bar No: 2419

11 1840 E. Sahara Ave #106

12 Las Vegas, NV 89104

13 Phone No: (702) 386-7002

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15 Email: Jmuije@muijelawoffice.com

16 *Attorneys for Plaintiffs*

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CERTIFICATE OF MAILING

I certify that I am an employee of JOHN W. MUIJE & ASSOCIATES and that on the
23rd day of September, 2019, I caused the foregoing document, **NOTICE OF ENTRY OF
ORDER RE: DISCOVERY SANCTIONS**, to be served as follows:

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

Elliot S. Blut, Esq.
BLUT LAW GROUP, P.C.
300 South Fourth Street, Suite 701
Las Vegas, Nevada 89101
Telephone: (702) 384-1050
Facsimile: (702) 384-8565
E-Mail: eblut@blutlaw.com
Attorneys for Defendants
Barnet Liberman and Casino Coolidge,
LLC

Brian W. Boschee, Esq.
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Telephone: (702) 791-0308
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Attorneys for Defendant
305 Las Vegas, LLC

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

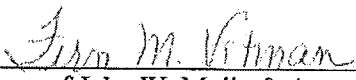

An Employee of John W. Muije & Associates

EXHIBIT "1"



1 **ORD**

2 **DISTRICT COURT**

3 **CLARK COUNTY, NEVADA**

4
5
6 **RUSSELL L. NYPE; REVENUE PLUS, LLC,**
7 **DOES I through X; DOE CORPORATIONS I**
8 **through X; and DOE PARTNERSHIPS I through X;**

9 **Plaintiffs,**

10 **vs.**

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

22 **Defendants.**

Case No.: A-16-740689-B

Dept. No.: XI

23 **ORDER RE: DISCOVERY SANCTIONS**

24 This matter came on for Plaintiff's Motion for Sanctions Pursuant to NRCP 37(b) on
25 June 24, 2019 and evidentiary hearing on June 27, 2019, July 9, 2019 and September 3,
26 2019 as to Plaintiff's Motion for Sanctions Pursuant to NRCP 37(b), Plaintiffs RUSSELL L.
27 NYPE and REVENUE PLUS, LLC (collectively "Nype"), appearing by and through their
28 attorneys of record, JOHN W. MUIJE, ESQ., of the Law Firm of JOHN W. MUIJE &
ASSOCIATES and LENARD SCHWARTZER, ESQ.; Defendants, DAVID J. MITCHELL,

EXHIBIT 5

REGISTER OF ACTIONS

CASE NO. A-16-740689-B

Russell Nype, Plaintiff(s) vs. David Mitchell, Defendant(s)

§
§
§
§
§
§
§

Case Type: NRS Chapters 78-89
Date Filed: 07/26/2016
Location: Department 11
Case Number History: A-16-740689-C
Cross-Reference Case Number: A740689

PARTY INFORMATION

Defendant	305 Las Vegas LLC	Lead Attorneys Brian W. Boschee
Defendant	Aquarius Owner LLC	Garry L. Hayes
Defendant	Casino Coolidge LLC	Elliot S. Blut
Defendant	FC/Live Work Vegas LLC	James L. Edwards, ESQ
Defendant	Las Vegas Land Partners LLC	Garry L. Hayes
Defendant	Leah Property LLC	Garry L. Hayes
Defendant	Lieberman, Barnet	Elliot S. Blut
Defendant	Live Work LLC	Garry L. Hayes
Defendant	Live Work Manager LLC	Garry L. Hayes
Defendant	Live Works TIC Successor LLC	Garry L. Hayes
Defendant	LVLP Holdings LLC	Garry L. Hayes
Defendant	Meyer Property Ltd	Garry L. Hayes
Defendant	Mitchell Holdings LLC	Garry L. Hayes
Defendant	Mitchell, David J	Harold Stanley Johnson
Defendant	Wink One LLC	Garry L. Hayes
Defendant	Zoe Property LLC	Garry L. Hayes
Plaintiff	Nype, Russell L	John W. Muije
Plaintiff	Revenue Plus LLC	

EVENTS & ORDERS OF THE COURT

07/08/2019 | Status Check: Trial Readiness (9:00 AM) (Judicial Officer Gonzalez, Elizabeth)

Minutes

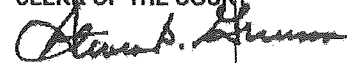
07/08/2019 9:00 AM

- Mr. Muije appeared by telephone. Mr. Edwards advised 400 pages of new financial documents have been produced; Mr. Mitchell cannot appear tomorrow; they have prevailed upon him to hire an I.T. person, and they would request 30 days. Court inquired as to whether it should hear from Plaintiff's expert who is available tomorrow. Mr. Muije advised Mr. Rich changed his family vacation plans so he is available tomorrow and all set to go. COURT ORDERED, evidentiary hearing to proceed tomorrow since Mr. Rich changed his plans, and, at the conclusion of his testimony, Court and counsel will discuss further scheduling; Mr. Mitchell simply needs to get his act together and appear for court. 7-9-19 9:30 AM EVIDENTIARY HEARING...PLAINTIFFS' MOTION FOR SANCTIONS PURSUANT TO NRCP 37(B) AND MOTION TO EXTEND TIME FOR PLAINTIFFS' DEADLINE FOR SUPPLEMENTAL EXPERT REPORT ON ORDER SHORTENING TIME 10-8-19 9:30 AM CALENDAR CALL 10-14-19 1:30 PM BENCH TRIAL

Parties Present

Return to Register of Actions

EXHIBIT 6



1 COHEN | JOHNSON | PARKER | EDWARDS

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10 Las Vegas, Nevada 89119

11 Telephone: (702) 823-3500

12 Facsimile: (702) 823-3400

13 *Attorneys for Mitchell Defendants*

14 IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

15 IN AND FOR THE COUNTY OF CLARK

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

21 vs.

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

Case No.: A-16-740689-B

Dept. No.: XI

DECLARATION OF IRA VICTOR

1 STATE OF NEVADA)
2) ss
3 COUNTY OF CLARK)

4 1. My name is Ira Victor. I am over the age of eighteen (18) years and I am
5 in all respects competent to make this Declaration.

6 2. This Declaration is based upon my personal knowledge and, if called upon
7 to testify, I would testify as set forth in this Declaration. I respectfully make this
8 declaration regarding the action Nype v. Mitchell A-16-740689-B pending in Dept. XI of
9 the Eighth Judicial District Court, County of Clark, Nevada.

10 3. I am the Chief Forensic Analyst for Discovery Technician. I have over
11 twenty-five years of relevant experience. I hold four certifications (G2700, GCFA, GPCI,
12 GSEC) from The Global Information Assurance Certification body (GIAC). I hold two
13 relevant certifications from (CGEIT, CRISC) from ISACA, Formerly known as
14 Information Systems Audit and Control Association. I am named as co-developer on
15 multiple U.S. patents related to information security.

16 4. On or about August 8th 2019 I was retained to provide digital forensics and
17 related services in searching the business records David Mitchell and related companies
18 to demonstrate compliance with the Court's Order of May 15, 2019.

19 5. As of today I have located and downloaded many of the digital files to a
20 more secure environment and have begun the process of the digital analysis. Due to
21 some technical and logistic issues this process has taken longer than average.

22 6. I estimate that I will be done with the analysis by September 30, 2019 and
23 that I estimate it will take until October 10, 2019 to complete my report.

24 ///

25 ///

26 ///

27 ///

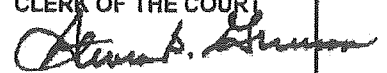
CERTIFICATE OF SERVICE

Pursuant to Nev. R. Civ. P. 5(b)(2)(D) and E.D.C.R. 8.05, I hereby certify that on this day, I caused a true and correct copy of the foregoing **DECLARATION OF IRA VICTOR**, to be served to all registered parties, via the Court's Electronic Filing System.

Dated: September 3, 2019

/s/ Sarah Gondek
An employee of Cohen | Johnson | Parker | Edwards

EXHIBIT 7



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

RUSSELL NYPE,)	
)	
Plaintiffs,)	CASE NO. A-16-740689-B
)	DEPT NO. XI
vs.)	
)	
DAVID MITCHELL,)	
et al.,)	
)	TRANSCRIPT OF
Defendants.)	PROCEEDINGS

BEFORE THE HONORABLE ELIZABETH GONZALEZ, DISTRICT COURT JUDGE

TUESDAY, SEPTEMBER 03, 2019

EVIDENTIARY HEARING - DAY 03

APPEARANCES:

FOR THE PLAINTIFFS: JOHN W. MUIJE, ESQ.

FOR FC/LIVE WORK: JAMES L. EDWARDS, ESQ.
H. STANLEY JOHNSON, ESQ.

RECORDED BY: JILL HAWKINS, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 Q Are you aware that during the course of this
2 discovery evidentiary process, since we filed our motion to
3 compel back on April 22nd, Mr. Mitchell produced one
4 supplement on the eve of the first evidentiary hearing and
5 another one just before the 4th of July weekend with the
6 hearing scheduled for July 9th? Were you aware of that?

7 A Yes.

8 Q And have you had a chance to carefully go through the
9 documentation supplements that Mr. Mitchell produced at that
10 time?

11 A Yes.

12 Q In your own words, would you tell the Court your
13 conclusions after reviewing those supplemental discovery
14 disclosures.

15 A Yes. I previously testified on this, and on the
16 first supplement as well as the second supplement, and to prove
17 the point, we went back through document by document. We did a
18 calculation as to the first supplement, and over 83 percent of
19 the documents contained in that supplement were produced by the
20 defendant in this action or there CPA Sam Smit -- or Spitz
21 previously.

22 With regard to the second supplement, 97 percent was
23 previously provided by the defendant or Sam Smit's (sic), and
24 then we did a calculation of how much of it really related to
25 documents Sam Spitz had already provided, and there was a 97 --

1 or excuse me, 91 percent -- or actually over 91 percent was
2 already provided by Sam Spitz.

3 Q And did you summarize those conclusions in Proposed
4 Exhibit 38?

5 A Yes.

6 Q During the course of the accrual here of several
7 years of litigation which most of which spans the time and
8 billing that you've shown, have you been able to ascertain what
9 kind of documentation Mr. Mitchell has failed to produce?

10 A Yes.

11 Q And what kind of documentation was that?

12 A Well, in Section 8 of my declaration, I give an
13 example. It's not -- there's other documents, but I've listed
14 significant documents. One would be the electronic worksheets
15 and Word documents that were given to the CPA by LVLP. In
16 Mr. Spitz's testimony in his deposition, he had indicated that
17 the accounting documents were communicated via email. So for
18 the -- especially for the missing periods of 2007 to 2012, it
19 would be great to have those.

20 The Live Work monthly management reports, we have
21 some, but not all that would relate to the Live Work monthly
22 management and bank statements. Those reports are critical in
23 that they include bank statements, and we'd be able to
24 determine if there were any distributions by month to the
25 defendant entities.

JD Reporting, Inc.

1 The engagement letters, there was controversy over
2 the engagement letters. Some have been provided by Mr. Spitz,
3 the CPA. We would like to -- there is issues that are related
4 to those, and the -- the accuracy of those engagement letters
5 that were provided in another matter in New Jersey, that's
6 being pursued, but that's why it's critical. It would be
7 important to see what Mr. Mitchell has.

8 The accounting documents that were destroyed
9 admittedly by the CPA that Mr. Mitchell should have himself as
10 well from 2000 to 2012.

11 Details of notes receivable to related parties and
12 how they're repaid, and that's critical from the standpoint
13 that we do have the 305 note that was shown on the books of
14 LVLP as though it was paid; however, 305, the accounting
15 records there contradict that, that it was not paid for the
16 same periods. In other words, the same periods of records that
17 were provided don't agree.

18 Depreciation schedules from 2007 to 2012.

19 Cost basis schedules from 2007 to 2012, which may or
20 may not be a part of the depreciation schedules.

21 Calculation of loan amortizations. There are loans
22 on the books. Obviously there would be loan amortization
23 schedules, not just statements, but, you know, schedules that
24 contemplate repayment and principal balances that would agree
25 with the books, you know, for each year and for each period.

JD Reporting, Inc.

1 Support for loan balances is lacking in the related parties.
2 There are schedules, but those schedules don't identify what
3 entity the loans were made to. Everything is treated as though
4 it's just one entity, LVLP, and as far as the accounting
5 records, we've talked about this before that there are numerous
6 entities that are included in those records. So the loans by
7 entity would be critical or copies of notes or something of
8 that nature.

9 Support for all journal entries. There's journal
10 entries that are in the books for millions of dollars,
11 including the disposition of the 305 note is made by journal
12 entry. So it'd be critical to have all the journal entries.
13 That's an example of why it's important to have the detail is
14 we'd be able to see why LVLP claimed that the note did not
15 exist and why 305 acknowledged that the note did exist.

16 Capital account detail, once again, that's similar to
17 the necessity of having the detail on the notes would be that
18 they maintained capital as though it's just one entity; whereas
19 capital would be considered by each individual entity, and the
20 repayment, the contributions of capital as well as the
21 distributions that are made should be by entity.

22 Details of sales documents provided to the CPA, but
23 the CPA obviously is getting information that we're not and
24 calculating gains and losses on dispositions of properties.

25 Wink One LLC, PQ and HQ, these are entities that

JD Reporting, Inc.

1 assets were spun off in, but we just don't have detailed
2 accountings as to, you know, primarily we're interested in
3 capital account activity, distribution activity, things of that
4 nature related to those specific entities.

5 Supporting work papers that LVLP gave the CPA to
6 provide -- to prepare the returns. So not only would there be
7 basic documents, but there would be follow-up questions, you
8 know, my firm and myself, we had prepared tax returns for 40
9 years, and, you know, it doesn't work that you just submit
10 information. There are obviously questions that go back and
11 forth, and data goes back and forth. The CPA can't prepare the
12 tax return just out of thin air. There's hard data that's
13 going there.

14 And, you know, as I've testified, CPA Sam Smit's --
15 Spitz has indicated that he has destroyed some of those
16 records.

17 Appraisals to support sales of real estate,
18 especially in a case of these related party transactions, and
19 then the Forest City accountings. We have been successful in
20 getting Forest City accountings, but their accountings have
21 links to spreadsheets, electronic spreadsheets that are
22 disabled. So it's -- they're impossible to work with.

23 That's -- that's just for example.

24 Q Okay. And the result is that an independent
25 [indiscernible], so to speak, of not being able to follow or

1 THE COURT: -- from the exhibits from April 22,
2 forward --

3 MR. MUIJE: Not counting New York.

4 THE COURT: -- not counting the Mr. Spitz fight, and
5 then submit that to Mr. Edwards and Mr. Johnson for the review
6 before you send it to me, then I will be happy to enter the
7 order.

8 Make sure you prepare findings.

9 I did evaluate all seven factors [indiscernible] made
10 a determination that striking the answer and entering a default
11 was too harsh a sanction under the circumstances.

12 MR. MUIJE: Too harsh, got it, Judge.

13 THE COURT: At this time.

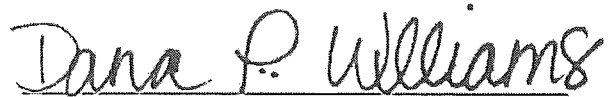
14 MR. EDWARDS: Thank you, Your Honor.

15 THE COURT: Goodbye.

16 (Proceedings concluded at 3:18 p.m.)

17 -oOo-

18 ATTEST: I do hereby certify that I have truly and correctly
19 transcribed the audio/video proceedings in the above-entitled
20 case.

21 
22

23 Dana L. Williams
24 Transcriber
25