

IN THE SUPREME COURT STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

JOSEPH FOLINO, an individual and
NICOLE FOLINO, an individual,

Appellant,

v.

TODD SWANSON, an individual;
TODD SWANSON, Trustee of the
SHIRAZ TRUST;
SHIRAZ TRUST, a Trust of unknown
origin; LYONS DEVELOPMENT,
LLC, a Nevada limited liability
company; DOES I through X; and ROES
I through X,

Respondent.

Case No. 81252

JOSEPH FOLINO, an individual and
NICOLE FOLINO, an individual,

Appellant,

v.

TODD SWANSON, an individual;
TODD SWANSON, Trustee of the
SHIRAZ TRUST;
SHIRAZ TRUST, a Trust of unknown
origin; LYONS DEVELOPMENT,
LLC, a Nevada limited liability
company; DOES I through X; and ROES
I through X,

Respondent.

Case No. 81831

**APPEAL
FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JIM CROCKETT CASE NO. A-18-782494-C**

**JOINT
APPENDIX ON APPEAL
VOLUME X OF XIX
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CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on March 9th, 2021.

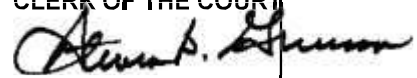
I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 9th day of March 2021.

BLACK & WADHAMS

/s/ Rusty Graf

Rusty Graf, ESQ
Nevada Bar No. 6322
10777 W. Twain Ave., Ste 300.
Las Vegas, Nevada 89135
Attorneys for Appellants



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSEPH FOLINO, an individual
and NICOLE FOLINO, an
individual,

Plaintiffs,

vs.

TODD SWANSON, an
individual, TODD SWANSON,
Trustee of the SHIRAZ TRUST;
SHIRAZ TRUST, a Trust of
unknown origin; LYONS
DEVELOPMENT, LLC, a
Nevada limited liability company;
DOES I through X; and ROES I
through X,

Defendants.

CASE#: A-18-782494-C

DEPT. XXIV

BEFORE THE HONORABLE JIM CROCKETT, DISTRICT COURT JUDGE

TUESDAY, APRIL 7, 2020

**RECORDER'S TRANSCRIPT OF VIDEO CONFERENCE VIA
BLUEJEANS HEARING**

**DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND
AMENDED COMPLAINT**

APPEARANCES (continued on page 2):

For the Plaintiffs:

J. RUSTY GRAF, ESQ.

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APPEARANCES (continued):

For the Defendants:	JEFFREY L. GALLIHER, ESQ.
	JAY T. HOPKINS, ESQ.

RECORDED BY: NANCY MALDONADO, COURT RECORDER

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1 Las Vegas, Nevada, Tuesday, April 7, 2020

2
3 [Case called at 10:42 a.m.]

4 THE CLERK: A782494, Joseph Folino versus Todd Swanson.
5 We should have Mr. Graf and Mr. Galliher.

6 MR. GRAF: Good morning, Your Honor, Rusty Graf.

7 THE COURT: Good morning.

8 MR. GALLIHER: And good morning, Your Honor, Jeff Galliher
9 and Jay Hopkins for the Defendants.

10 THE COURT: Good morning. All right, first of all, I owe
11 counsel an apology. I was castigating you for not giving me the
12 documents that you were referring to. That was completely my error.

13 I had several different three-ring binders that came in on this
14 case. And the one that contained the pleadings that I needed to be
15 referring to and that I was giving you guys a hard time about was on a
16 different part of the filing cabinet. And I simply did not see it and look at
17 it. So I apologize for accusing you guys of screwing up. That was my
18 error.

19 So this is Defendant's Motion to Dismiss Plaintiff's Second
20 Amended Complaint. In the Plaintiff's supplemental brief, it appears the
21 Plaintiff is attempting to expand their claim that Defendant
22 misrepresented water loss issues by bringing up items that surfaced
23 after the initial sellers executed the real property disclosure form on
24 October 24th, 2017. For example, a water leak that manifested on
25 November 7th, 2017.

1 Plaintiff seems to take issue with the fact that when the seller
2 completes the real property disclosure form on October 24th, 2017, he's
3 under no obligation to and can't report a leak that hasn't happened yet.

4 So the Defendant cannot be charged with concealing or failing
5 to report or misrepresenting something on October 24th, 2017 that
6 doesn't happen until November 7th, 2017.

7 In Defendant's supplemental brief of 2/27/20, as the
8 Defendants points out, Plaintiff's lawsuit was premised on there being a
9 leak in the -- I don't know how you pronounce this, U-P-O-N-O-R, that's
10 a brand name system, for my purposes, I'll just call it the Uponor, on
11 February 16th, 2017, which of course, pre-dates October 24th, 2017.

12 The -- which Plaintiff says the Defendant failed to disclose
13 that. But it has been established clearly under oath that actually that
14 leak was repaired by Rakeman Plumbing, R-A-K-E-M-A-N, long before
15 the 10/24/17 real property disclosure form was executed by the
16 Defendant.

17 This is evidenced by the uncontroverted affidavit of Mr. Holley
18 [phonetic] of Rakeman Plumbing. There was another leak November
19 7th, 2017 after the 10/24/17 real property disclosure form was executed
20 by the Defendant.

21 On November 15th, 2017, eight days later, Defendant notified
22 its agent, emailed disclosure of that leak, and Defendant's agent in turn
23 on November 16th, 2017. And there are text messages acknowledging
24 Plaintiff's actual knowledge of the reporting of the leaks.

25 With knowledge of the leaks, Plaintiff elected to close escrow

1 on November 17th, 2017. On November 17th, 2017, mold testing was
2 done and mold was identified, but the matter was remediated and
3 resolved by December 5th, 2017.

4 To the Court, it appears that the undisputed evidence is that
5 Defendant did not fail to disclose the February 16th, 2017 leak because
6 the affidavit of Rakeman employee Holley, which is not disputed or
7 contested by a countervailing affidavit on the facts or any expert opinion
8 to the contrary.

9 And so, the Defendant was not under an obligation to report
10 the repaired condition in the absence of evidence or information that
11 would leave the Defendant to know or have reason to know that the leak
12 had not in fact been repaired.

13 The evidence shows that the Plaintiff knew of the November
14 7th, 2017 leak, but elected to close escrow anyway after threatening to
15 walk if there were not sufficient credits made.

16 But escrow did close, so Plaintiff waived or is estopped to
17 disavow the waiver effect of closure of escrow with this knowledge.

18 The alleged "water losses" regarding the two recirculating
19 pumps, water pumps, in 2015 were also matters that became moot
20 when the two recirculating pumps were replaced under warranty in that
21 same year, 2015. Apparently, the home was completed in April of 2015.

22 The third "leak in the ceiling" apparently did not continue or did
23 not recur, and in any event, is not the subject of the alleged failure to
24 disclose.

25 The subject of the alleged failure to disclose was the 2/16/17

1 leak repaired by Rakeman.

2 For me, Defendant's Supplemental Reply brief of 2/27/20
3 adequately synthesizes my thinking at page 2, line 3 through page 3,
4 line 10; at page 3, line 14 through page 6, line 4; at page 7, line 7
5 through page 11, line 5; at page 11, line 17 through page 13, lines 1
6 through 22, and at page 14, line 1 and page 14, lines 13 through page
7 15, line 4. I offer you the page and line citations rather than to read that
8 information into the record.

9 So my conclusion is that the Motion for Summary Judgment
10 should be granted. And Defendants should prepare findings of fact and
11 conclusions of law consistent with this Court's analysis.

12 So those are my thoughts. I'm happy to hear anything that the
13 Plaintiff's counsel wishes to add that supplements the very
14 comprehensive brief and exhibits that were already submitted and
15 reviewed.

16 And, again, my apologies to you for having not made myself
17 aware of it at the earlier hearing.

18 MR. GRAF: Your Honor, not a problem. I understand that
19 these things happen when you got caseloads like you have.

20 Your Honor, and this is Rusty Graf appearing on behalf of the
21 Plaintiffs and I would like to make some statements regarding those
22 findings, Your Honor.

23 First and foremost, Your Honor, it's my understanding you're
24 making this finding pursuant to NRS 113.140, as well as Nelson v. Heer.

25 My understanding, Your Honor, is the following that you're

1 also making this determination that you announced on your -- the last
2 hearing on a basis of summary judgment.

3 I would like to talk about the fact that the standard of summary
4 judgment is it's reviewed in the light most favorable to the nonmoving
5 party, that is the Plaintiff, Your Honor.

6 In addition, Your Honor, that I wanted to make a procedural
7 statement regarding Nelson v. Heer. Nelson v. Heer was the case that
8 decided on NRCP 50 after the presentation of evidence at trial and after
9 the trial had actually concluded.

10 That's important because Nelson v. Heer makes the following
11 determination. It says the determination of whether a seller is aware of a
12 defect, however, is a question of fact to be decided by the trier of fact.

13 What we attempted to do, Your Honor, by presenting the
14 evidence and information that we presented to His Honor, His Honor had
15 made a statement at the last hearing like you did a document dump.
16 And I apologize, Your Honor, if you thought that.

17 That wasn't the intent. The intent was, you know, in just sitting
18 here through some of the other hearings that you had this morning, I
19 heard where you instructed Plaintiff's counsel that they needed to do
20 some discovery and what not.

21 I think it's important for the Court to understand the amount of
22 discovery that was conducted on this case, that we took Dr. Swanson's
23 deposition, that we took Mr. Holley's deposition. We provided the
24 affidavit from Rakeman Plumbing. And we took the deposition of Mr.
25 Gerber [phonetic], who was the basis of what we would call the hearsay

1 statements contained within the affidavit.

2 In addition, Your Honor, we took the depositions of a couple of
3 realtors and that sort of thing. And from all of that testimony, Your
4 Honor, and from all of the information that we subpoenaed also and that
5 we presented to His Honor was more information that I think negates
6 this Court's granting of a Motion for Summary Judgment.

7 There are several questions of fact that exist as to whether or
8 not particularly Dr. Swanson had knowledge of the defects and the leaks
9 and the conditions of moisture that occurred in 2015 --

10 THE COURT: Let me --

11 MR. GRAF: -- as well as thereafter.

12 THE COURT: Excuse me, one second. Let me interject one
13 thing.

14 MR. GRAF: Yes, yes, sir.

15 THE COURT: There is a common misconception that
16 happens when people are seeking to defend against a motion for
17 summary judgment.

18 And it is conflating a genuine dispute as to a material issue of
19 fact with a question of fact. Oftentimes, there are questions of fact, but a
20 motion for summary judgment presses the issue and says, well, here is
21 what we say the facts are and here is our sworn statement as to those
22 facts.

23 And if the person against whom summary judgment is sought
24 is unable to dispute that, the fact that they may have questions
25 subjectively as to whether or not they agree or disagree or whether or

1 not there might be evidence out there to contradict that statement, that
2 does not defeat a motion for summary judgment.

3 Instead, the party against whom summary judgment is sought,
4 they have to come up with evidence to contradict that sworn statement
5 or that evidence offered by the moving party to show that, well, that may
6 be that party's view of what the facts are, but in actuality, there's also
7 this factual contention under oath or by sworn exhibits that shows that
8 that is not in fact.

9 So then, you have a genuine dispute as to a material issue of
10 fact, which means that it has to be decided by the trier of fact whether
11 that's the judge in a nonjury trial or by the jury.

12 But merely having questions is not sufficient. If you have
13 questions, that you think you could provide answers to if you were given
14 sufficient time, that's when you seek NRCP 56(d) relief under the new
15 numbering system.

16 And that's the rule I read earlier. You have an affidavit where
17 you say, look, we know that Swanson has testified in his deposition that
18 his only knowledge of the February 6th, 2017 leak was back at the time
19 it occurred.

20 And we know that he has testified that Rakeman repaired it.
21 So, for him, it was no longer an issue when he signed the disclosure
22 form on October 24, 2017.

23 But we have a -- an email from him to Rakeman Plumbing
24 refusing to pay Rakeman Plumbing's invoice dated March 15th of 2017
25 because he said you didn't fix the leak. It's still an ongoing problem.

1 We don't have authentication that this is an email sent by Dr.
2 Swanson, so we're asking for some more time to conduct some
3 discovery to pin that down.

4 That is an affidavit for 56(d) relief. And that's how you seek
5 the opportunity to conduct more discovery.

6 You have to remember that the whole focus of your lawsuit
7 was the February 6th, 2017 leak. All of these other things that you talk
8 about, it may have been frustrating and irritating for the Plaintiffs to find
9 out that there was a leak that happened in November of 2017, but with
10 full knowledge of that, and even though the Plaintiff was threatening to
11 walk, the Plaintiff said, oh, you know, let's close escrow, let's be done
12 with it.

13 And so, we can't lose sight of the fact that the real issue has
14 always been in terms of the assertions made in the lawsuit, the February
15 6th, 2017 leak.

16 And if you are unable to create a genuine dispute as to a
17 material issue of fact, i.e., that Rakeman Plumbing repaired the February
18 6th, 2017 leak, then you're out of luck in terms of the lawsuit that you
19 have filed in this case.

20 And the fact that you have become aware of other things,
21 they're just -- they're not relevant to this inquiry regarding this Motion for
22 Summary Judgment. It's that simple.

23 MR. GRAF: Your Honor --

24 THE COURT: Or maybe I didn't make it sound real simple,
25 but I think it's simple.

1 MR. GRAF: And I understand what His Honor is saying as to
2 the November 2017 leak. My question is this, Your Honor.

3 Whether or not Dr. Swanson had knowledge of leaks in 2015,
4 whether or not he has proof and support to say that those leaks had
5 been repaired is a question of fact in this case. We've uncovered that
6 through the evidence and testimony that's been presented in our
7 supplemental brief.

8 Your Honor, our allegations as to the violation of NRS 113 and
9 the material misrepresentation or the fraudulent misrepresentation,
10 excuse me, allegation is as to anything that they did not indicate on the
11 SRPD.

12 The SRPD is a simple document, Your Honor. It is a yes or
13 no response. And he responded, no, there were no prior incidences of
14 moisture condition at this house.

15 That is categorically not true. It is false. We have proven that
16 through the deposition testimony of Dr. Swanson and we have proven
17 that also, Your Honor, through the deposition testimony of Mr. Holley
18 and Mr. Gerber.

19 One thing that I want to draw to the attention of the Court is,
20 Your Honor, we have submitted the deposition transcripts of Mr. Holley
21 and Mr. Gerber.

22 Those deposition transcripts controvert the testimony and
23 statements in the affidavit. Those -- that sworn testimony specifically
24 says that they were not there when any repairs were made.

25 One of the things that His Honor made very clear at the prior

1 hearing is that the decision the Court was going to make as to the
2 November 17, 2017 leak was based upon the affidavit of Mr. Holley.

3 That affidavit was controverted during their depositions. They
4 both testified they were not present during any repairs. They
5 were -- both testified that they could not provide you with any evidence
6 as to the repairs themselves.

7 That is in direct contravention of that. Your Honor, they both
8 testified they did not perform the repairs. That controverts that affidavit.
9 Both of those individuals, Your Honor, testified as such.

10 They -- Mr. Holley testified at page 17 of his deposition that he
11 obtained any knowledge that he had from others, not from personal
12 knowledge that he had.

13 He then -- he testified at page 24 of his deposition that he did
14 not observe any of the repairs and emphatically stated in that deposition
15 not at all.

16 He then said, Your Honor, that on page 34 of his deposition, I
17 do not know what actually occurred.

18 Your Honor, if these types of statements are in direct
19 contravention of his affidavit, I don't know what are.

20 He specifically then went forward to say, Your Honor, that in
21 terms of the mold testing in 2017, and I don't want to really talk too much
22 about that, but that is an indication of -- and here's the question of fact
23 that I would like to draw to the attention of the Court on that issue, Your
24 Honor.

25 And that is this. The testing was conducted on November

1 17th. That's the day that the house supposedly closed. That test by
2 Infinity Environmental, which that test is before His Honor, and the
3 results of that test are before His Honor, is a positive test for mold.

4 At some point in time, Dr. Swanson was aware of that defect.
5 Your Honor --

6 THE COURT: Hold on, let me ask you a question about that.
7 Are you saying that the October 24th, 2017 disclosure form was a
8 misrepresentation regarding the November 2017 mold?

9 MR. GRAF: I am, Your Honor, for the following reasons.

10 THE COURT: No, wait, wait, wait. Wait, it's clear that it was
11 brought to the attention of your client, and your client was not happy
12 about it, said he was going to walk if suitable credits were not done.

13 And I don't know if credits were done or not, but he closed
14 escrow with that information as opposed to refusing to close escrow.
15 Had he refused to close escrow, we wouldn't be here. There wouldn't
16 have been a purchase and sale.

17 But in spite of all of this information, your client went ahead
18 and closed escrow.

19 MR. GRAF: Your Honor, and I apologize, Your Honor, I didn't
20 -- I kind of stopped and started there a couple of times. This is kind of a
21 difficult format to use, especially when I don't have video, so I apologize.

22 In response to that statement, I think that that's an accurate
23 statement, Your Honor, as to the leak. It's not an accurate statement as
24 to the mold.

25 This is the issue here. And we asserted this in our brief, Your

1 Honor. Counsel, or excuse me, not counsel, but Dr. Swanson submitted
2 an addendum, Addendum 4A, that was meant to supplement the SRPD.
3 That was the document where he told the Folinis that there had been a
4 leak in November of 2017.

5 What that document does not contain, Your Honor, and has
6 never been produced, nor was it ever disclosed anywhere is the actual
7 positive test for mold that came back from Infinity Environmental.

8 THE COURT: No, but --

9 MR. GRAF: And Your Honor --

10 THE COURT: No, but counsel, the problem is it put your
11 client on notice of the fact that there was a leak.

12 And given the --

13 MR. GRAF: No --

14 THE COURT: And given the fact that your client had
15 concerns and this was a not insubstantial purchase at all, and given the
16 fact that he threatened to walk, and instead, he went ahead and closed
17 escrow without any further specification or demands regarding that leak.

18 So I do think, and I got to cut you off because we have other
19 things we have to get to, but I do think that your client is confounding
20 some of the other information that they've learned since that just has
21 thrown gasoline on their fire over issues with this house.

22 And they've even gotten upset about things which are not
23 problems going on today, but the mere fact that they weren't told about
24 them or that they existed is a source of irritation to them.

25 I understand that it's irritating and upsetting, but it's not legally

1 actionable. And that's where the distinction has to be drawn. So I think
2 that the Motion for Summary Judgment --

3 MR. GRAF: Your Honor --

4 THE COURT: -- should be granted.

5 MR. GRAF: Your Honor --

6 THE COURT: It's a Motion to Dismiss the Second Amended
7 Complaint. But I think given all of extensive consideration of matters
8 outside the pleadings that have been utilized, that it should be treated as
9 a summary judgment motion and I'm inclined to grant it.

10 Now, Mr. Galliher, is there anything that you wish to add?

11 MR. GRAF: Your Honor, I don't mean to interrupt His Honor,
12 but I had some statements that I'd like to make as to the 2015 leaks --

13 THE COURT: No, I'm sorry, counsel, I have to cut you off.
14 You have to realize you submitted at least a couple thousand pages of
15 material for my review.

16 I reviewed it. I was tardy in my review of it, but I reviewed it.
17 And so, there is nothing you have said or could say that would be
18 supplemental to the written materials you provided.

19 If there was something that you didn't include, that's what I
20 was inviting you to mention, but everything you have said is contained in
21 the brief.

22 And I have to manage the time here and move on to the next
23 case. So I do want to give Mr. Galliher a chance, if he wishes to, to
24 supplement his written filings if he wants to for the record.

25 MR. GALLIHER: Thank you, Your Honor. Very briefly, I just

1 want to make sure it's clear for this record that the very first report of
2 mold at 33 Meadowhawk is dated November 24th, 2017, which is a
3 week after the date of closing.

4 The test was conducted on November 17th, 2017, but no
5 results were had until November 24th. And even then, that report was
6 never provided to Dr. Swanson because of course, he was no longer the
7 owner of the property. And I believe that report was actually directed to
8 Rakeman Plumbing.

9 So there could be no question, disputed or otherwise, about
10 whether Dr. Swanson ever had any knowledge either express or implied
11 of or notice of mold prior to the date of the closing. I just want to make
12 sure that we're clear on that that there's been confusion about dates, but
13 there's no --

14 THE COURT: No, it was clear to me that the material was
15 submitted for testing on November 17th, 2017. Escrow closed. And
16 then, some days later, the report came back positive findings of mold.
17 All right. So the motion --

18 MR. GALLIHER: Thank you, Your Honor.

19 THE COURT: The Motion to Dismiss is being treated as a
20 Motion for Summary Judgment. It's granted and I tried to call out the
21 specific information in the briefs that I felt was important to be included in
22 the findings of fact and conclusions of law.

23 I do need the order within 14 days per EDCR 7.21. All right?

24 MR. GALLIHER: Thank you, Your Honor.

25 THE COURT: And we will set a calendar date for 30 days

1 from today. And what I'm looking for is the filing of the order granting
2 summary judgment.

3 THE CLERK: May 5th at 9 a.m.

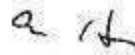
4 THE COURT: No need to return on May 5th if the order has
5 been filed. If it has been, I will need to see you on May 5th. Okay, thank
6 you.

7 MR. GALLIHER: Thank you, Your Honor.

8 [Proceedings concluded at 11:09 a.m.]

9 * * * * *

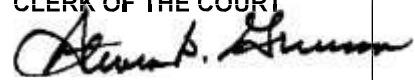
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11
12 ATTEST: I do hereby certify that I have truly and correctly transcribed the
13 audio/video proceedings in the above-entitled case to the best of my ability.

14 

15 _____
16 Chris Hwang
17 Transcriber
18
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20
21
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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSEPH FOLINO, an individual and NICOLE
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD
SWANSON, Trustee of the SHIRAZ TRUST;
SHIRAZ TRUST, a Trust of unknown origin;
LYON DEVELOPMENT, LLC, a Nevada limited
liability company; DOES I through X; and ROES
I through X,

Defendant(s).

CASE NO.: A-18-782494-C
DEPT. NO.: XXIV

HEARING REQUESTED

DEFENDANTS' MOTION FOR ATTORNEY'S FEES AND COSTS

COME NOW Defendants, TODD SWANSON, an individual; TODD SWANSON, Trustee
of the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYON DEVELOPMENT,
LLC, (hereinafter referred to as "Defendants") by and through their counsel of record

1 CHRISTOPHER M. YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law firm of
2 CHRISTOPHER M. YOUNG, PC, and JEFFREY L. GALLIHER, ESQ., of the law firm of
3 GALLIHER LEGAL P.C., and hereby submits their motion for Attorney Fees and Costs pursuant to
4 NRCP 68 and NRS 18.010. Defendants are the prevailing parties in this matter after Plaintiff's
5 complaint was dismissed upon motion. Furthermore, Plaintiff's suit was brought without reasonable
6 grounds, therefore Defendants are entitled to an award of their reasonable attorney's fees pursuant to
7 NRS 18.010(20(a) and (b).
8

9 This motion is made and based upon the attached points and authorities, affidavit, and all the
10 pleadings, papers and files herein.

11 DATED this 22nd day of April 2020.

12 GALLIHER LEGAL P.C.

13 /s/ *Jeffrey L. Galliher*
14 Jeffrey Galliher, Esq.
15 Nevada Bar No. 8078
16 1850 E. Sahara Ave., Suite 107
17 Las Vegas, NV 89104

18 **POINTS AND AUTHORITIES**

19 **I.**

20 **INTRODUCTION**

21 This case arises from the sale of a private residence located at 42 Meadowhawk ("The
22 Property") in Las Vegas. The home was constructed by Blue Heron Homes pursuant to a contract with
23 Defendant Lyons Development and construction was completed in the spring of 2015. The home was
24 sold by Defendant Lyons Development to Plaintiffs and escrow closed on November 17, 2017.

25 On October 9, 2018 Plaintiffs filed their Complaint alleging seven separate causes of action
26 against Defendants. On February 4, 2019 Defendants filed their motion to dismiss Plaintiffs'
27
28

1 complaint. In response, Plaintiffs filed a countermotion to amend their complaint which was granted
2 at a hearing on April 9, 2019.

3 On April 18, 2019 Plaintiffs filed their First Amended Complaint (“FAC”) and Defendants’
4 filed a motion to dismiss on May 20, 2019. On July 18, 2019 this court held a hearing wherein
5 Plaintiffs’ 2nd, 3rd, 5th, 6th, and 7th causes of action were dismissed. The court ordered Plaintiffs to file
6 a second amended complaint limited to the two surviving causes of action.
7

8 On September 3, 2019 Plaintiffs filed their Second Amended Complaint (“SAC”) wherein
9 Plaintiffs alleged two causes of action. The first alleged Fraud/Intentional Misrepresentation and the
10 second alleged violation of NRS 113.100 et seq. The gravamen of the SAC was that Defendants failed
11 to disclose systemic defects in The Property’s plumbing system related to the Uponor piping installed
12 in The Property. In response the Defendants filed a Motion for Summary Judgment, supported by
13 indisputable evidence that Rakeman Plumbing completely repaired the water leak, thus negating the
14 Defendants’ purported “knowing concealment.” EXHIBIT A.
15

16 On November 7, 2019 this court held a hearing on Defendants’ motion to dismiss. At that time
17 the court stated its inclination to grant Defendants’ motion. EXHIBIT B.

18 On November 26, 2019, due to the extent of discovery indicated by numerous written
19 discovery requests and notices of deposition served by Plaintiffs, Defendants associated Mr. Galliher
20 as counsel. EXHIBIT C.
21

22 On December 11, 2019 Defendants served an offer of judgment upon the Plaintiffs in the
23 amount of \$150,000.00 (one-hundred, fifty thousand dollars) inclusive of fees, costs and interests.
24 EXHIBIT D. The offer of judgment was not accepted and ultimately expired as a function of law.

25 Subsequent to the expiry of the offer of judgment, Plaintiff’s undertook substantial discovery
26 in a futile effort to manufacture a material issue of fact in the case. That discovery included service
27 of Interrogatories, Requests for Admissions and Requests for Production of Documents on all
28

1 Defendants. Additionally, Plaintiff noticed and took the depositions of Dr. Swanson (twice), his
2 assistant (Nikki Whitfield), two employees of Rakeman Plumbing (Aaron Hawley and William
3 Gerber) and two of the selling agent's team (Ivan Sher and Kelly Contenta).

4 After a brief stipulated extension Plaintiff's filed their supplemental brief on February 13,
5 2020. Along with the brief Plaintiffs served more than 5,400 pages of documents upon the Defendants.

6 On February 27, 2020 Defendants filed their response to Plaintiffs' supplement.

7 On March 3, 2020 the court held a hearing on all pending motions. Due to some logistical
8 confusion the matter was eventually continued to April 7, 2020.

9 On April 7, 2020 this court summarily dismissed this case upon Defendants' motion. EXHIBIT

10 B.

11 Defendants incurred attorney's fees in the amount of since the inception of the case. EXHIBIT

12 C and EXHIBIT D.

13 II.

14 ARGUMENT

15 Defendants are entitled to an award of their accrued attorney's fees and costs of suit. Plaintiffs
16 pursued this action out of pure spite based upon the bald assumption that Todd Swanson had
17 knowledge prior to selling The Property that the Uponor piping system installed during construction
18 was defective and needed to be replaced. But rather than inquire of Dr. Swanson or the contractor
19 who had installed and serviced the system – Rakeman Plumbing – about the history of the system, or
20 Dr. Swanson's potential knowledge of any defects, Plaintiffs instead just filed a lawsuit.

21 Despite subsequently arguing to the contrary, Plaintiffs filed this suit with the full knowledge
22 of the leak which occurred in early November 2017. See, SAC at ¶¶ 24-26. The leak was disclosed
23 by Defendants in Addendum 4A to the transaction and Plaintiffs acknowledged their right to "walk
24 away" prior to closing. As the court correctly pointed out at the hearing where the case was dismissed,

1 this uncontroverted knowledge and action by the Plaintiffs constituted a waiver of the Plaintiffs'
2 claims.

3 **PURSUANT TO NRCP 68, DEFENDANTS ARE ENTITLED TO THEIR FEES AND**
4 **COSTS ACCRUED SINCE DECEMBER 11, 2019**

5 On December 11, 2019 Defendants served upon Plaintiffs an Offer of Judgment in the amount
6 of \$150,000.00. EXHIBIT F. Pursuant to NRCP 68(f)(1)(B) Defendants are entitled to recover their
7 costs and allowed attorney's fees from the time of the service of the offer as Plaintiffs did not accept
8 the offer and then failed to obtain a more favorable outcome. See, *Uniroyal Goodrich Tire Co. v.*
9 *Mercer*, 11 Nev 318, 890 P.2d 785 (1995); *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 860 P.2d
10 720(1993).
11

12 Defendants have incurred recoverable costs in the amount of \$4,165.26 in defending this
13 lawsuit since December 11, 2019. See, Declaration of Jeffrey L. Galliher, Esq, attached as EXHIBIT
14 G and declaration of Christopher M. Young, Esq. attached as EXHIBIT H. These costs were
15 reasonable and necessary to the defense of this case. Those costs are set forth in Defendants' Verified
16 Memorandum of Costs and Disbursements filed concurrently herewith and Attached as EXHIBIT I.
17

18 Defendants have likewise incurred \$39,447.00 in attorney's fees in defending this case from
19 December 11, 2019 through present. (EXHIBITS C, D, G and H).

20 In total Defendants have incurred \$43,612.26 in recoverable attorney's fees and costs since
21 serving Plaintiffs with their offer of judgment. Defendants request that these fees and costs be awarded
22 to Defendants.

23 **THE ATTORNEYS FEES AND COSTS SOUGHT BY DEFENDANTS ARE**
24 **REASONABLE AND JUSTIFIED AND THE COURT SHOULD AWARD THE FULL**
25 **AMOUNT REQUESTED.**

26 An award of attorney's fees pursuant to NRCP 68 is discretionary with the court, and the
27 court's discretion will not be abused absent clear abuse. *Bidart v. American Title Ins. Co.*, 103 Nev.
28

1 175, 734 P.2d 732 (1987). In determining whether to award fees and costs pursuant to an NRCP 68
2 offer of judgment the court must evaluate the following factors: 1) whether the plaintiff's claim was
3 brought in good faith; 2) whether the defendant's offer of judgment was reasonable and in good faith
4 in both its timing and amount; 3) whether the plaintiff's decision to reject the offer and proceed in the
5 litigation was grossly unreasonable or in bad faith; and 4) whether the fees sought by the offeror are
6 reasonable and justified in amount. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 833, 712 P.2d 786, 790
7 (1985); *Beattie v. Thomas*, 99 Nev. 579, 588-89, 668 P.2d 268 (1983). After weighing these factors
8 the court may award up to the full amount of fees requested. *Id.* at 589.

9
10 In considering the amount of fees to award the court must also consider the following:

- 11 1) The qualities of the advocate: his ability, training, education, experience, professional
12 standing and skill;
- 13 2) The character of the work to be done: its difficulty, intricacy, importance, the time and skill
14 required, the responsibility imposed and the prominence and character of the parties where
15 they affect the impotence of the litigation;
- 16 3) The work actually performed by the lawyer; the skill, time and attention given to the work;
17 and
18 4) The result: whether the attorney was successful and what benefits were derived.

19
20 *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969). Where the trial
21 court evaluates the necessary factors, its ruling will not be disturbed on appeal unless its exercise of
22 discretion is arbitrary or capricious. *Schouweiler v. Yancey Co.*, 101 Nev. 827, 712 P.2d 786, (1985).

23
24 In this case, consideration of the *Beattie* and *Bunzell* factors supports an award of the entire
25 amount of fees and costs requested by Defendants.

26 ///

27 ///

1 ***1) Whether the Plaintiffs' claim was brought in good faith***

2 There is a substantial question of whether Plaintiffs' claims in this case were initially brought in
3 good faith. Plaintiff's initial complaint was replaced by the First Amended Complaint early on. The
4 gravamen of the FAC was that Defendants failed to disclose a leak which occurred in February of
5 2017 on the form Seller's Real Property Disclosure ("SRPD") completed by Dr. Swanson on or about
6 October 24, 2017. However, attached to the First Amended Complaint itself was an invoice from
7 Rakeman Plumbing evidencing the fact that the February 2017 leak had, in fact, been repaired by
8 Rakeman Plumbing, a licensed professional plumbing contractor. The Defendants sought dismissal
9 of each of the Plaintiffs' seven claims in the FAC. Based on the Rakeman Plumbing invoice and
10 related documents attached to the Plaintiffs' First Amended Complaint, the Defendants argued the
11 invoice showed the leak had been repaired, thus negating the duty to disclose under *Nelson v. Heer*,
12 123 Nev. 217, 223-224, 163 P.3d 420, 425 (2007).
13
14

15 On July 18, 2019 at the hearing on Defendants' motion to dismiss the FAC, the court dismissed
16 Plaintiff's 2nd, 3rd, 5th, 6th and 7th causes of action and directed Plaintiffs to file a second amended
17 complaint including the surviving claims. EXHIBIT B.

18 On September 4, 2019, the Plaintiffs filed their Second Amended Complaint. In response the
19 Defendants filed a Motion to Dismiss, supported by undisputed evidence – indeed the same evidence
20 attached to the Plaintiffs' pleadings - that Rakeman Plumbing completely repaired the water leak,
21 which thus negated the Defendants' purported "knowing concealment."
22

23 The Defendants obtained an affidavit from Aaron Hawley, the owner of Rakeman Plumbing,
24 regarding the adequacy of Rakeman's repair and what was communicated to the Defendants. Mr.
25 Hawley stated that the water leak was completely repaired and that no further or contradictory
26 information was conveyed to the Defendants. With these new facts, the Defendants requested a ruling
27 from this Court that neither of the Plaintiffs' remaining claims could survive summary judgment. The
28

1 concealment claim fails because under *Nelson* and NRS Chapter 113, the completed repair negates
2 any duty to disclose. Defendants argued that because the Defendants did not have “knowledge” under
3 the *Nelson* standard, because the repair had been completed, summary judgment on the Plaintiffs’
4 fraud claim was also warranted.

5
6 Plaintiffs’ response was to file an opposition and countermotion for sanctions filled with
7 personal attacks against defense counsel. The court characterized the motion for sanctions as
8 “inappropriate” and denied it. EXHIBIT B.

9
10 At the hearing on November 7, 2019 the court stated its inclination to grant Defendants’ motion
11 for summary judgment. Plaintiff orally requested NRCP 56(d) relief which was granted in the form
12 of an order allowing Plaintiffs’ counsel 90 days to conduct discovery in an attempt to “demonstrate a
13 genuine issue of material fact.” EXHIBIT B.

14
15 At that point the “good faith” of Plaintiffs was clearly in doubt. Not only had they filed
16 multiple complaints with seemingly zero factual basis, but had also filed a completely “inappropriate”
17 motion for sanctions ascribing multiple nefarious acts to defense counsel without basis.

18
19 **2) *Whether the defendant’s offer of judgment was reasonable and in good faith in both its
20 timing and amount***

21
22 Defendants offer was reasonable in time because it was made after the Court expressed its
23 inclination to dismiss the case, but before the parties had expended substantial time, effort and money
24 in discovery.

25
26 On December 11, 2019 Defendants served Plaintiff’s with an offer of judgment in the amount
27 of \$150,000.00 inclusive of fees and costs. EXHIBIT F. This offer was made in what was obviously
28 a genuine, even generous, effort to settle the case under the circumstances. To that time, and even

1 now, Plaintiffs have never asserted that they had suffered any measurable special damages. Just as
2 had been the case when Defendants owned The Property, all repairs to the plumbing system were
3 handled under warranty by either Rakeman Plumbing or the manufacturer, Uponor. Further, at the
4 time of the offer of judgment, Plaintiffs had already been advised in open court of the Court's
5 inclination to grant Defendants' motion to summarily dispose of the case. Nevertheless, in a genuine
6 attempt to resolve the case in the very spirit of NRCP 68, Defendant's offered the very substantial
7 amount of \$150,000.00 at a time when Plaintiffs had yet to expend significant amounts of time and
8 money on what ultimately turned out to be futile discovery efforts.

9
10 Defendants' offer was reasonable with respect to amount because the offer was for an
11 objectively substantial amount when compared to Plaintiffs' potential damages.

12 Plaintiffs have never disclosed any special damages which they allege to have suffered.
13 Instead, Plaintiffs' computation of damages merely claimed "Fraud Damages" of "[a]pproximately
14 \$300,000.00" and "Bad Faith Damages" of "\$100,000.00." Based upon this paucity of damage
15 information, and with the knowledge that the court had declared its inclination to dismiss the case,
16 Defendants calculated their offer with the expectation that it would do what it was intended to do:
17 settle the case. While Defendants maintain that they did nothing wrong, given the unpredictable nature
18 of litigation and the potential to accrue substantial costs and fees in a relatively short period of time
19 they authorized their counsel to offer an exceedingly generous amount of money to resolve the case
20 once and for all.

21
22
23 When no response was forthcoming from Plaintiffs, Defendants and their counsel were
24 disappointed, but were left with no alternative but to go forward and participate fully in the discovery
25 propounded by Plaintiffs and to attend the six depositions Plaintiffs noticed.

26 ///

27 ///

1 **3) *Whether the plaintiff's decision to reject the offer and proceed in the litigation was grossly***
2 ***unreasonable or in bad faith***

3 Under the circumstances at the time Defendants served their offer of judgment: where the court
4 had already indicated its inclination to dismiss the case; where Plaintiff's had essentially zero special
5 damages; and where established case law clearly eviscerated Plaintiff's claims, rejection of that
6 extremely generous offer of judgment was grossly unreasonable. Rather than take what could be
7 reasonably described as a gift, Plaintiffs instead chose to undertake extensive, ultimately futile,
8 discovery at great expense to the parties.
9

10 All indications are that all of the expenses required to re-pipe the house and remediate the
11 November 2017 leak were borne by Uponor and Rakeman Plumbing. Indeed, Plaintiffs' disclosed
12 calculation of damages includes zero special damages. Even if Plaintiffs could prove that Defendants
13 did fail to make all necessary disclosures under NRS 113.150, Plaintiffs' recoverable damages would
14 be limited to "the amount necessary to repair or replace the defective part of the property". NRS
15 113.150(4). Plaintiffs have not alleged that they have born any costs to repair or replace the Uponor
16 system.
17

18 Further, pursuant to statute, recovery is completely barred "on the basis of an error or omission
19 in the disclosure form that was caused by the seller's reliance upon information provided to the seller
20 by:... (b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or
21 pesticide applicator, who was authorized to practice that profession in this State at the time the
22 information was provided." NRS 113.150(5). It has been well established that both the leak in
23 February 2017 and November 2017 were immediately reported to Rakeman Plumbing, a licensed
24 Nevada plumbing contractor for investigation and repair and that all information relied upon by
25 Defendants regarding the leaks was provided by Rakeman Plumbing.
26
27
28

As discussed earlier, all indications are that, since the problems with the pipe stemmed from a manufacturing defect, the costs of re-piping the property were covered by the manufacturer warranty provided by Uponor. Based upon the conduct of the Plaintiff during the escrow period, where they sought access to the property for myriad trades and contractors, it is believed that Plaintiffs undertook a substantial remodel of The Property immediately upon taking possession, but before actually moving in. If, as presumed, the re-piping was accomplished commensurate with the remodel it is likely that Plaintiffs did not even suffer any significant inconvenience as a result of the re-pipe. Beyond the bare claims in the calculation of damages listed in Plaintiff's initial disclosures no other information regarding any alleged damages was ever communicated to the Defendants.

Finally, the damages available to Plaintiffs on their second cause of action are fixed by statute. NRS 113.150 provides, in pertinent part:

If, before the conveyance of the property to the purchaser, a seller or the seller's agent informs the purchaser or the purchaser's agent, through the disclosure form or another written notice, of a defect in the property of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser may: **(a)** Rescind the agreement to purchase the property at any time before the conveyance of the property to the purchaser; or **(b)** Close escrow and accept the property with the defect as revealed by the seller or the seller's agent **without further recourse.** (emphasis added)

Nev. Rev. Stat. § 113.150(2).

In this case there can be no dispute that the leak occurring in November 2017 was disclosed to Plaintiffs via Addendum 4A to the purchase agreement prior to the close of escrow. Plaintiffs' decision to nevertheless close escrow was their election of remedy and bars "further recourse" as a matter of law. *Id.*

Under the circumstances as they existed in mid-December 2019 – the court had indicated its inclination to dismiss the case, Plaintiffs had suffered essentially zero special damages, the repiping had apparently not created any substantial inconvenience – and in the face of the formidable statutory

1 barriers to any substantial recovery discussed earlier, Plaintiffs' rejection of the \$150,000.00 offer of
2 judgment was grossly unreasonable.

3 **4) *Whether the fees sought be the offeror are reasonable and justified in amount***

4 When determining whether the fees requested are reasonable and justified in amount the court
5 is to consider the 4 factors set forth in *Brunzell v. Golden Gate Nat. Bank*, 85 Nev. 345, 349, 455 P.2d
6 31, 33 (1969):
7

- 8 1) The qualities of the advocate: his ability, training, education, experience, professional standing
9 and skill;
- 10 2) The character of the work to be done: its difficulty, intricacy, importance, the time and skill
11 required, the responsibility imposed and the prominence and character of the parties where
12 they affect the importance of the litigation;
- 13 3) The work actually performed by the lawyer; the skill, time and attention given to the work;
14 and
15
- 16 4) The result: whether the attorney was successful and what benefits were derived.

17 As set forth more fully in the attached declarations, the attorneys handling the defense of this
18 matter have excellent credentials. The have been partnered with and trained by some of the finest trial
19 lawyers in the state, including the late J. Mitchell "Mitch" Cobeaga and Rex Jemison, among others.
20 They have substantial litigation and trial experience over many decades of combined admission as
21 Nevada lawyers in handling lawsuits for both plaintiffs and defendants. They serve as judges pro-tem
22 and arbitrators in both criminal and civil courts. They are skilled litigators with at least one of them
23 rated AV/Preeminent in litigation by Martindale-Hubbell, the nation's foremost rating service for
24 attorneys. All are in good standing with the State Bar of Nevada with no history of discipline.
25

26 The character of the work to be done was difficult. The range of claims initially brought by the
27 Plaintiffs combined with the statute heavy nature of these types of cases required close attention to
28

1 detail and mastery of a litany of important facts. The work performed in a relatively short period of
2 time was extensive, including six lengthy depositions being taken over just a two week period,
3 expansive research and writing, including review of over 5,400 documents and multiple oral
4 arguments. Defense counsel delivered a just result for their client: dismissal of the case. As discussed
5 herein the case should not have been brought, but Plaintiffs pushed the case and conducted substantial
6 discovery which had to be dealt with and made myriad arguments which had to be countered.

7
8 After rejecting the offer of judgment of \$150,000.00, Plaintiffs conducted substantial and wide-
9 ranging discovery. Plaintiffs' counsel deposed Dr. Swanson (twice), his assistant (Nikki Whitfield),
10 two employees of Rakeman Plumbing (Aaron Hawley and William Gerber) and two of the selling
11 agent's team (Ivan Sher and Kelly Contenta). In addition, Plaintiffs served each of the Defendants
12 with substantive Interrogatories, Requests for Admissions and Requests for Production of Documents
13 and issued many third-party subpoenas resulting in the production of more than 5,000 pages of
14 documents. None of this unnecessary work changed the facts which had already been established:
15 the February 2017 leak had been repaired by a professional, licensed plumbing contractor and the
16 November 2017 leak was disclosed during escrow via Addendum 4A. When applied to the well-
17 established case law, these undisputed facts made it clear that there could be no cognizable claim
18 against the Defendants. Nevertheless, Plaintiff insisted and persisted in engaging in a scorched Earth
19 discovery plan despite the writing on the wall.
20
21

22 Conversely, Defendants' conduct since the offer of judgment has been almost completely reactive
23 in nature, meaning that the work done by defense counsel was directly necessitated by the actions of
24 the Plaintiff in undertaking expansive early discovery. These expenses were exactly what Defendants
25 were seeking to avoid by making an early and substantial, even generous offer to settle the dispute for
26 real money.
27
28

1 But even in a purely reactionary role Defendants accrued \$39,447.00 in attorneys fees and
2 \$4,189.26 in case costs since service of the offer of judgment on December 11, 2019. The vast
3 majority of the time spent was making initial disclosures, responding to Plaintiffs' written discovery,
4 attending depositions and hearings and drafting a response to Plaintiff's supplemental opposition.
5 Further, the hourly fee of \$270.00 charged to Defendants is exceedingly reasonable given the nature
6 of the work (real estate litigation) and the experience of counsel involved.
7

8 These costs and fees could have been avoided had Plaintiffs accepted Defendants' exceedingly
9 reasonable offer of judgment made on December 11, 2019.

10 **PURSUANT TO NRS 18.010(2)(b) DEFENDANTS ARE ENTITLED TO THEIR FEES**
11 **AND COSTS ACCRUED SINCE INCEPTION OF SUIT**

12 Defendants should be awarded their attorney's fees and costs in defending this action from its
13 inception because the case was brought by Plaintiffs without any reasonable factual basis and on
14 grounds which are directly inapposite to Nevada law.

15 NRS 18.010(2)(b) provides as follows:

16 In addition to the cases where an allowance is authorized by specific statute, the court
17 may make an allowance of attorney's fees to a prevailing party:

18 ...

19 (b) Without regard to the recovery sought, when the court finds that the claim,
20 counterclaim, cross-claim or third-party complaint or defense of the opposing party
21 **was brought or maintained without reasonable ground or to harass the prevailing**
22 **party. The court shall liberally construe the provisions of this paragraph in favor**
23 **of awarding attorney's fees in all appropriate situations.** It is the intent of the
24 Legislature that the court award attorney's fees pursuant to this paragraph and impose
25 sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate
26 situations to punish for and deter frivolous or vexatious claims and defenses because
27 such claims and defenses overburden limited judicial resources, hinder the timely
28 resolution of meritorious claims and increase the costs of engaging in business and
providing professional services to the public. (Emphasis added)

26 Since the inception of this case Defendants have accrued \$82,021.50 in attorney's fees and
27 \$6,939.85 in costs. EXHIBITS C, D, G and H. In this case, Plaintiffs brought suit against the
28

1 Defendants based upon wholly frivolous grounds. With respect to the November 2017 leak, Plaintiffs’
2 Second Amended Complaint clearly states that Plaintiffs requested and performed an inspection prior
3 to close of escrow and that during that inspection they observed the November 2017 leak. *See*, Second
4 Amended Complaint at paragraphs 24-26. The subsequent determination that the leak was caused by
5 a manufacturing defect in the Uponor piping was never disclosed by Uponor or Rakeman Plumbing
6 to Defendants prior to the sale to the Plaintiffs and the Plaintiffs had no evidence that it ever had been
7 disclosed to Defendants when they initiated this suit. The February 2017 leak was fully repaired as
8 indicated by documentation the Plaintiff actually attached to their Second Amended Complaint. *See*,
9 Exhibit 8 to Second Amended Complaint.
10

11 These facts, alleged within the Second Amended Complaint itself, firmly establish that
12 Defendants had no liability under Nevada law because they show that 1) the February leak had been
13 repaired, and 2) Plaintiffs were aware of the November leak prior to closing. These facts, alleged by
14 Plaintiffs themselves, defeat their claims when applied to clearly established precedent in the form of
15 the *Nelson* decision.
16

17 Further, even if the Plaintiffs could establish a prima facie case, they could still not establish
18 that they had suffered any recoverable damages. The repair to the piping was done under warranty at
19 no expense to the Plaintiffs and concurrent with other work being done at the Property. Plaintiffs
20 suffered no monetary damages nor even any significant inconvenience. Plaintiffs’ claimed “Fraud
21 Damages” of “[a]pproximately \$300,000.00” and “Bad Faith Damages” of “\$100,000.00” have no
22 basis in reality since they did not have to pay for the re-piping of the property or for the remediation
23 of the November 2017 leak.
24

25 The plain language of NRS 18.010(2)(b) unequivocally establishes that attorney’s fees awards
26 are appropriate in cases like this one: “It is the intent of the Legislature that the court award attorney's
27 fees pursuant to this paragraph . . . in all appropriate situations to punish for and deter frivolous or
28

vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs of engaging in business and providing professional services to the public.” *See also* NRS 7.085. The reasoning set forth in Defendants’ multiple motions to dismiss and adopted by this Court when granting Defendants’ most recent motion establishes the folly of this case. This court has acknowledged the controlling nature of *Nelson v. Heer* with respect to the issues in this case. Any reasonable reading of *Nelson* must lead to the conclusion that the conduct of the Defendants alleged in this case are not actionable. Likewise, Plaintiffs made no real effort to distinguish this case from *Nelson* nor did they argue that *Nelson* should not otherwise apply. Instead, in pursuing this case Plaintiffs essentially ignored *Nelson* and the clear example it set for actionable conduct. “A claim is groundless if “the allegations in the complaint . . . are not supported by any credible evidence at trial.” [citation omitted] *Allianz Ins. Co. v. Gagnon*, 109 Nev. 990, 996 (Nev. 1993).

PURSUANT TO NRS 18.020 DEFENDANTS ARE ENTITLED TO THEIR COSTS ACCRUED SINCE INCEPETION OF SUIT

Pursuant to NRS 18.020, “(c)osts must be allowed of course to the prevailing party against any adverse party against whom judgment is rendered, in the following cases...(3) In an action for the recovery of money or damages, where the plaintiff seeks to recover more than \$2,500.” (Emphasis added). An award of costs under NRS 18.020 is “mandatory and not subject to the court’s discretion.” *Day v. West Coast Holdings Inc.*, 101 Nev. 260, 264, 699 P.2d 1067, 1070 (1985). Since the inception of this case Defendants have expended \$6,427.26 in recoverable costs. EXHIBIT I.

CONCLUSION

Pursuant to NRS 18.020, Defendants must be awarded their costs incurred in the amount of \$6,427.26. Pursuant to NRS 18.010(2)(b) Defendants should be awarded their attorney’s fees incurred

///

1 since the inception of this case in the amount of \$82,021.50. In the alternative, pursuant to NRCP 68
2 Defendants should be awarded their attorney's fees accrued since December 11, 2019 in the amount
3 of \$39,447.00.

4 DATED this 22nd day of April 2020.

6 GALLIHER LEGAL P.C.

7 */s/ Jeffrey L. Galliher*
8 Jeffrey Galliher, Esq.
9 Nevada Bar No. 8078
10 1850 E. Sahara Ave., Suite 107
11 Las Vegas, NV 89104

IN THE SUPREME COURT STATE OF NEVADA

JOSEPH FOLINO, an individual and NICOLE FOLINO, an individual, Appellant, v. TODD SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYONS DEVELOPMENT, LLC, a Nevada limited liability company; DOES I through X; and ROES I through X, Respondent.	Case No. 81252
JOSEPH FOLINO, an individual and NICOLE FOLINO, an individual, Appellant, v. TODD SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST, a Trust of unknown origin; LYONS DEVELOPMENT, LLC, a Nevada limited liability company; DOES I through X; and ROES I through X, Respondent.	Case No. 81831

APPEAL
FROM THE EIGHTH JUDICIAL DISTRICT COURT
THE HONORABLE JIM CROCKETT | CASE No. A-18-782494-C

JOINT
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121.	02/06/2020	Todd Swanson Deposition Transcript Volume II 2/6/20	XIX	JA003584 JA003701
122.	01/13/2021	Hearing Transcript of March 3, 2020 of Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint	XIX	JA003702 JA003724

123.	01/13/2021	Hearing Transcript of April 7, 2020 of Defendants' Motion to Dismiss Plaintiff's Second Amended Complaint	XIX	JA003725 JA003742
124.	01/13/2021	Hearing Transcript of June 20, 2020 of Defendants' Motion for Fees and Costs and Plaintiffs' Motion to Retax Costs	XIX	JA003743 JA003757

CERTIFICATE OF SERVICE

When All Case Participants are Registered for the Appellate CM/ECF System

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on March 9th, 2021.

I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the appellate CM/ECF system.

DATED this 9th day of March 2021.

BLACK & WADHAMS

/s/ Rusty Graf
 Rusty Graf, ESQ
 Nevada Bar No. 6322
 10777 W. Twain Ave., Ste 300.
 Las Vegas, Nevada 89135
Attorneys for Appellants

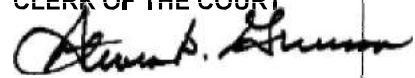
CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 22nd day of April 2020 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **MOTION FOR ATTORNEYS FEES AND COSTS** postage prepaid and addressed to the following:

Rusty Graf, Esq.
Shannon M. Wilson, Esq.
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
rgraf@blacklobello.law
swilson@blacklobello.law

/s/ Kimalee Goldstein
An employee of Galliher Legal PC

EXHIBIT A



COMP

Rusty Graf, Esq.
Nevada Bar No. 6322
Shannon M. Wilson, Esq.
Nevada Bar No. 13988
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
Telephone: (702) 869-8801
Facsimile: (702) 869-2669
E-mail: rgraf@blacklobello.law
E-mail: swilson@blacklobello.law
Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

JOSEPH FOLINO, an individual and NICOLE
FOLINO, an individual,

Plaintiffs,

v.

TODD SWANSON, an individual; TODD
SWANSON, Trustee of the SHIRAZ TRUST;
SHIRAZ TRUST, a Trust of unknown origin;
LYONS DEVELOPMENT, LLC, a Nevada
limited liability company; DOES I through X;
and ROES I through X,

Defendants.

CASE NO.: A-18-782494-C
DEPT. NO.: XXIV

**PLAINTIFFS' SECOND AMENDED
COMPLAINT**

Comes now, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through Rusty Graf, Esq. and Shannon M. Wilson, Esq., of Black & LoBello, his attorneys of record, and for their Second Amended Complaint against Defendants assert, allege and complain as follows:

I.

PARTIES, JURISDICTION AND VENUE

1. Plaintiff, JOSEPH FOLINO (hereinafter "FOLINO" or collectively "FOLINOS" or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

2. Plaintiff, NICOLE FOLINO (hereinafter "FOLINO" or collectively "FOLINOS" or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

1 3. Upon information and belief, TODD SWANSON, an individual (hereinafter
2 “SWANSON” or collectively “DEFENDANTS”), Defendant is, and at all times relevant hereto
3 was, a resident of Clark County, Nevada.

4 4. Upon information and belief, TODD SWANSON, as Trustee of the SHIRAZ
5 TRUST (hereinafter “SWANSON” or collectively “DEFENDANTS”), Defendant is, and at all
6 times relevant hereto was, a resident of Clark County, Nevada.

7 5. Upon information and belief, SHIRAZ TRUST, (hereinafter “SHIRAZ” or
8 collectively “DEFENDANTS”), Defendant is, and at all times relevant hereto was a lawful entity
9 believed to have been formed within the State of Nevada, and licensed to conduct business in
10 Clark County, Nevada.

11 6. Upon information and belief, LYONS DEVELOPMENT, LLC, a Nevada limited
12 liability company (hereinafter “LYONS” or collectively “DEFENDANTS”), Defendant is, and at
13 all times relevant hereto was a lawful entity formed within the State of Nevada, and licensed to
14 conduct business in Clark County, Nevada.

15 7. Defendants designated herein as Does I-X and Roes Entities I-X are individuals
16 and legal entities that are liable to Plaintiff for the claims set forth herein, including but not
17 limited to, possible alter egos or successors-in-interest of Defendants. Certain transactions, and
18 the true capacities of Does and Roes Entities, are presently unknown to the Plaintiffs and,
19 therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiffs will amend their
20 Complaint to assert the true names and capacities of such Doe and Roe Entities when more
21 information has been ascertained.

22 8. At all relevant times hereto, each Defendant was the agent, servant, employee, co-
23 adventurer, representative, or co-conspirator of each of the other Defendants, and acted with the
24 knowledge, consent, ratification, authorization, and at the direction of each Defendant, or is
25 otherwise responsible in some manner for the occurrences alleged in this Complaint.

26 9. This Court has personal jurisdiction over all Defendants as, at all times relevant
27 hereto, a substantial part of the events or omissions giving rise to the claims occurred in whole or
28 in part in Clark County, Nevada. Further, this suit alleges claims and causes of action arising

1 from the sale of certain real property located within Clark County, Nevada. Thus, jurisdiction
2 and venue are proper in Clark County, Nevada.

3 **II.**

4 **FACTUAL ALLEGATIONS**

5 10. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 9
6 inclusive, and incorporate the same as if fully set forth herein.

7 11. On or about October 22, 2017, Joseph Folino and Nicole Folino (Hereinafter,
8 "Plaintiffs" or "Folinos") entered into a Residential Purchase Agreement ("RPA") to purchase
9 the property identified as 42 Meadowhawk Lane, Las Vegas, NV 89135, ("Subject Property") for
10 the purchase price of THREE MILLION DOLLARS AND 00/100 (\$3,000,000.00) with the
11 Shiraz Trust, Dr. Todd Swanson, Trustee (collectively "Defendants" or individually "Swanson")
12 and Lyons Development, LLC (collectively "Defendants" or individually "Lyons"). *See*, rpa
13 attached hereto as **Exhibit 1.**

14 12. The house was constructed in 2015 by Lyons, and it is the understanding of the
15 Plaintiffs, that Swanson and Lyons were the owners since its original construction.

16 13. The transaction was consummated when Counter Offer Number 2 was executed
17 electronically by both parties on or about that date. *See*, Counter Offer attached hereto as
18 **Exhibit 2.**

19 14. The parties had previously exchanged prior counteroffers and the original RPA.
20 *See* attached Exhibits 1, 2 and Counter Offer No. 1 attached hereto as **Exhibit 3.**

21 15. The form of the RPA and the counteroffers are the standard forms used by the
22 Greater Las Vegas Association of Realtors ("GLVAR").

23 16. Pursuant to the terms and conditions of the RPA, NRS 113.130 and NRS 113.140,
24 the Defendants was required to complete and execute a Seller's Real Property Disclosure form
25 ("SRPD"), and the Defendants did so execute the SRPD on or about October 24, 2017. *See*,
26 SRPD attached as **Exhibit 4.**

27 17. The SRPD executed by Swanson does not contain any notification to the
28 purchasers regarding any problems or defects in the plumbing system, or other related systems

1 that would discuss or reference the plumbing system to supply water. *See*, attached Exhibit 4,
2 pp. 1-3.

3 18. There is no description of any water event, the existence of fungi/mold or
4 otherwise that would lead the Plaintiffs to understand that there had been previous water loss
5 issues at this Subject Property. *Id.*

6 19. It is the understanding of the Plaintiffs that Swanson had been living in the home
7 for a period of months and possibly years prior to the sale transaction.

8 20. Prior to the time of closing, the Plaintiffs engaged an inspection company, Caveat
9 Emptor LV ("Inspector"), to perform an inspection of the Subject Property. *See*, Inspection
10 Report attached hereto as Exhibit 5.

11 21. The home inspection was performed on or about October 27, 2017.

12 22. Pursuant to the inspection report, the Plaintiffs utilized a Request for Repair form
13 from their realtor to make a formal request to remediate any and all issues identified in the
14 inspection report. *See*, Request attached hereto as Exhibit 6.

15 23. Every item identified in the inspection report was included in the Request for
16 Repair. *See*, Exhibit 5 and Exhibit 6.

17 24. Prior to the time of closing the transaction, the Plaintiffs requested and were given
18 the opportunity to perform their own site inspection of the Subject Property.

19 25. This pre-closing inspection occurred on or before November 17, 2017.

20 26. During this inspection, the Plaintiffs uncovered a water leak that was in the
21 process of being repaired by the Defendants.

22 27. The Defendants had not previously communicated the existence of the water leak,
23 prior to the Plaintiffs observing the repairs during the pre-closing inspection by the Plaintiffs.

24 28. The Plaintiffs' real estate agent, Ashley Lazosky, ("Plaintiff's Agent") had
25 specific conversations with the Defendants and the subcontractor hired to make the repairs.

26 29. The Defendants stated that there was an isolated water loss, drywall damage and
27 other repairs that were being completed to the Plaintiff's Agent.
28

1 30. The Plaintiffs' Agent was not told about any previous or other water losses, and
2 certainly was not told about any plumbing failures, such as defects requiring the complete
3 replacement of the water supply/plumbing system as a result of a warranty claim having been
4 made to Uponor, the manufacturer of the plumbing/pipe supply system.

5 31. On or about November 17, 2017, the Plaintiffs effectuated the closing of the real
6 estate transaction for the Subject Property. *See*, Grant Bargain and Sale Deed attached hereto as
7 **Exhibit 7**.

8 32. Shortly after the closing occurred, the Plaintiffs were made aware of an additional
9 water loss that had occurred at the Subject Property in approximately February of 2017 by the
10 plumbing system manufacturer: Uponor.

11 33. After learning of the earlier water loss, the Plaintiffs obtained an additional
12 inspection report of the plumbing system, water supply pipe system and any related drainage
13 system.

14 34. The Plaintiffs have been made aware by the plumbing manufacturer, Uponor, that
15 the Defendants had previously made a warranty claim that was accepted by Uponor.

16 35. The payment to conduct the warranty repairs to the plumbing system was made to
17 the Defendant's subcontractor, Rakeman Plumbing, on or about June 9, 2017, well before the
18 date of the SRPD, October 24, 2017. *See*, Rakeman Plumbing Invoice attached hereto as
19 **Exhibit 8** and June 9, 2017, Uponor letter attached hereto as **Exhibit 9**.

20 36. The Plaintiffs contacted Uponor directly and were informed of the past water
21 losses that had occurred at the Subject Property. In addition to the water loss that occurred in
22 November 2017, at or near the time of the closing, the Plaintiffs were informed by Uponor of the
23 February 2017 water loss. *See*, Uponor email with attachments attached hereto as **Exhibit 10**.

24 37. Uponor provided the warranty claim information for the plumbing system in
25 response to an email from the Plaintiffs. *See*, Uponor email with Warranty attached hereto as
26 **Exhibit 11**.

27 38. The plumbing defects in the house were systemic and known to the Defendants
28 prior to the closing of the transaction.

III.

FIRST CAUSE OF ACTION

(Fraud/Intentional Misrepresentation)

42. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 41,
inclusive, and incorporate the same as if fully set forth herein.

43. Defendants, and each of them, communicated, by and through themselves and their employees and/or agents, on or about October 24, 2017, to the Plaintiffs that there were no defects in the house, the systems or the structure.

44. The Defendants, and each of them, coerced the Plaintiff into closing on the sale of the Subject Property by concealing, hiding and affirmatively omitting known facts, to wit: that the house was built with defects known to the Defendants, whether repaired or not.

45. The Defendants purposefully, and with the intent to deceive the Plaintiffs, failed to identify the known defects, prior water losses, prior warranty repairs and other material misrepresentations or omissions contained on the SRPD.

46. The Defendants made these intentional misrepresentations on the SRPD form in an effort to induce the Plaintiffs to purchase the Subject Property.

47. Defendants, and each of them, intended by their false representations to induce the Plaintiffs into entering into said transaction.

48. Plaintiffs would not have completed the transaction had they known of the facts alleged herein and withheld from the Plaintiffs by the Defendants.

1 57. Defendants, and each of them, committed violations of Nevada's rules and
2 regulations regarding the Conditions of Residential Property Offered for Sale, and including, but
3 not limited to, NRS 113.100 et seq, and specifically NRS 113.150, by failing to inform the
4 Plaintiff that there were defects known to the Defendants at the time they executed and affirmed
5 compliance with the SRPD regarding the Subject Property, its plumbing system and the structure
6 being purchased by the Plaintiffs from the Defendants.

7 58. The Nevada Revised Statutes create a separate duty from any contractual duty to
8 disclose the requested information by the Defendants, and this separate duty requires these
9 Defendants to have been candid, honest and forthcoming as to the topics of information, defects
10 and general condition of the property as requested on the SRPD form.

59. That as a direct and proximate result of Defendant's actions alleged herein, plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

60. As a direct and proximate result of the Defendants' violations, and each of them,
and pursuant to violation of the Nevada Revised Statutes, Plaintiff is entitled to recover treble
damages.

61. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

PRA YER

WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

1. For general damages in an amount in excess of \$15,000.00;
2. For special damages in an amount in excess of \$15,000.00;
3. For punitive damages in an amount in excess of \$15,000.00;
4. For reasonable attorney's fees;
5. For costs incurred in the pursuit of this action; and

6. For such ~~other~~ further relief as the court deems proper.

DATED this 3 day of September 2019.

BLACK & LOBELLO

Rusty Graf, Esq.
Nevada Bar No. 6322
Shannon M. Wilson, Esq.
Nevada Bar No. 13988
10777 W. Twain Ave., Suite 300
Las Vegas, NV 89135
rgraf@blacklobello.law
swilson@blacklobello.law
Attorneys for Plaintiffs

BLACK & LOBELLO
10777 W. Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
(702) 869-8801 FAX: (702) 869-2669

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 3rd day of September 2019, I caused the above and foregoing document *Plaintiffs'*

Amend the Complaint to be served as follows:

- ☐ by placing same to be deposited for mailing in the United States Mail, in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada; and
- ☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;
- ☐ pursuant to EDCR 7.26, to be sent via facsimile;
- ☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

Christopher M. Young, Esq.
Nevada Bar No. 7961
Jay T. Hopkins, Esq.
Nevada Bar No. 3223
Christopher M. Young, PC
2640 Professional Court, #200
Las Vegas, Nevada 89128

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.

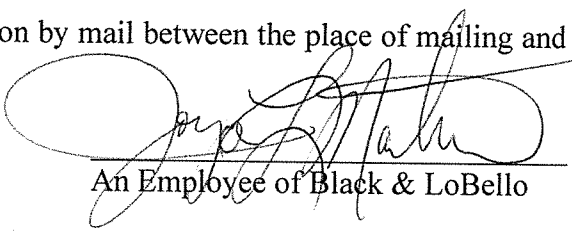

An Employee of Black & LoBello

EXHIBIT B

[Skip to Main Content](#) [Logout](#) [My Account](#) [Search Menu](#) [New District Civil/Criminal](#)
[Search](#) [Refine Search](#) [Close](#)

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

REGISTER OF ACTIONS

CASE No. A-18-782494-C

Joseph Folino, Plaintiff(s) vs. Todd Swanson, Defendant(s)

§
§
§
§
§
§

Case Type: Other Tort
 Date Filed: 10/09/2018
 Location: Department 24
 Cross-Reference Case Number: A782494

PARTY INFORMATION

Defendant	Lyons Development, LLC	Lead Attorneys Christopher M. Young Retained 702-240-2499(W)
Defendant	Shiraz Trust	Christopher M. Young Retained 702-240-2499(W)
Defendant	Swanson, Todd	Christopher M. Young Retained 702-240-2499(W)
Plaintiff	Folino, Joseph	J. Rusty Graf Retained 702-869-8801(W)
Plaintiff	Folino, Nicole	J. Rusty Graf Retained 702-869-8801(W)

EVENTS & ORDERS OF THE COURT

11/07/2019 Motion to Dismiss (9:00 AM) (Judicial Officer Crockett, Jim)
 11/07/2019, 03/03/2020, 04/07/2020
 Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint

Minutes

11/07/2019 9:00 AM

- Court stated its inclination as to the Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint noting an affidavit was required seeking 56 (d) relief. Further, there were two questions of fact. Moreover, the Court was inclined to grant the motion for summary judgment and to deny to inappropriately filed counter motion for sanctions. Arguments by counsel. Colloquy regarding affidavits, discovery, and conducting depositions. Court GRANTED counsel ninety (90) days to demonstrate a genuine issue of material fact by February 6th; Defendant's Reply February 20th. COURT ORDERED, matter CONTINUED. Counsel to adhere to compliance with the rules. Additionally, the parties could conduct their 16.1 even in advance of their answers or bring the answers to the 16.1. Moreover, Defendants need to file supplemental affidavits as to the two technicians. CONTINUED TO: 02/27/20 9:00 AM

02/27/2020 9:00 AM

03/03/2020 9:00 AM

- COURT NOTED, there was a Motion to Dismiss heard back in November; at that time the Court stated its inclination to the

JA001899

Defendants Motion to Dismiss Plaintiffs second amended Complaint noting that an affidavit was required seeking 56(d) relief, further there were two questions of fact, the Court was inclined to GRANT the Motion for Summary Judgment and to DENY the inappropriate filed countermotion for sanctions. Court further stated there is no affidavit to contradict the affidavit of Mr. Holly, Plaintiff was to demonstrate a genuine dispute as a material issue of fact. Mr. Graf stated he did have a thumb drive dropped off with all of the documents attached. The documents that are attached are also referenced in the Supplemental Brief. Mr. Graf further stated included in those documents is the deposition transcript of Mr. Holly and deposition transcript of Mr. Gerber. Following further arguments of counsel. COURT ORDERED, MATTER CONTINUED 4-07-20 9:00 AM DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

04/07/2020 9:00 AM

- Mr. Graf argued mold and leaks and that Dr. Swanson had knowledge of the defects. Opposition by Mr. Galiher. Argument that the Defendant was no longer the owner at the time of the results. Court finds that Plaintiff was aware of the leaks and elected to close escrow. COURT ORDERED, motion GRANTED as a Summary Judgment. Matter SET for status check for filing of the order 5/5/20 9:00am.

Parties Present

Return to Register of Actions

EXHIBIT C

Christopher M. Young, PC

2460 Professional Court, #200
Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson
10120 W. Flamingo Rd
#4333
Las Vegas, NV
89147

June 14, 2018

Attention: Todd Swanson

File #: 0300.003

Inv #: 1121

RE: Folino v. Lyons Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Feb-12-18	Review/analyze correspondence from client regarding new litigation including litigation hold letter from Plaintiff's counsel for analysis.	0.40	110.00	CMY
	Draft/revise correspondence to client Swanson regarding instructions.	0.30	82.50	CMY
Mar-08-18	Draft/revise correspondence to client regarding requested documents, policy and meeting.	0.30	82.50	CMY
Mar-12-18	Review/analyze correspondence from Todd Swanson regarding meeting to discuss homeowner's claim regarding seller's misrepresentation.	0.10	27.50	CMY
	Review/analyze Seller's Disclosure Statement and Purchase/Sales Agreement.	0.30	82.50	CMY
Mar-16-18	Appear for/attend meeting with client Todd Swanson to discuss facts and circumstances and litigation strategy.	1.50	412.50	CMY
Mar-21-18	Review/analyze correspondence from client, review and analyze of Plaintiff's demand with attached Seller's disclosures, review and analyze client's homeowner's policy draft representation letter to Plaintiff's counsel.	1.20	330.00	CMY
Mar-22-18	Communicate (with client) extended Teleconference with attorney Mike Stoberski	0.50	137.50	CMY

regarding background facts, possible association, experts and mediator recommendations.

Apr-05-18	Review/analyze Plaintiff's counsel's reply to our response with attached documentation regarding plumbing repairs.	0.40	110.00	CMY
	Draft/revise correspondence to client with attached plaintiff's counsel reply and attachments.	0.10	27.50	CMY
Apr-24-18	Communicate (with client) teleconference with client - case discussion.	0.10	27.50	CMY
Apr-25-18	Communicate (with client) extended teleconference with Plaintiff's lawyer regarding case status and potential early case mediation.	0.40	110.00	CMY
May-17-18	Teleconference with Dr. Swanson; case strategy.	0.30	82.50	CMY
Jun-05-18	Communicate (other outside counsel) with Plaintiff's counsel Rusty Graf regarding proposed early case mediation.	0.30	82.50	CMY
Jun-06-18	Review/analyze request for early litigation mediation.	0.10	27.50	CMY
	Draft/revise correspondence to client.	0.10	27.50	CMY
	Draft/revise correspondence to opposing counsel.	0.10	27.50	CMY
Jun-12-18	Communicate (with client) - Teleconference with client regarding pre-litigation mediation, mediator selection, dates and strategy	0.30	82.50	CMY
	Draft/revise correspondence to Plaintiff's counsel regarding client's approval pre-litigation mediation.	0.20	55.00	CMY
	Totals	7.00	\$1,925.00	

DISBURSEMENTS

Feb-12-18	Copying - 42 MH Farmer's Insurance Policy 9-22-15 8 @ .25	2.00
	Copying - 42 MH Farmer's Insurance Umbrella Liability 9-22-15 5 @ .25	1.25

Totals

\$3.25**Total Fee & Disbursements**

\$1,928.25**Balance Now Due**

\$1,928.25

TAX ID Number 82-1847362

Christopher M. Young, PC

2460 Professional Court, #200
Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson
10120 W. Flamingo Rd
#4333
Las Vegas, NV
89147

October 26, 2018

Attention: Todd Swanson

File #: 0300.003

Inv #: 1150

RE: Folino v. Lyons Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Jun-29-18	Review/analyze correspondence with voluminous attachments from client, and respond to client.	0.20	55.00	CMY
Jul-05-18	Appear for/attend meeting with client to discuss mediation strategy including review of all document.	0.50	137.50	CMY
	Appear for/attend meeting with client to discuss strategy and review of case documents.	1.50	375.00	JTH
Jul-06-18	Review/analyze letter from Realtor Ivan Sher regarding valuation of property after the plumbing was replaced, to accompany Mediation Brief on diminution of value issue.	0.20	50.00	JTH
Jul-09-18	Review/analyze e-mail from Folinos' counsel requesting August 17, 2018 JAMS mediation with Floyd Hale.	0.20	50.00	JTH
Jul-12-18	Review/analyze JAMS Notice 8/17/18 Mediation.	0.10	25.00	JTH
Jul-13-18	Review/analyze the Ridges' gate logs for updating time-line of Folino's visits to residence prior to closing.	0.30	75.00	JTH
Jul-16-18	Review/analyze correspondence and backup documents regarding Folino's presence at 42 Meadowhawk.	0.30	82.50	CMY

Jul-17-18	Review/analyze and execute JAMS agreement, and forward to client.	0.20	55.00	CMY
Jul-20-18	Appear for/attend conference with JAMS representative regarding format and parameters for Confidential Mediation Brief.	0.20	50.00	JTH
Aug-01-18	Review/analyze detailed review of documents provided by Dr. Swanson/Nicky Whitfield.	3.10	775.00	JTH
	Draft/revise chronology for Mediation Brief.	5.50	1,375.00	JTH
Aug-02-18	Draft/revise affidavits for Dr. Swanson and Nicky Whitfield to accompany Confidential Mediation Brief.	1.40	350.00	JTH
	Communicate (with client) Communicate by telephone with Nicky Whitfield regarding chronology and additional documentation from Rakeman Plumbing to assist in confirming the Folinos' knowledge regarding November 7, 2017 water leak.	0.30	75.00	JTH
Aug-03-18	Review/analyze e-mail to and from Nicky Whitfield regarding revising affidavits.	0.30	75.00	JTH
Aug-04-18	Review/analyze e-mail from Dr. Swanson regarding revising affidavits.	0.10	25.00	JTH
	Review/analyze affidavits following input from for Dr. Swanson and Nicky Whitfield and supplementing affidavits with additional information.	1.40	350.00	JTH
Aug-06-18	Review/analyze factual/chronology sections of Confidential Mediation Brief, and drafting argument section, including analysis of N.R.S. Chapter 113 and related cases, including Nelson v Heer.	6.80	1,700.00	JTH
	Analysis of Nelson v. Heer case and progeny and drafting argument that repair of defect/condition negates duty to disclose.	3.80	950.00	JTH
Aug-10-18	Revising affidavits following input from for Dr. Swanson and Nicky Whitfield and supplementing affidavits with additional information.	0.60	150.00	JTH
Aug-13-18	Revising and finalizing Confidential Mediation Brief.	4.10	1,025.00	JTH

	Coordinating with staff to prepare Confidential Mediation Brief for service.	0.30	75.00	JTH
Aug-15-18	Communicate (with client) Communicate with client Swanson regarding mediation preparation.	0.30	82.50	CMY
Aug-17-18	Plan and prepare for and meet with client to review for Mediation hearing.	0.50	137.50	CMY
	Appear for/attend Mediation hearing with client. no travel	2.50	687.50	CMY
	Plan and prepare for and attend Mediation.	7.00	1,750.00	JTH
Aug-19-18	E-mail from Dr. Swanson Folinos' request for mold inspection prior to closing, showing knowledge of potential condition affecting closing date.	0.10	25.00	JTH
Aug-20-18	E-mail from Dr. Swanson regarding application of Nevada Supreme Court's ruling in Nelson v. Heer.	0.10	25.00	JTH
Aug-21-18	E-mail from Dr. Swanson and post-mediation conference to discuss importance of Nelson ruling and strategy for limited discover and moving for summary judgment.	0.20	50.00	JTH
Aug-28-18	Review/analyze correspondence from Arbitrator.	0.10	27.50	CMY
Sep-04-18	Communicate (with client) Communicate - teleconference with client Dr. Swanson regarding post mediation letter and future litigation strategy.	0.40	110.00	CMY
Sep-18-18	Communicate (other outside counsel) Communicate with mediator Floyd Hale regarding settlement negotiations.	0.30	82.50	CMY
Oct-05-18	Communicate (with client) Communicate - teleconference with Plaintiff's counsel Rusty Graf regarding settlement negotiations, filing suit.	0.30	82.50	CMY
	Totals	43.20	\$10,940.00	

DISBURSEMENTS

Aug-01-18	0300.003 Mediator's Final Bill	164.75
Aug-14-18	Copying - Confidential Mediation Brief. 98 @ .25	24.50
Sep-27-18	Copying - Amended Notice of Early Arbitration Conference. 3 @ .25	0.75

Totals	\$190.00
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Total Fee & Disbursements	\$11,130.00
--------------------------------------	--------------------

Previous Balance	1,928.25
------------------	----------

Previous Payments	1,928.25
-------------------	----------

Balance Now Due	\$11,130.00
------------------------	--------------------

TAX ID Number 82-1847362

PAYMENT DETAILS

Jul-02-18	Final Payment for Inv1121 - Chk#22	1,928.25
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Total Payments	\$1,928.25
-----------------------	-------------------

Christopher M. Young, PC
2460 Professional Court, #200
Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson
10120 W. Flamingo Rd
#4333
Las Vegas, NV
89147

April 8, 2019

Attention: Todd Swanson

File #: 0300.003
Inv #: 1195

RE: Folino v. Lyons Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Nov-06-18	Teleconference with Mediator Floyd Hale regarding settlement.	0.20	55.00	CMY
Dec-20-18	Review/analyze Notice from Plaintiff's counsel regarding service of process on Lyons, including correspondence.	0.30	82.50	CMY
	Communicate - teleconference with Plaintiff's counsel regarding Answer and request to accept service on client Swanson.	0.30	82.50	CMY
Jan-04-19	Review/analyze correspondence from Plaintiff's counsel regarding request to Accept Service with Affidavit of Service on Lyons Development.	0.20	55.00	CMY
	Communicate - teleconference with client regarding acceptance of services and status of case, future activity.	0.30	82.50	CMY
Jan-07-19	Communicate - Teleconference with client regarding current status, intent to Answer lawsuit, and acceptance of service.	0.40	110.00	CMY
Jan-10-19	Review and execute Acceptance of Affidavit of Service.	0.20	55.00	CMY
Jan-23-19	Review Plaintiffs' Complaint for pleading deficiencies and preparing preliminary outline	1.80	495.00	CMY

for drafting Motion to Dismiss or for a More Definite Statement under N.R.C.P. 12(b)(5).

	Research and drafting argument supporting Motion to Dismiss regarding failure to plead fraud with specificity pursuant to N.R.C.P. 9(b) and related cases.	4.10	1,025.00	JTH
	Review/analyze Plaintiff's Complaint for pleading deficiencies and preparing preliminary outline for drafting Motion to Dismiss or for a More Definite Statement Under N.R.C.P. 12(b)(5).	1.80	450.00	JTH
	Research and drafting argument supporting Motion to Dismiss regarding failure to plead fraud with specificity pursuant to N.R.C.P. 9(b) and related cases.	4.10	1,025.00	JTH
Jan-24-19	Research regarding standards and elements for pleading claim under the Nevada Deceptive Trade Practices Act.	1.50	375.00	JTH
	Research regarding elements to plead cause of action for Civil RICO.	2.30	575.00	JTH
	Drafting argument regarding pleading deficiencies in Plaintiffs' Deceptive Trade Practice Act and Civil RICO claims.	3.40	850.00	JTH
	Research regarding standards and elements for pleading claim under the Nevada Deceptive Trade Practices Act.	1.50	375.00	JTH
	Research regarding elements to plead cause of action for Civil RICO.	2.30	575.00	JTH
	Draft/revise argument regarding pleading deficiencies in Plaintiffs' DTPA and Civil RICO claims.	3.40	850.00	JTH
Jan-25-19	Research and drafting argument that Todd Swanson, individually, is not a proper defendant because transaction was between the Folinos and Lyons Development, LLC.	1.70	425.00	JTH
	Drafting argument that Plaintiffs' punitive damages prayer is not supported by the pleadings.	1.60	400.00	JTH
	Review, revise and finalize brief for filing.	1.50	375.00	JTH

	Research and drafting argument that Todd Swanson, individually, is not a proper defendant transaction was between the Folinis and Lyons Development, LLC.	1.70	425.00	JTH
	Draft/revise argument that Plaintiff's punitive damages prayer is not supported by the pleadings.	1.60	400.00	JTH
	Review/analyze and finalize brief for filing.	1.50	375.00	JTH
Feb-25-19	Review/analyze correspondence from client, draft reply to client regarding hearing strategy.	0.30	82.50	CMY
Mar-18-19	Communicate - teleconference with client Dr. Swanson regarding Motion to Dismiss, continuance and strategy.	0.40	110.00	CMY
Mar-25-19	Communicate with Court regarding continue of Motion to Dismiss; draft Notice of Rehearing.	0.30	82.50	CMY
Apr-01-19	Review/analyze Plaintiff's Proposed Amended Complaint.	0.50	137.50	CMY
	Review/analyze Plaintiff's Opposition to Motion to Dismiss and Counter-Motion to Amend Pleadings. Prepare outline for drafting Reply.	1.60	400.00	JTH
	Draft/revise Reply regarding fraud and punitive damages.	5.10	1,275.00	JTH
Apr-02-19	Review/analyze Plaintiff's Request for Exemption.	0.20	50.00	JTH
	Research regarding Nevada standards for asserting alter ego and piercing the corporate veil.	1.50	375.00	JTH
	Draft/revise argument regarding alter ego and finalizing Reply for filing and delivery to Judge Crockett.	2.10	525.00	JTH
	Totals	49.70	\$12,555.00	

DISBURSEMENTS

Feb-07-19	Copying - Request for Exemption from Arbitration. 6 @ .25	1.50
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Totals

\$1.50**Total Fee & Disbursements**

\$12,556.50

Previous Balance

11,130.00

Previous Payments

11,130.00

Balance Now Due

\$12,556.50

TAX ID Number 82-1847362

PAYMENT DETAILS

Nov-08-18 Payment for Inv#1150 - 0300.003

11,130.00

Total Payments

\$11,130.00

Christopher M. Young, PC

2460 Professional Court, #200

Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson

10120 W. Flamingo Rd

#4333

Las Vegas, NV

89147

September 13, 2019

File #: 0300.003

Inv #: 1230

Attention: Todd Swanson

RE: Folino v. Lyons Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Apr-08-19	Communicate - Teleconference with client regarding attendance at Motion to Dismiss hearing.	0.10	27.50	CMY
Apr-09-19	Plan and prepare for and attend Defendant Swanson's motion to Dismiss, Countermotion to Amend Complaint at Regional Justice Center.	3.00	825.00	CMY
Apr-10-19	Review/analyze Proposed Order regarding Motion to Dismiss and Countermotion.	0.10	27.50	CMY
	Communicate - teleconference with Plaintiff's counsel regarding revisions to Order.	0.10	27.50	CMY
Apr-18-19	Review/analyze Notice of Entry of Order on Motion to Dismiss.	0.20	55.00	CMY
May-15-19	Review/analyze Plaintiffs' filed First Amended Complaint for drafting Renewed Motion to Dismiss.	0.90	225.00	JTH
	Research regarding economic loss doctrine.	2.70	675.00	JTH
	Draft/revise argument regarding dismissal of second claim for negligent misrepresentation based on bar on tort claims for purely economic loss.	3.10	775.00	JTH

	Research regarding dismissal pursuant to N.R.S. Chapter 113.	1.90	475.00	JTH
	Draft/revise argument that Plaintiff's Fourth Claim for failure to disclose pursuant to N.R.S. Chapter 113.	2.90	725.00	JTH
May-20-19	Review/analyze and finalize Motion to Dismiss for filing.	0.70	175.00	JTH
May-21-19	Review/analyze Notice of Hearing for July 11, 2019 from Department 24.	0.10	25.00	JTH
May-23-19	Draft/revise correspondence to client regarding Motion to Dismiss, and review of Notice of Hearing.	0.30	82.50	CMY
Jun-24-19	Review/analyze Plaintiff's Opposition to Motion to Dismiss and framing argument for Reply.	1.90	475.00	JTH
	Review/analyze cases cited by Plaintiffs' regarding applicability of economic loss doctrine and drafting reply regarding same.	4.30	1,075.00	JTH
	Review/analyze Plaintiffs' argument that Defendants violated N.R.S. Chapter 113 disclosure requirements and analysis of cited cases.	2.10	525.00	JTH
	Draft/revise reply argument that N.R.S. Chapter 113 and related cases warrant dismissal of Plaintiffs' Fourth Claim.	3.30	825.00	JTH
Jul-03-19	Review/analyze and finalize reply for filing.	0.30	75.00	JTH
Jul-18-19	Plan and prepare for and attend motion to dismiss hearing at the Regional Justice Center, with travel.	4.00	1,100.00	CMY
Jul-29-19	Communicate - teleconference with Department 24, Clerk regarding status of Minute Order from July 18, 2019.	0.20	50.00	JTH
Jul-30-19	Draft/revise Order granting Defendant's Motion to Dismiss Plaintiff's Second, Third, Fifth, Sixth, and Seventh Causes of Action.	2.70	675.00	JTH
Aug-05-19	Communicate - Teleconference with Floyd Hale regarding settlement status.	0.20	55.00	CMY

	Review/analyze Order and Findings of Fact.	0.60	165.00	CMY
Aug-15-19	Draft/revise Notice of Entry of Order on Motion to Dismiss.	0.20	55.00	CMY
	Totals	35.90	<u>\$9,195.00</u>	

DISBURSEMENTS

Apr-10-19	Other - Parking	24.00	
Apr-18-19	Copying - First Amended Complaint. 75 @ .25	18.75	
Apr-24-19	Lewis St. Garage - Parking	21.00	
Apr-30-19	Payment for Inv# Inv# 37022860	63.56	
Jun-05-19	Copying - Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's First Amended Complaint. 13 @ .25	3.25	
Jul-01-19	Copying - CLS Documents 555 @ .15	83.25	
Jul-19-19	Other - Parking	18.00	
Jul-31-19	Swanson - Drop Motion Binder off for Hearing	35.03	
Sep-13-19	Lewis St Garage Las Vegas	18.00	
	Totals	<u>\$284.84</u>	
	Total Fee & Disbursements		\$9,479.84
	Previous Balance		12,556.50
	Previous Payments		12,556.50
	Balance Now Due		\$9,479.84

TAX ID Number 82-1847362

PAYMENT DETAILS

Apr-19-19	Payment for Inv#1195 - 0030.003	12,556.50
	Total Payments	\$12,556.50

Christopher M. Young, PC

2460 Professional Court, #200

Las Vegas, NV 89128 USA

Ph:(702) 240-2499

Fax:(702) 240-2489

Todd Swanson
10120 W. Flamingo Rd
#4333
Las Vegas, NV
89147

March 23, 2020

Attention: Todd Swanson

File #: 0300.003

Inv #: 1277

RE: Folino v. Lyons Development, LLC

DATE	DESCRIPTION	HOURS	AMOUNT	LAWYER
Sep-20-19	Review/analyze Affidavit of Aaron Hawley, with Rakeman Plumbing, make edits, revisions and discuss with Jay Motion to Dismiss.	0.60	165.00	CMY
Sep-24-19	Review/analyze Motion to Dismiss, including final revisions, and edits by lead counsel, and finalize Motion for Filing.	1.50	412.50	CMY
Oct-02-19	Review/analyze Notice of Hearing.	0.10	27.50	CMY
Oct-04-19	Review/analyze Plaintiff's Opposition to Defendant's Motion to Dismiss with analysis and discussion with associates for response.	0.50	137.50	CMY
Nov-06-19	Plan and prepare for summary judgment hearing including review of all briefs and prepare outline of oral argument.	1.50	412.50	CMY
Nov-07-19	Appear for/attend Oral hearing on Defendant Swanson's Motion to Dismiss Summary Judgment at the Regional Justice Center.	2.00	550.00	CMY
Nov-08-19	Communicate - teleconference with client regarding Motion for Summary Judgment Hearing, case status and future litigation activity.	0.30	82.50	CMY
Nov-26-19	Review/analyze Plaintiff's N.R.C.P. 16.1 List of Witnesses and Production of Documents.	0.20	55.00	CMY

Dec-10-19	Communicate - extended teleconference with client regarding case status, strategy and Offer of Judgment.	0.30	82.50	CMY
Dec-11-19	Communicate - teleconference with associate regarding Discovery responses.	0.20	55.00	CMY
Dec-23-19	Review/analyze of Request for Production and Interrogatory answers to client before serving.	0.60	165.00	CMY
	Communicate - teleconference with Jeff Galliher regarding discovery responses.	0.10	27.50	CMY
Mar-03-20	Attend defendant Swanson's motion to dismiss hearing at Regional Justice Center	1.50	412.50	CMY
	Telephone call with Client regarding outcome of hearing	0.30	82.50	CMY
	Totals	9.70	\$2,667.50	

DISBURSEMENTS

Aug-31-19	Runner Services - 7-23-19 - Pick Up Minute Order	29.10
	Runner Services - 8-6-19 - Submit Order to Chambers	36.44
Sep-15-19	Filing Fee	3.50
	Filing Fee	3.50
Oct-15-19	NVEfile	3.50
Nov-07-19	Final Invoice for Mediation Services - 0300.003	49.50
Nov-20-19	Copying - Plaintiff's Initial List of Witnesses. 63 @ .25	15.75
Nov-22-19	Copying - Plaintiff's First Set of Interrogatories to Todd Swanson - Trustee 9 @ .25	0.90
	Copying - Plaintiff's First Set of Request for Admissions to Todd Swanson - Trustee 9 @ .25	2.25
	Copying - Plaintiff's First Set of Request for Production of Documents to Todd Swanson - Trustee 10 @ .25	2.50
	Copying - Plaintiff's First set of Request for Admission - Todd Swanson and Lyon Developement. 20 @ .25	5.00
	Copying - Plaintiff's First Set of Request for Production of Documents - Todd Swanson and Lyon Developement. 20 @ .25	5.00
Nov-30-19	Runner Service for November 2019	35.03

	Courier Expense	35.03
Dec-09-19	Parking @ court house	9.00
Dec-16-19	Lewis Street Garage Las Vegas, Nevada	15.00
Mar-03-20	Parking	9.00
	Totals	\$260.00
	Total Fee & Disbursements	\$2,927.50
	Previous Balance	9,479.84
	Previous Payments	9,479.84
	Balance Now Due	\$2,927.50

TAX ID Number 82-1847362

PAYMENT DETAILS

Oct-07-19	Payment for Inv#1230 - 0030.003 - CK#26	9,479.84
	Total Payments	\$9,479.84

EXHIBIT D

GALLIHER LEGAL PC

A Professional Corporation Of Counsel to
The Galliher Law Firm

Todd Swanson, M.D.

Via Electronic Mail

Through 02/05/20

Re: Swanson, et al. adv. Folino

9/6/19	JTH	Emails (2x) to and from Nicky Whitfield regarding Rakeman Plumbing interactions prior to closing	0.3	81.00
9/17/19	JTH	Emails (3x) to and from Todd Swanson regarding Aaron Hawley (Rakeman Plumbing) affidavit to accompany Motion to Dismiss/Motion for Summary Judgment regarding Folino's Second Amended Complaint	0.4	108.00
9/19/19	JTH	Meeting with Aaron Hawley and Rocky Gerber (Rakeman Plumbing) regarding February service and repair of water leak and May 23, 2017 invoice, for drafting affidavit to accompany Motion to Dismiss/Motion for Summary Judgment regarding Folino's Second Amended Complaint	1.4	378.00
9/20/19	JTH	Further communication with Aaron Hawley, drafting and revising affidavit to accompany MTD/MSJ Folino's Second Amended Complaint	1.1	297.00
9/26/19	JTH	Draft and revise MTD/MSJ Folino's Second Amended Complaint regarding Folino's claims for fraud and violation of NRS Chapter 113	6.3	1701.00
10/28/19	JTH	Review Folino's Opposition. Outline issues for Reply	1.8	486.00
10/29/19	JTH	Research NRCP 11 and NRS 18.010 regarding Folino's Motion for Sanctions	1.5	405.00

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104
Tel: 702-735-0049 Fax: 702-735-0204

JA001920

GALLIHER LEGAL PC

A Professional Corporation Of Counsel to
The Galliher Law Firm

10/29/19	JTH	Draft Reply in support of MTD/MSJ and Opposition to Motion for Sanctions	3.7	999.00
10/30/19	JTH	Final revisions to Reply and Opposition for filing and hand-delivery to Judge Crockett	0.9	243.00
11/7/19	JTH	Preparation for and attend hearing on our Motion to Dismiss Plaintiffs' Second Amended Complaint	2.2	594.00
11/26/19	JLG	Meeting with CMY re: facts of case, current status and future handling;	1.0	270.00
11/27/19	JLG	Prepare for and attend Early Case Conference with opposing counsel	1.0	270.00
12/3/19	JLG	TCW Jay Hopkins re: status of case and future handling;	0.3	81.00
12/9/19	JTH	Telephone call to Dr. Swanson regarding Plaintiffs' discovery requests	0.2	54.00
12/19/19	JLG	Multiple communications with OC re: consolidation of depositions of TS, Shiraz Trust and Lyons development. E-mail to client re: same.	0.5	135.00
12/20/19	JLG	Draft and finalize Defendants initial list of witnesses and documents pursuant to NRCP 16.1	5.5	1485.00
12/23/19	JLG	Finalize responses to Interrogatories and Requests for Admissions served on all 3 defendants. Serve same upon Plaintiff's counsel	6.0	1620.00
1/6/20	JTH	Pre-deposition meeting with Dr. Swanson and JLG	2.5	675.00
1/6/20	JLG	Prep client for deposition	2.5	675.00
1/7/20	JLG	Multiple e-mail communications with OC re: rescheduling of witness depositions	0.5	135.00
1/14/20	JLG	Receipt and review of multiple declarations of service of various notices of deposition.	0.4	N/C
1/14/20	JLG	Receipt of documents and telephone conversation with Dr. Swanson re: SDT served upon Nicky Whitfield	0.4	108.00

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JA001921

GALLIHER LEGAL PC

A Professional Corporation Of Counsel to
The Galliher Law Firm

1/14/20	JLG	Receipt and review of correspondence form Darren Welsh, counsel for Sher and Contenta re: deposition scheduling	0.3	N/C
1/14/20	JLG	Receipt and review of Plaintiffs 2 nd supplement to NRCP 16.1 production (Berkshire Hathaway docs)	2.0	540.00
1/15/20	JLG	Receipt and review of Plaintiffs 3 rd supplement to NRCP 16.1 production (The Ridges Community Association docs)	1.8	486.00
1/21/20	JLG	Receipt and review of Plaintiffs 4 th supplement to NRCP 16.1 production	1.5	405.00
1/23/20	JLG	Prepare and serve Defendant's First Supplement to NRCP 16.1 disclosure	1.2	324.00
1/24/20	JLG	Defend deposition of Todd Swanson	8.0	2160.00
1/27/20	JLG	Receipt and review of Plaintiffs 5 th supplement to NRCP 16.1 production (Uponor docs)	2.0	540.00
1/27/20	JLG	Receipt and review of additional documents from client re: Blue Heron. Prepare and file Defendants' Second Supplement to NRCP 16.1 disclosure	3.5	945.00
1/28/20	JLG	Telephone conference with OC and counsel for Berkshire Hathaway re: depositions of Ivan Sher and Kelly Contenta	0.4	108.00
1/28/20	JLG	Receipt and review of notices of deposition for Ivan Sher and Kelly Contenta	0.2	54.00
1/29/20	JLG	Prepare for and defend deposition of Nicky Whitfield	4.0	1080.00
1/31/20	JLG	Prepare for and attend deposition of William "Rocky" Gerber	2.0	540.00
1/31/20	JLG	Prepare for and attend deposition of Aaron Hawley	3.0	810.00
TOTAL			70.3	18792.00

Total: 18792.00

Retainer on deposit: 0.00

Total due this bill: 18792.00

Please make checks payable to "GALLIHER LEGAL PC" Tax ID # 82-2688661

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104
Tel: 702-735-0049 Fax: 702-735-0204

JA001922

GALLIHER LEGAL PC

A Professional Corporation Of Counsel to
The Galliher Law Firm

Todd Swanson, M.D.

Via Electronic Mail

Through 03/10/20

Re: Swanson, et al. adv. Folino

2/4/20	JLG	Receipt and review of request for extension from OC. Forward same to client and co-counsel.	.04	N/C
2/6/20	JLG	Prepare for and defend continued deposition of Dr. Swanson. TCW client re: same.	3.5	945.00
2/7/20	JLG	Receipt and review of stipulation regarding extension of time for supplemental briefs and hearing. Execute same for filing with the court.	0.3	81.00
2/14/20	JLG	Receipt and review of Plaintiff's Supplemental Brief and list of exhibits.	2.1	567.00
2/14/20	JLG	Review of deposition transcripts of A. Hawley and W. Gerber, for relevance to Plaintiff's Supplemental Brief and Defendant's Reply;	1.9	513.00
2/17/20	JLG	Review of deposition transcripts of K. Contenta, N. Whitfield and T. Swanson for relevance to Plaintiff's Supplemental Brief and Defendant's Reply;	1.5	405.00
2/14/20	JTH	Detailed analysis of Plaintiffs' Supplemental Brief and prepare outline of potential arguments in response	3.1	837.00
2/18/20	JTH	Begin detailed review of Plaintiffs' Supplemental List of Witnesses and Production of Documents (5429 pp) for preparing Defendants' Supplemental Reply	2.7	729.00
2/18/20	JTH	Strategy meeting with JLG regarding structure of Supplemental Reply in light of Plaintiffs' arguments and mis-stated recitation of facts	3.0	810.00
2/20/20	JLG	Meeting with JTH regarding contents of Plaintiff's Supplemental Brief and strategy for our Reply.	3.0	810.00

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JA001923

GALLIHER LEGAL PC

A Professional Corporation Of Counsel to
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2/20/20	JTH	Continued analysis of Plaintiffs' Supplemental Production and all discovery, including depositions of Dr. Swanson, Aaron Hawley, Rocky Gerber, Nicky Whitfield and Ivan Sher, for deposition excerpts to support Defendants' Supplemental Reply	2.0	540.00
2/24/20	JTH	Continued drafting and revising Defendants' Supplemental Brief	4.9	1323.00
2/25/20	JTH	Continued drafting and revising Defendants' Supplemental Brief	5.5	1485.00
2/28/20	JLG	Receipt and review of text message printout from N. Whitfield.	0.9	243.00
2/27/20	JLG	Draft and finalize supplemental brief to final form with JTH; File and serve brief and deliver courtesy copy to Dept. 24;	7.0	1890.00
2/27/20	JTH	Final strategy meeting w/ JLG regarding Supplemental reply	5.0	1350.00
2/28/20	JLG	Receipt and review of text message printout from N. Whitfield.	0.9	243.00
3/3/20	JTH	Preparation with JLG and attend Hearing on Motion for Summary Judgment	1.5	405.00
3/3/20	JLG	Prepare for and attend hearing on Defendants' Motion to Dismiss. Meeting with JTH re: same.	1.5	405.00
3/10/20	JLG	Receipt and review of acceptance of service of amended deposition subpoena for Ashley Oakes-Lazosky. Draft correspondence to R. Graf re: same.	0.8	216.00
TOTAL		FEES	51.5	13797.00
1/24/20		Deposition transcript – Todd Swanson Vol I		1,404.30
1/29/20		Deposition Transcript – Nicole Whitfield		908.10
1/31/20		Deposition Transcript – Aaron Hawley		586.85
1/31/20		Deposition Transcript – William Gerber		641.49
2/6/20		Deposition Transcript - Todd Swanson Vol II		587.02
2/27/20		Copies – Courtesy binder for court	.15	37.50
TOTAL		COSTS		4165.26

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104
Tel: 702-735-0049 Fax: 702-735-0204

JA001924

GALLIHER LEGAL PC

A Professional Corporation Of Counsel to
The Galliher Law Firm

Total Fees:	13797.00
Total Costs:	4165.26
Retainer on Deposit:	0.00
Balance Forward:	0.00
Total due this bill:	17962.26

Please make checks payable to “**GALLIHER LEGAL PC**” **Tax ID # 82-2688661**

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104
Tel: 702-735-0049 Fax: 702-735-0204

JA001925

GALLIHER LEGAL PC

A Professional Corporation Of Counsel to
The Galliher Law Firm

Todd Swanson, M.D.

Via Electronic Mail

Through 04/15/20

Re: Swanson, et al. adv. Folino

2/20/20	JTH	Begin drafting Defendants' Supplemental Reply	5.3	1431.00
2/26/20	JTH	Finalize drafting and revising Defendants' Supplemental Reply	4.7	1269.00
4/6/20	JLG	Review of file materials in preparation for scheduled hearing.	0.8	216.00
4/7/20	JLG	Prepare for and attend continued hearing on Defendant's motion for summary judgment; TCW client re: same.	3.0	810.00
4/7/20	JTH	Attend hearing on Defendants' Motion for Summary Judgment	2.5	675.00
4/9/20	JTH	Drafting Findings of Fact and Conclusions of Law as directed by Judge Crockett	6.5	1755.00
4/10/20	JLG	Begin draft of motion for attorney's fees and costs.	3.0	810.00
4/10/20	JTH	Revising Findings of Fact and Conclusions of Law. Supplemental research regarding fraud claims being derivative of concealment claims under NRS Chapter 113	5.3	1431.00
4/14/20	JLG	Legal research re: availability of fees from inception of suit for inclusion in motion for fees and costs.	1.1	297.00
4/14/20	JLG	Continue drafting of motion for attorney's fees and costs including review of record and filed papers.	3.6	972.00

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104
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JA001926

GALLIHER LEGAL PC

A Professional Corporation Of Counsel to
The Galliher Law Firm

4/15/20	JTH	Finalizing Findings of Fact and Conclusions of Law	3.4	918.00
4/15/20	JLG	Make edits to motion for attorney's fees and costs; Forward same to JTH for review and comment.	2.5	675.00
4/17/20	JLG	Revise and edit Order Dismissing Suit and forward same to Plaintiffs' counsel for review.	1.2	324.00
4/17/20	JLG	Assemble declaration and exhibits and revise and edit motion for attorney's fees and costs to final form and file and serve same.	2.1	567.00
TOTAL		FEES	45.0	12150.00

Total Fees: 12150.00

Retainer on Deposit: 0.00

Balance Forward: 0.00

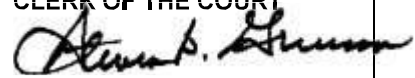
Total due this bill: 12150.00

Please make checks payable to "GALLIHER LEGAL PC" Tax ID # 82-2688661

1850 East Sahara Avenue, Suite 107 Las Vegas, Nevada 89104
Tel: 702-735-0049 Fax: 702-735-0204

JA001927

EXHIBIT E



1 **NOAC**
2 GALLIHER LEGAL P.C.
3 Jeffrey L. Galliher, Esq.
4 Nevada Bar No. 8078
5 1850 East Sahara Avenue, Suite 107
6 Las Vegas, Nevada 89104
7 Telephone: (702) 735-0049
8 Facsimile: (702) 735-0204
9 jgalliher@galliherlawfirm.com
10 Attorneys for Defendants

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 JOSEPH FOLINO, an individual, and) CASE NO.: A-18-782494-C
10 NICOLE FOLINO, an individual;) DEPT. NO.: XXIV
11)

11 Plaintiffs,)

12 v.)

13 TODD SWANSON, an individual;)
14 TODD SWANSON, Trustee of the)
15 SHIRAZ TRUST, a Trust of unknown)
16 origin; LYONS DEVELOPMENT,)
17 LLC, a Nevada limited liability)
18 company; DOES I-X and ROES I-X,)

17 Defendants.)

19 TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL OF RECORD

20 PLEASE TAKE NOTICE that JEFFREY L. GALLIHER, ESQ. of GALLIHER LEGAL P.C.
21 has associated with CHRISTOPHER M. YOUNG and JAY T. HOPKINS, ESQ. of CHRISTOPHER
22 M. YOUNG, PC, as counsel for defendants herein.

23 ///

24 ///

25 ///

26 ///

1 It is respectfully requested that a copy of all future documents in this action be served upon each of
2 the undersigned counsel.

3 DATED this 26th day of November 2019.
4

5 CHRISTOPHER M. YOUNG, PC

GALLIHER LEGAL, P.C.

6
7 /s/ Christopher M. Young
8 Christopher M. Young, Esq.
9 Nevada Bar Number 7961
10 Jay T. Hopkins, Esq.
11 Nevada Bar Number 3223
12 2640 Professional Court, #200
13 Las Vegas, Nevada 89128
14 Attorney for Defendants
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/s/ Jeffrey L. Galliher
Jeffrey L. Galliher, Esq.
Nevada Bar Number 8078
1850 E. Sahara Avenue, Ste. 107
Las Vegas, Nevada 89104
Attorney for Defendants

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I am an employee of CHRISTOPHER M. YOUNG PC, and that service of a true and correct copy of the above and foregoing **NOTICE OF ASSOCIATION OF COUNSEL** was served on the 26th day of November 2019, to the following addressed parties by:

_____ First Class Mail, postage prepaid from Las Vegas, Nevada pursuant to N.R.C.P 5(b)

_____ Facsimile, pursuant to EDCR 7.26 (as amended)

_____ Electronic Mail/Electronic Transmission

_____ Hand Delivered to the addressee(s) indicated

_____ Receipt of Copy on this _____ day of _____, 2019, acknowledged by,

Rusty Graf, Esq.
Black & Lobello
10777 W. Twain Ave., 3rd Floor
Las Vegas, Nevada 89135
Attorneys for Plaintiffs

/s/Myra Hyde

An employee of CHRISTOPHER M. YOUNG PC

EXHIBIT F

CHRISTOPHER M. YOUNG, ESQ.
Nevada Bar No. 7961
JAY T. HOPKINS, ESQ.
Nevada Bar No. 3223
CHRISTOPHER M. YOUNG, PC
2460 Professional Court, #200
Las Vegas, Nevada 89128
Tel: (702) 240-2499
Fax: (702) 240-2489
cyoung@cotomlaw.com
jaythopkins@gmail.com

Jeffrey L. Galliher, Esq.
Nevada Bar No. 8078
GALLIHER LEGAL P.C.
1850 East Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
Telephone: (702) 735-0049
Facsimile: (702) 735-0204
jgalliher@galliherlawfirm.com

Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

JOSEPH FOLINO, an individual and NICOLE
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD
SWANSON, Trustee of the SHIRAZ TRUST;
SHIRAZ TRUST, a Trust of unknown origin;
LYON DEVELOPMENT, LLC, a Nevada
limited liability company; DOES I through X;
and ROES I through X,

Defendant(s).

CASE NO.: A-18-782494-C
DEPT. NO.: XXIV

OFFER OF JUDGMENT

TO: JOSEPH FOLINO and NICOLE FOLINO, Plaintiffs

TO: RUSTY J. GRAF, ESQ., Attorney for Plaintiffs

PLEASE TAKE NOTICE that pursuant to the provisions of NRCP 68 and Chapter 17
of the Nevada Revised Statutes, Defendants, TODD SWANSON, individually, TODD

1 SWANSON as Trustee of the SHIRAZ TRUST, the SHIRAZ TRUST, and LYON
2 DEVELOPMENT, LLC, by and through their attorneys of record, CHRISTOPHER M.
3 YOUNG, ESQ., JAY T. HOPKINS, ESQ. and JEFFREY L. GALLIHER, ESQ., hereby offers
4 to have judgment taken against them in the total sum of ONE HUNDRED FIFTY
5 THOUSAND DOLLARS AND ZERO CENTS (\$150,000.00). This offer is inclusive of costs,
6 fees and interest.
7

8 DATED this 11th day of December, 2019.
9

10
11 */s/ Jeffrey L. Galliher*

12 CHRISTOPHER M. YOUNG, ESQ.
13 Nevada Bar No. 7961
14 JAY T. HOPKINS, ESQ.
15 Nevada Bar No. 3223
16 CHRISTOPHER M. YOUNG, PC
17 2460 Professional Court, #200
18 Las Vegas, Nevada 89128
19 Tel: (702) 240-2499
20 Fax: (702) 240-2489
21 cyoung@cotomlaw.com
22 jaythopkins@gmail.com

18 Jeffrey L. Galliher, Esq.
19 Nevada Bar No. 8078
20 GALLIHER LEGAL P.C.
21 1850 East Sahara Avenue, Suite 107
22 Las Vegas, Nevada 89104
23 Telephone: (702) 735-0049
24 Facsimile: (702) 735-0204
25 jgalliher@galliherlawfirm.com

26 *Attorneys for Defendants*
27
28

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Rusty Graf, Esq.
Shannon M. Wilson, Esq.
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
rgraf@blacklobello.law
swilson@blacklobello.law

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EXHIBIT G

DECLARATION OF JEFFREY L. GALLIHER

I, Jeffrey L. Galliher, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am the principal of Galliher Legal P.C., Of Counsel to the Galliher Law Firm and counsel for all Defendants herein.
2. This Declaration is made in support of Defendants' Motion for Attorney's Fees and Costs. I have personal knowledge of the attorney fees incurred by my firm in defense of Defendants in this case. The amount of attorney's fees incurred by Defendants is \$44,739.00. This amount is true and correct to the best of my knowledge and belief. These attorney's fees have been necessarily and actually incurred and paid in this action. True and correct copies of the billings are attached hereto as Exhibit A.
3. My educational and professional background is as follows: I am a solo practitioner Of Counsel to The Galliher Law Firm. I was previously a partner in the law firms of Cobeaga Tomlinson, LLP, Ham Galliher, LLP and Buckley King, LLP. I graduated from the Sandra Day O'Connor College of Law at Arizona State University. I have been admitted in Nevada since 2003 and was admitted in Indiana from 2010-2013. I have served as an Alternate Municipal Court Judge for the City of Las Vegas and as a court-appointed Arbitrator for the Eighth Judicial District Court since 2015. I have tried approximately 30 cases to verdict, including two with this very court. I am rated AV/Preeminent in Litigation by Martindale-Hubbell.
4. I was retained to represent defendants as lead counsel in December of 2020. Since that time I have performed legal work relevant to this case, including, but not limited to responding to all of Plaintiff's propounded written discovery, making Defendants'

initial disclosures pursuant to NRCP 16.1 and all supplements thereto, preparing for and defending or otherwise participating in the depositions of Dr. Swanson (twice), his assistant (Nikki Whitfield), two employees of Rakeman Plumbing (Aaron Hawley and William Gerber) and two of the selling agent's team (Ivan Sher and Kelly Contenta), preparation of Defendants' response to Plaintiffs' supplemental brief and preparing for and appearing at two motion hearings.

5. In addition, I have contracted for the services of attorney Jay T. Hopkins, Esq. to assist in the defense of this case. Mr. Hopkins' time is billed though my firm or through CHRISTOPHER M. YOUNG P.C., as appropriate to the timing and circumstances
6. Attached to the motion for fees and costs are copies of my firm's invoices, including time entries, incurred in the defense of this case.
7. I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

DATED this 17 day of April 2020.



Jeffrey L. Galliher

EXHIBIT H

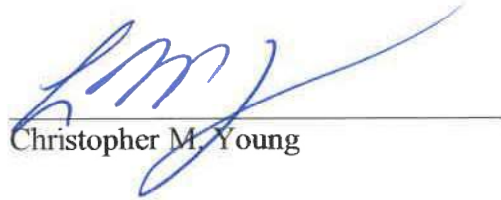
DECLARATION OF CHRISTOPHER M. YOUNG

I, Christopher M. Young, declare as follows:

1. I am an attorney duly admitted to practice before this Court. I am the principal of Christopher M. Young P.C., and counsel for all Defendants herein.
2. This Declaration is made in support of Defendants' Motion for Attorney's Fees and Costs. I have personal knowledge of the attorney fees incurred by my firm in defense of Defendants in this case. The amount of attorney's fees paid to my firm and incurred by Defendants is \$37,282.50. Costs incurred are \$739.59 (disbursements on invoices) plus \$2,035.00 (pre-litigation mediation). This amount is true and correct to the best of my knowledge and belief. These attorney's fees have been necessarily and actually incurred and paid in this action. True and correct copies of the billings are attached hereto as Exhibit A (Invoice #s 1121, 1150, 1195, 1230,1277) between February 2018 to present) .
3. My educational and professional background is as follows: I am a solo practitioner for Christopher M. Young, PC. I began my Nevada career with Beckley, Singleton Jemison, Cobeaga & List. Thereafter I was a partner in the law firms of Cobeaga Tomlinson and The Cobeaga Firm from 2003-2017. I graduated from Stanford University A.B., The University of Houston Law Center J.D, and Temple University Beasley School of Law L.L.M. I have been admitted in Texas since 1994 and Nevada since 2001. I have served as an as a court-appointed Arbitrator and Short Trial Judge since 2005 for the Eighth Judicial District Court.
4. I was retained to represent defendants in January of 2018.

5. Since that time, I have performed legal work relevant to this case, including, but not limited to a pre-litigation mediation with Floyd Hale, and the filing of three motions to dismiss.
6. Attached to the motion for fees and costs are copies of my invoices, including time entries, incurred in the defense of this case.
7. I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 14th day of April 2020.



Christopher M. Young

EXHIBIT I

Christopher M. Young, Esq.
Nevada Bar No. 7961
Jay T. Hopkins, Esq.
Nevada Bar No. 3223
CHRISTOPHER M. YOUNG, PC
2460 Professional Court, #200
Las Vegas, Nevada 89128
Tel: (702) 240-2499
Fax: (702) 240-2489
cyoung@cotomlaw.com
jaythopkins@gmail.com

Jeffrey L. Galliher, Esq.
Nevada Bar No. 8078
GALLIHER LEGAL P.C.
1850 East Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
Telephone: (702) 735-0049
Facsimile: (702) 735-0204
jgalliher@galliherlawfirm.com

Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSEPH FOLINO, an individual and NICOLE
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD
SWANSON, Trustee of the SHIRAZ TRUST;
SHIRAZ TRUST, a Trust of unknown origin;
LYON DEVELOPMENT, LLC, a Nevada limited
liability company; DOES I through X; and ROES
I through X,

Defendant(s).

CASE NO.: A-18-782494-C
DEPT. NO.: XXIV

DEFENDANTS' VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS

Pursuant to NRS 18.020, NRS 18.005, NRS 18.110 and NRCP 68 Defendants, TODD
SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST,
a Trust of unknown origin; LYON DEVELOPMENT, LLC, (hereinafter referred to as

“Defendants”) by and through their counsel of record CHRISTOPHER M. YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law firm of CHRISTOPHER M. YOUNG, PC, and JEFFREY L. GALLIHER, ESQ., of the law firm of GALLIHER LEGAL P.C., hereby moves this court to recover costs of suit. These costs were actually incurred and are reasonable in amount.

Defendants are entitled to recover statutory interest on the above costs from the date the costs were incurred through the date of entry of judgment pursuant to NRS 17.130 and *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994). For purposes of the calculation of prejudgment interest, the actual date or latest date each reasonable cost was incurred is set forth. Further, Defendants are entitled to post-judgment statutory interest from the date of entry of judgment.

COST	DATE	TOTAL
1. Mediation deposit	7/16/18	\$2,035.00
2. Runner	7/23/19	29.10
3. Runner	8/6/19	36.44
4. Filing fees	9/15/19	7.00
5. NVEFile	10/15/19	3.50
6. Mediation final bill	11/7/19	49.50
7. Copies	11/20/19	15.75
8. Copies	11/22/19	15.65
9. Runner	11/30/19	70.06
10. Deposition (Swanson I)	1/24/20	1404.30
11. Deposition (Whitfield)	1/29/20	908.10
12. Deposition (Gerber)	1/31/20	641.49
13. Deposition (Swanson II)	2/6/20	587.02

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14. Copies	2/27/20	37.50
TOTAL COSTS		\$5840.41

DATED this 22nd day of April 2020.

GALLIHER LEGAL P.C.

/s/ Jeffrey L. Galliher
Jeffrey Galliher, Esq.
Nevada Bar No. 8078
1850 E. Sahara Ave., Suite 107
Las Vegas, NV 89104

CERTIFICATE OF MAILING

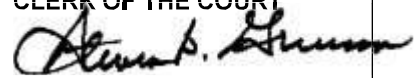
I HEREBY CERTIFY that, on the 22nd day of April 2020 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS** postage prepaid and addressed to the following:

Rusty Graf, Esq.
Shannon M. Wilson, Esq.
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
rgraf@blacklobello.law
swilson@blacklobello.law

/s/ Kimalee Goldstein
An employee of Galliher Legal PC

GALLIHER LEGAL P.C.
1850 E. Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
702-735-0049 Fax: 702-735-0204

Electronically Filed
4/22/2020 10:59 AM
Steven D. Grierson
CLERK OF THE COURT



Christopher M. Young, Esq.
Nevada Bar No. 7961
Jay T. Hopkins, Esq.
Nevada Bar No. 3223
CHRISTOPHER M. YOUNG, PC
2460 Professional Court, #200
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Fax: (702) 240-2489
cyoung@cotomlaw.com
jaythopkins@gmail.com

Jeffrey L. Galliher, Esq.
Nevada Bar No. 8078
GALLIHER LEGAL P.C.
1850 East Sahara Avenue, Suite 107
Las Vegas, Nevada 89104
Telephone: (702) 735-0049
Facsimile: (702) 735-0204
jgalliher@galliherlawfirm.com

Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

JOSEPH FOLINO, an individual and NICOLE
FOLINO, an individual,

Plaintiff(s),

v.

TODD SWANSON, an individual; TODD
SWANSON, Trustee of the SHIRAZ TRUST;
SHIRAZ TRUST, a Trust of unknown origin;
LYON DEVELOPMENT, LLC, a Nevada limited
liability company; DOES I through X; and ROES
I through X,

Defendant(s).

CASE NO.: A-18-782494-C
DEPT. NO.: XXIV

DEFENDANTS' VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS

Pursuant to NRS 18.020, NRS 18.005, NRS 18.110 and NRCP 68 Defendants, TODD
SWANSON, an individual; TODD SWANSON, Trustee of the SHIRAZ TRUST; SHIRAZ TRUST,
a Trust of unknown origin; LYON DEVELOPMENT, LLC, (hereinafter referred to as

“Defendants”) by and through their counsel of record CHRISTOPHER M. YOUNG, ESQ., and JAY T. HOPKINS, ESQ., of the law firm of CHRISTOPHER M. YOUNG, PC, and JEFFREY L. GALLIHER, ESQ., of the law firm of GALLIHER LEGAL P.C., hereby moves this court to recover costs of suit. These costs were actually incurred and are reasonable in amount.

Defendants are entitled to recover statutory interest on the above costs from the date the costs were incurred through the date of entry of judgment pursuant to NRS 17.130 and *Gibellini v. Klindt*, 110 Nev. 1201, 885 P.2d 540 (1994). For purposes of the calculation of prejudgment interest, the actual date or latest date each reasonable cost was incurred is set forth. Further, Defendants are entitled to post-judgment statutory interest from the date of entry of judgment.

COST	DATE	TOTAL
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3. Runner	8/6/19	36.44
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5. NVEFile	10/15/19	3.50
6. Mediation final bill	11/7/19	49.50
7. Copies	11/20/19	15.75
8. Copies	11/22/19	15.65
9. Runner	11/30/19	70.06
10. Deposition (Swanson I)	1/24/20	1404.30
11. Deposition (Whitfield)	1/29/20	908.10
12. Deposition (Gerber)	1/31/20	641.49
13. Deposition (Swanson II)	2/6/20	587.02

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14. Copies

2/27/20

37.50

TOTAL COSTS

\$5840.41

DATED this 22nd day of April 2020.

GALLIHER LEGAL P.C.

/s/ Jeffrey L. Galliher

Jeffrey Galliher, Esq.

Nevada Bar No. 8078

1850 E. Sahara Ave., Suite 107

Las Vegas, NV 89104

CERTIFICATE OF MAILING

I HEREBY CERTIFY that, on the 22nd day of April 2020 and pursuant to NRCP 5(b), I deposited for mailing in the U.S. Mail a true and correct copy of the foregoing **VERIFIED MEMORANDUM OF COSTS AND DISBURSEMENTS** postage prepaid and addressed to the following:

Rusty Graf, Esq.
Shannon M. Wilson, Esq.
10777 West Twain Avenue, 3rd Floor
Las Vegas, Nevada 89135
rgraf@blacklobello.law
swilson@blacklobello.law

/s/ Kimalee Goldstein
An employee of Galliher Legal PC

DISTRICT COURT
CLARK COUNTY, NEVADA

Electronically Filed
4/23/2020 7:51 AM
Steven D. Grierson
CLERK OF THE COURT



Joseph Folino, Plaintiff(s)
vs.
Todd Swanson, Defendant(s)

Case No.: A-18-782494-C
Department 24

NOTICE OF HEARING

Please be advised that the Defendants' Motion for Fees and Costs in the above-entitled matter is set for hearing as follows:

Date: June 09, 2020
Time: 9:00 AM
Location: Phoenix Building Courtroom - 11th Floor
Phoenix Building
330 S. 3rd Street
Las Vegas, NV 89101

NOTE: Under NEFCR 9(d), if a party is not receiving electronic service through the Eighth Judicial District Court Electronic Filing System, the movant requesting a hearing must serve this notice on the party by traditional means.

STEVEN D. GRIERSON, CEO/Clerk of the Court

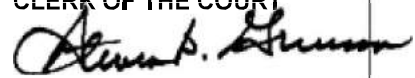
By: /s/ Ivonne Hernandez
Deputy Clerk of the Court

CERTIFICATE OF SERVICE

I hereby certify that pursuant to Rule 9(b) of the Nevada Electronic Filing and Conversion Rules a copy of this Notice of Hearing was electronically served to all registered users on this case in the Eighth Judicial District Court Electronic Filing System.

By: /s/ Ivonne Hernandez
Deputy Clerk of the Court

JA001951



1 **MRTX**

2 Rusty Graf, Esq.

3 Nevada Bar No. 6322

4 **BLACK & LOBELLO**

5 10777 West Twain Avenue, 3rd Floor

6 Las Vegas, Nevada 89135

7 Telephone: (702) 869-8801

8 Facsimile: (702) 869-2669

9 E-mail: rgraf@blacklobello.law

10 *Attorneys for Plaintiffs*

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

13 JOSEPH FOLINO, an individual and NICOLE
14 FOLINO, an individual,

15 Plaintiff,

16 v.

17 TODD SWANSON, an individual; TODD
18 SWANSON, Trustee of the SHIRAZ TRUST;
19 SHIRAZ TRUST, a Trust of unknown origin;
20 LYONS DEVELOPMENT, LLC, a Nevada
21 limited liability company; DOES I through X;
22 and ROES I through X,

23 Defendants.

CASE NO.: A-18-782494-C
DEPT. NO.: XXIV

**PLAINTIFFS' MOTION TO RETAX
COSTS**

HEARING REQUESTED

24 COMES NOW, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through
25 their attorney of record Rusty Graf, Esq., of Black & LoBello, hereby moves the Court to Retax
26 the Costs sought by Defendants in their Memorandum of Costs and Disbursements, filed with
27 this Court on April 22, 2020.

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1 This Motion is based upon the pleadings and papers on file in this action, the Points and
2 Authorities set forth herein, and argument to be made by counsel at the time of the hearing.

3 DATED this 26th day of April 2020.

4 **BLACK & LOBELLO**

5
6 Rusty Graf, Esq.
7 Nevada Bar No. 6322
8 10777 W. Twain Ave., Suite 300
9 Las Vegas, NV 89135
10 rgraf@blacklobello.law
11 Attorney for Plaintiffs

12 **NOTICE OF MOTION**

13 TO: ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

14 PLEASE TAKE NOTICE that the undersigned will bring the foregoing PLAINTIFFS'
15 MOTION TO RETAX FEES AND COSTS for hearing before the above entitled Court on the
16 ____ day of ____, 2020, at the hour of ____ a.m./p.m. in Department No. XXIV, or as soon
17 thereafter as Plaintiffs can be heard.

18 DATED this 26th day of April 2020.

19 **BLACK & LOBELLO**

20
21 RUSTY GRAF, ESQ.
22 Nevada Bar No. 6322
23 10777 W. Twain Ave., 3rd Fl.
24 Las Vegas, Nevada 89135
25 (702) 869-8801
26 (702) 869-2669 (fax)
27 rgraf@blacklobellolaw.com
28 Attorney for Plaintiffs

///

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I.

FACTUAL AND PROCEDURAL BACKGROUND

On August 17, 2018 Plaintiffs and Defendants conducted a mediation conference which was unsuccessful in reaching a settlement agreement. On October 19, 2018, Plaintiffs filed their initial Complaint. On February 4, 2019 Defendants filed their first Motion to Dismiss which was denied, and the Court granted Plaintiffs leave to amend. On May 20, 2019, Defendants filed their Motion to Dismiss Plaintiffs' Amended Complaint. On July 18, 2019, the Court dismissed several of Plaintiffs' claims, but denied Defendants' Motion to Dismiss as to Plaintiffs' claims of Fraud and Concealment in violation of NRS 113.

On September 4, 2019 Plaintiffs filed their Second Amended Complaint. Defendants' Motion to Dismiss the Second Amended Complaint was heard by the Court on November 7, 2019, and the matter was ordered continued for this supplemental brief and production of documents. The hearing was held on April 7, 2020 and the Court granted Defendants' Motion to Dismiss the Second Amended Complaint. Thereafter, on April 22, 2020, Defendants filed a Memorandum of Costs and Disbursements ("Memorandum"), requesting this Court award \$5,840.41 in costs they claim were incurred in this matter. However, many of the costs listed in Defendants' Memorandum are not compensable under Nevada law.

II.

LEGAL ARGUMENT

A. Legal Authority for Motion to Retax Costs

An adverse party who disputes the costs contained in a verified memorandum may request the court determine the costs pursuant to NRS 18.110(4), which provides:

Within 3 days after service of a copy of the memorandum, the adverse party may move the court, upon 2 days' notice, to retax and settle the costs, notice of which motion shall be filed and served on the prevailing

1 party claiming costs. Upon the hearing of the motion the court or judge
2 shall settle the costs.

3 *See NRS 18.110(4).*

4 **B. Legal Authority for Awarding Costs.**

5 Costs may properly be recovered by a prevailing party pursuant to NRS 18.020, which
6 provides that Costs be allowed to the prevailing party in the following cases:

- 7 1. In an action for the recovery of real property or a possessory right
8 thereto.
- 9 2. In an action to recover the possession of personal property, where the
10 value of the property amounts to more than \$2,500. The value must be
11 determined by the jury, court or master by whom the action is tried.
- 12 3. In an action for the recovery of money or damages, where the plaintiff
13 seeks to recover more than \$2,500.
- 14 4. In a special proceeding, except a special proceeding conducted
15 pursuant to NRS 306.040.
- 16 5. In an action which involves the title or boundaries of real estate, or the
17 legality of any tax, impost, assessment, toll or municipal fine,
18 including the costs accrued in the action if originally commenced in a
19 Justice Court.

20 *See NRS 18.020.*

21 Neither costs nor attorney fees incurred incident to litigation may be recovered unless
22 authorized by statute or rule. *Sun Realty v. Eighth Judicial Dist. Ct.*, 91 Nev. 774, 776, 542 P.2d
23 1072, 1074 (1975). Even in instances where a party is entitled to request its costs, the trial court
24 still retains discretion when determining the reasonableness of the individual costs to be
25 awarded. *See U.S. Design & Const. Corp. v. International Broth. of Elec. Workers*, 118 Nev. 458,
26 50 P.3d 170 (2002); *See also Bergmann v. Boyce*, 109 Nev. 670, 856 P.2d 560 (1993). "This
27 discretion should be sparingly exercised when considering whether or not to allow expenses not
28 specifically allowed by statute and precedent." *Bergmann v. Boyce*, 109 Nev. at 679. As such, the
trial court should exercise restraint because "statutes permitting recovery of costs, being in
derogation of the common law, must be strictly construed." *Id.* A strict construction of the statute
"requires that the phrase 'reasonable costs' be interpreted to mean actual costs that are reasonable,

1 rather than a reasonable estimate or calculation of such costs based upon administrative
2 convenience." *Gibellini v. Klindt*, 110 Nev. 1201, 1206, 885 P.2d 540 (1994).

3 NRS 18.005 enumerates compensable costs as follows:

- 4 1. Clerks' fees.
- 5 2. Reporters' fees for depositions, including a reporter's fee for one copy of
6 each deposition.
- 7 3. Jurors' fees and expenses, together with reasonable compensation of an
8 officer appointed to act in accordance with NRS 16.120.
- 9 4. Fees for witnesses at trial, pretrial hearings and deposing witnesses, unless
10 the court finds that the witness was called at the instance of the prevailing
11 party without reason or necessity.
- 12 5. Reasonable fees of not more than five expert witnesses in an amount of
13 not more than \$1,500 for each witness, unless the court allows a larger fee
14 after determining that the circumstances surrounding the expert's
15 testimony were of such necessity as to require the larger fee.
- 16 6. Reasonable fees of necessary interpreters.
- 17 7. The fee of any sheriff or licensed process server for the delivery or service
18 of any summons or subpoena used in the action, unless the court
19 determines that the service was not necessary.
- 20 8. Compensation for the official reporter or reporter pro tempore.
- 21 9. Reasonable costs for any bond or undertaking required as part of the
22 action.
- 23 10. Fees of a court bailiff or deputy marshal who was required to work
24 overtime.
- 25 11. Reasonable costs for telecopies.
- 26 12. Reasonable costs for photocopies.
- 27 13. Reasonable costs for long distance telephone calls.
- 28 14. Reasonable costs for postage.
15. Reasonable costs for travel and lodging incurred taking depositions and
conducting discovery.
16. Fees charged pursuant to NRS 19.0335.
17. Any other reasonable and necessary expense incurred in connection with
the action, including reasonable and necessary expenses for computerized
services for legal research.

22 See NRS 18.005.

23 The Nevada Supreme Court has held that this statute must be strictly construed to allow
24 only the costs specifically enumerated therein, and only under the circumstances provided for in
25 the statute. See *Bobby Berosini, Ltd v. People for the Ethical Treatment of Animals*, 114 Nev.
26 1348, 1352-53, 971 P.2d 383 (1998). Applying these principles to the instant matter, Plaintiffs
27 respectfully submit that this Court should grant the Motion to Retax, as some of the costs
28

delineated in Defendants' Memorandum of Costs and Disbursements are not recoverable under applicable and relevant authority.

C. **The Requested Costs Are Not Compensable Under NRS 18.005.**

Here, the following costs are not compensable under NRS 18.005 and therefore should be retaxed as non-recoverable:

i. **Mediation Costs**

Defendants' Verified Memorandum of Costs and Disbursements ask the Court to tax Plaintiffs **\$2,084.50** for costs described as follows:

- | | | |
|-----------|------------------------|------------|
| • 7/16/18 | "Mediation deposit" | \$2,035.00 |
| • 11/7/19 | "Mediation final bill" | \$49.50 |

Here, these Mediation costs should be retaxed because (1) they are not enumerated under NRS 18.005 or any other relevant statute and the Nevada Supreme Court has held that only the fees and costs specifically enumerated by statute are compensable; (2) the Nevada Mediation Rules suggest that mediation costs are intended to be split between the parties unless otherwise stipulated; and (3) any argument by Defendants that these costs do fall under one of the categories enumerated by NRS 18.005 is inapplicable as they were incurred prior to the litigation of the matter. Further, Defendants do not cite any legal authority authorizing the taxing of such costs, and Court is to use its discretion sparingly "when considering whether or not to allow expenses not specifically allowed by statute and precedent". *See Bergmann, 109 Nev. at 679, 856 P.2d at 565-566.*

First, Plaintiffs would reiterate that mediation costs are not specifically enumerated under NRS 18.005. Therefore, Defendants' only potential argument as to the validity of these costs is that they fall under NRS 18.005(17) which states "any other reasonable and **necessary** expense **incurred in connection with the action**" are compensable. (emphasis added) *See NRS*

1 18.005(17). As stated above, mediation costs are not mentioned specifically by any provision of
2 NRS 18.005 and thus the Court is to use any discretion as to awarding these fees and costs
3 “sparingly”. These facts, combined with Defendants’ failure to cite any statutes or authority to
4 the contrary, are sufficient for the mediation costs to be retaxed. Arguendo, even if the Court did
5 determine that NRS 18.005(17) could potentially encompass some mediation costs, it would not
6 still not be applicable to the instant mediation costs because they were not a “necessary expense”
7 and they were not “incurred in connection with the action” as required by the statute. *Id.*

9 The mediation costs were not a “necessary expense” as required by NRS 18.005(17)
10 because mediation is an optional process that occurs prior to the commencement of litigation.
11 Neither Plaintiffs or Defendants were compelled to conduct a mediation, they freely determined
12 that they wished to do so. Therefore, the costs cannot be considered “necessary” as Defendants
13 could have declined to participate in mediation without forfeiting any rights or impacting the
14 subsequent litigation process in any manner.

16 Further, the mediation costs were not “incurred in connection with the action” as is also
17 required by NRS 18.005(17). *Id.* NRCP 3 states that “A civil action is commenced by filing a
18 complaint with the court.” *See NRCP 3.* In the instant action, Plaintiffs filed their Complaint on
19 October 19, 2018. *See attached Exhibit 1, Plaintiffs’ First Complaint.* This is over two (2)
20 months after the Parties conducted the mediation conference, which occurred on August 17,
21 2018. Therefore, as the instant action was not commenced until October 19, 2018, mediation
22 costs incurred on August 17, 2018 cannot be “incurred in connection with the action” as required
23 to be compensable under NRS 18.005(17). The action did not exist at the time these expenses
24 were incurred. This is further validated by a letter that was sent by the mediator, Floyd A. Hale,
25 to both Plaintiffs and Defendants following the mediation conference. The letter summarized
26 what occurred during the conference and stated, “Since I anticipate that litigation will

1 commence soon if there is no settlement, let me know your responses by September 4, 2018.”
2 (emphasis added) *See attached Exhibit 2, August 20, 2018 Letter from Floyd A. Hale.* Defendants
3 cannot rationally argue that the mediation costs were “necessary expense” which were “incurred
4 in connection with the action”, and therefore compensable under NRS 18.005, when the action
5 and thus the litigation process had not yet commenced.
6

7 Finally, though it is clear that the mediation expenses are not compensable under NRS
8 18.005, Plaintiffs would also note that consideration of this Court’s own Nevada Mediation
9 Rules weighs heavily against Plaintiffs’ being taxed for these costs. Specifically, NMR 10(C)
10 states that the “fees and costs of the mediator are paid equally by the parties unless otherwise
11 stipulated”. *See NMR 10(C).* This demonstrates that the Court’s intention is for pre-litigation
12 mediation costs to be borne by both parties equally. There was no stipulation by the Parties as to
13 the mediation costs. Therefore, these costs should be retaxed.
14

15 **ii. Runner Costs**

16 Defendants’ Verified Memorandum of Costs and Disbursements ask the Court to tax
17 Plaintiffs **\$135.60** for costs described as follows:
18

- | | | |
|---------------|----------|---------|
| 19 • 7/23/19 | "Runner" | \$29.10 |
| 20 • 8/6/19 | "Runner" | \$36.44 |
| 21 • 11/30/19 | "Runner" | \$70.06 |

22 The costs Defendants seek to recover for the use of Runners should also be retaxed
23 because (1) these costs are also not specifically enumerated by NRS 18.005; (2) the Court is to
24 use any discretion as to unenumerated costs “sparingly” and Defendants again do not cite any
25 legal authority authorizing the taxing of such costs; and (3) there is persuasive legal authority
26 which suggests that such costs are not compensable.
27
28

1 Federal courts have consistently held that overhead costs, such as administrative fees,
2 supplies and the use of runners are not properly taxable. *See, e.g., Warner Chilcott Labs. Ireland*
3 *Ltd. v. Impax Labs., Inc.*, 2013 WL 1876441, at *12 (D. N.J. April 18, 2013) (holding costs slip
4 sheets, tabs, binders, folders, redweld file pockets and labels. . . .constitute[d] attorney's overhead
5 and as such, [was] not taxable"); *N.J. Mfrs. Ins. Group v. Electrolux, Inc.*, 2013 WL 5817161, at
6 *12 (D. N.J. Oct. 21, 2013) (holding costs "for labels and binders, which constitute attorney's
7 overhead and as such, are not taxable"); *J-Way Leasing, Ltd. v. Am. Bridge Co.*, 2010 WL
8 816439, at *4 (N.D. Ohio March 4, 2010) ("[C]osts for marking exhibits are overhead expenses
9 and not taxable"); *Butler v. Wright*, 2010 WL 599387, at *8 (M.D. Fl. Feb 16, 2010)
10 (holding "operating overhead is not taxable"); *Osorio v. Dole Food Co.*, 2010 WL 3212065, at *7
11 (S.D. Fl. July 7, 2010) ("Courts have held that costs for tabs and binders are not taxable costs
12 because they are subsumed within operating overhead."); *Van Voorhis v. Hillsborough Bd. of*
13 *County Comm'rs*, 2008 WL 2790244, at *5 (M.D. Fl. July 18, 2008) (finding cost of supplies
14 movant purchased from Staples was "subsumed within operating overhead and . . . not taxable.").

17 Again, as runner costs are not specifically mentioned under any of the provisions of NRS
18 18.005, Defendants' only reasonable argument regarding these costs is that they fall under NRS
19 18.005(17). It's implicit in both the language of the statute and its application in relevant case
20 law, that the Court analyzes whether non-specifically enumerated costs and fees are compensable
21 under NRS 18.005(17) by putting the burden on the party seeking to tax the costs to demonstrate
22 that those costs are reasonable and necessary (in addition to being incurred in connection with
23 the action). *See Bergmann v. Boyce*, 109 Nev. at 679; *See U.S. Design & Const. Corp. v.*
24 *International Broth. of Elec. Workers*, 118 Nev. 458, 50 P.3d 170 (2002); *See Bobby Berosini,*
25 *Ltd v. People for the Ethical Treatment of Animals*, 114 Nev. 1348, 1352-53, 971 P.2d 383
26 (1998); *See also NRS 18.005(17)*. The demonstration that unenumerated costs are reasonable and
27
28

1 necessary must be sufficiently compelling as to persuade the Court that it is appropriate to
2 exercise discretion that the Nevada Supreme Court has directly stated should only be used
3 “sparingly” and deem the costs compensable. *Id.* Here, runner fees is an unenumerated cost and
4 Defendants do not cite any legal authority which would either compel or reasonably persuade the
5 Court to exercise discretion meant to be used “sparingly”. Thus, the costs are not compensable
6 and should be retaxed.
7

8 **III.**

9 **CONCLUSION**

10 Based on the foregoing reasons, Plaintiffs respectfully request that the Court grant their
11 Motion, and Retax and deny the costs contained in Defendants’ Memorandum of Costs and
12 Disbursements as outlined herein.

13 DATED this 26th day of April 2020.

14 **BLACK & LOBELLO**

15
16
17 Rusty Graf, Esq.
18 Nevada Bar No. 6322
19 10777 W. Twain Ave., Suite 300
20 Las Vegas, NV 89135
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22 *Attorney for Plaintiffs*
23
24
25
26
27
28

CERTIFICATE OF MAILING

Pursuant to NRCP 5(b), I certify that I am an employee of BLACK & LOBELLO and that on the 24th day of April 2020, I caused the above and foregoing document **PLAINTIFFS' MOTION TO RETAX FEES AND COSTS** to be served as follows:

☐ by placing same to be deposited for mailing in the United States Mail in a sealed envelope upon which first class postage was prepaid in Las Vegas, Nevada;

☒ by electronic service through Odyssey, Clark County Eighth Judicial District Court's electronic filing/service system;

☐ pursuant to EDCR 7.26, to be sent via facsimile;

☐ hand delivered

to the party or their attorney(s) listed below at the address and/or facsimile number indicated below:

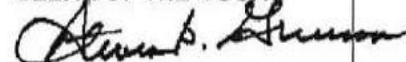
Christopher M. Young, Esq.
Nevada Bar No. 7961
Jay T. Hopkins, Esq.
Nevada Bar No. 3223
Christopher M. Young, PC
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Las Vegas, Nevada 89128

Jeffrey L. Galliher, Esq.
Galliher Legal, P.C.
Nevada Bar No. 8078
1850 E. Sahara Ave., #107
Las Vegas, NV 89104
Attorneys for Defendants

and that there is regular communication by mail between the place of mailing and the place(s) so addressed.


An Employee of Black & LoBello

EXHIBIT 1



1 **COMP**
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12 *Attorneys for Plaintiff*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 JOSEPH FOLINO, an individual and NICOLE
11 FOLINO, an individual,
12
13 Plaintiff,

13 v.

14 TODD SWANSON, an individual; TODD
15 SWANSON, Trustee of the SHIRAZ TRUST;
16 SHIRAZ TRUST, a Trust of unknown origin;
17 LYONS DEVELOPMENT, LLC, a Nevada
18 limited liability company; DOES I through X;
19 and ROES I through X,

18 Defendants.

CASE NO.:
DEPT. NO.:

A-18-782494-C

Department 24

COMPLAINT

20 Comes now, Plaintiffs JOSEPH FOLINO and NICOLE FOLINO, by and through Rusty
21 Graf, Esq. and Shannon M. Wilson, Esq., of Black & LoBello, his attorneys of record, and for
22 his Complaint against Defendants asserts, alleges and complains as follows:

23 **I.**

24 **PARTIES, JURISDICTION AND VENUE**

25 1. Plaintiff, JOSEPH FOLINO (hereinafter "FOLINO" or collectively "FOLINOS"
26 or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

27 2. Plaintiff, NICOLE FOLINO (hereinafter "FOLINO" or collectively "FOLINOS"
28 or "PLAINTIFFS") is, and at all times relevant hereto was, a resident of Clark County, Nevada.

1 3. Upon information and belief, TODD SWANSON, an individual (hereinafter
2 "SWANSON" or collectively "DEFENDANTS"), Defendant is, and at all times relevant hereto
3 was, a resident of Clark County, Nevada.

4 4. Upon information and belief, TODD SWANSON, as Trustee of the SHIRAZ
5 TRUST (hereinafter "SWANSON" or collectively "DEFENDANTS"), Defendant is, and at all
6 times relevant hereto was, a resident of Clark County, Nevada.

7 5. Upon information and belief, SHIRAZ TRUST, (hereinafter "SHIRAZ" or
8 collectively "DEFENDANTS"), Defendant is, and at all times relevant hereto was a lawful entity
9 believed to have been formed within the State of Nevada, and licensed to conduct business in
10 Clark County, Nevada.

11 6. Upon information and belief, LYONS DEVELOPMENT, LLC, a Nevada limited
12 liability company (hereinafter "LYONS" or collectively "DEFENDANTS"), Defendant is, and at
13 all times relevant hereto was a lawful entity formed within the State of Nevada, and licensed to
14 conduct business in Clark County, Nevada.

15 7. Defendants designated herein as Does I-X and Roes Entities I-X are individuals
16 and legal entities that are liable to Plaintiff for the claims set forth herein, including but not
17 limited to, possible alter egos or successors-in-interest of Defendants. Certain transactions, and
18 the true capacities of Does and Roes Entities, are presently unknown to the Plaintiffs and,
19 therefore, Plaintiff sues said Defendants by such fictitious names. Plaintiffs will amend their
20 Complaint to assert the true names and capacities of such Doe and Roe Entities when more
21 information has been ascertained.

22 8. At all relevant times hereto, each Defendant was the agent, servant, employee, co-
23 adventurer, representative, or co-conspirator of each of the other Defendants, and acted with the
24 knowledge, consent, ratification, authorization, and at the direction of each Defendant, or is
25 otherwise responsible in some manner for the occurrences alleged in this Complaint.

26 9. This Court has personal jurisdiction over all Defendants as, at all times relevant
27 hereto, a substantial part of the events or omissions giving rise to the claims occurred in whole or
28 in part in Clark County, Nevada. Further, this suit alleges claims and causes of action arising

1 from the sale of certain real property located within Clark County, Nevada. Thus, jurisdiction
2 and venue are proper in Clark County, Nevada.

3 **II.**

4 **FACTUAL ALLEGATIONS**

5 10. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 9
6 inclusive, and incorporate the same as if fully set forth herein.

7 11. On or about October 22, 2017, Joseph Folino and Nicole Folino (Hereinafter,
8 "Plaintiffs" or "Folinos") entered into a Residential Purchase Agreement ("RPA") to purchase
9 the property identified as 42 Meadowhawk Lane, Las Vegas, NV 89135, ("Subject Property") for
10 the purchase price of THREE MILLION DOLLARS AND 00/100 (\$3,000,000.00) with the
11 Shiraz Trust, Dr. Todd Swanson, Trustee (collectively "Defendants" or individually "Swanson")
12 and Lyons Development, LLC (collectively "Defendants" or individually "Lyons"). *See*, rpa
13 attached hereto as **Exhibit 1**.

14 12. The house was constructed in 2015 by Lyons, and it is the understanding of the
15 Plaintiffs, that Swanson and Lyons were the owners since its original construction.

16 13. The transaction was consummated when Counter Offer Number 2 was executed
17 electronically by both parties on or about that date. *See*, Counter Offer attached hereto as
18 **Exhibit 2**.

19 14. The parties had previously exchanged prior counteroffers and the original RPA.
20 *See* attached Exhibits 1, 2 and Counter Offer No. 1 attached hereto as **Exhibit 3**.

21 15. The form of the RPA and the counteroffers are the standard forms used by the
22 Greater Las Vegas Association of Realtors ("GLVAR").

23 16. Pursuant to the terms and conditions of the RPA, NRS 113.130 and NRS 113.140,
24 the Defendants was required to complete and execute a Seller's Real Property Disclosure form
25 ("SRPD"), and the Defendants did so execute the SRPD on or about October 24, 2017. *See*,
26 SRPD attached as **Exhibit 4**.

27 17. The SRPD executed by Swanson does not contain any notification to the
28 purchasers regarding any problems or defects in the plumbing system, or other related systems

1 that would discuss or reference the plumbing system to supply water. *See*, attached Exhibit 4,
2 pp. 1-3.

3 18. There is no description of any water or event, the existence of fungi/mold or
4 otherwise that would lead the Plaintiffs to understand that there had been previous water loss
5 issues at this Subject Property. *Id.*

6 19. It is the understanding of the Plaintiffs that Swanson had been living in the home
7 for a period of months and possibly years prior to the sale transaction.

8 20. Prior to the time of closing, the Plaintiffs engaged an inspection company, Caveat
9 Emptor LV ("Inspector"), to perform an inspection of the Subject Property. *See*, Inspection
10 Report attached hereto as Exhibit 5.

11 21. The home inspection was performed on or about October 27, 2017.

12 22. Pursuant to the inspection report, the Plaintiffs utilized a Request for Repair form
13 from their realtor to make a formal request to remediate any and all issues identified in the
14 inspection report. *See*, Request attached hereto as Exhibit 6.

15 23. Every item identified in the inspection report was included in the Request for
16 Repair. *See*, Exhibit 5 and Exhibit 6.

17 24. Prior to the time of closing the transaction, the Plaintiffs requested and were given
18 the opportunity to perform their own site inspection of the Subject Property.

19 25. This pre-closing inspection occurred on or before November 17, 2017.

20 26. During this inspection, the Plaintiffs uncovered a water leak that was in the
21 process of being repaired by the Defendants.

22 27. The Defendants had not previously communicated the existence of the water leak,
23 prior to the Plaintiffs observing the repairs during the pre-closing inspection by the Plaintiffs.

24 28. The Plaintiffs' real estate agent, Ashley Lazosky, ("Plaintiff's Agent") had
25 specific conversations with the Defendants and the subcontractor hired to make the repairs.

26 29. The Defendants stated that there was an isolated water loss, drywall damage and
27 other repairs that were being completed to the Plaintiff's Agent.
28

1 30. The Plaintiffs' Agent was not told about any previous or other water losses, and
2 certainly was not told about any plumbing failures, such as defects requiring the complete
3 replacement of the water supply/plumbing system as a result of a warranty claim having been
4 made to Uponor, the manufacturer of the plumbing/pipe supply system.

5 31. On or about November 17, 2017, the Plaintiffs effectuated the closing of the real
6 estate transaction for the Subject Property. *See*, Grant Bargain and Sale Deed attached hereto as
7 **Exhibit 7**.

8 32. Shortly after the closing occurred, the Plaintiffs were made aware of an additional
9 water loss that had occurred at the Subject Property in approximately February of 2017 by the
10 plumbing system manufacturer: Uponor.

11 33. After learning of the earlier water loss, the Plaintiffs obtained an additional
12 inspection report of the plumbing system, water supply pipe system and any related drainage
13 system.

14 34. The Plaintiffs have been made aware by the plumbing manufacturer, Uponor, that
15 the Defendants had previously made a warranty claim that was accepted by Uponor.

16 35. The payment to conduct the warranty repairs to the plumbing system was made to
17 the Defendant's subcontractor, Rakeman Plumbing, on or about June 9, 2017, well before the
18 date of the SRPD, October 24, 2017. *See*, Rakeman Plumbing Invoice attached hereto as
19 **Exhibit 8** and June 9, 2017, Uponor letter attached hereto as **Exhibit 9**.

20 36. The Plaintiffs contacted Uponor directly and were informed of the past water
21 losses that had occurred at the Subject Property. In addition to the water loss that occurred in
22 November 2017, at or near the time of the closing, the Plaintiffs were informed by Uponor of the
23 February 2017 water loss. *See*, Uponor email with attachments attached hereto as **Exhibit 10**.

24 37. Uponor provided the warranty claim information for the plumbing system in
25 response to an email from the Plaintiffs. *See*, Uponor email with Warranty attached hereto as
26 **Exhibit 11**.

27 38. The plumbing defects in the house were systemic and known to the Defendants
28 prior to the closing of the transaction.

1 39. The Defendants had previously employed Rakeman Plumbing to make repairs.

2 40. The Defendants specifically chose not to inform the Plaintiffs of any water losses,

3 including those that had been repaired.

4 41. The Defendants knew of or should have known of the duty to inform a purchaser

5 of real property of plumbing system defect and that failing to disclose known defects such as

6 those that are alleged to have existed at the Subject Property, as the duties of the Seller are

7 clearly stated on the SRPD form, on which the Seller/Defendant then signs, initials and thereby

8 affirms the obligations of the Defendants on several sections on that SRPD form.

III.

FIRST CAUSE OF ACTION

(Fraud/Intentional Misrepresentation)

12 42. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 41,
13 inclusive, and incorporate the same as if fully set forth herein.

43. Defendants, and each of them, communicated, by and through themselves and their employees and/or agents, on or about October 24, 2017, to the Plaintiffs that there were no defects in the house, the systems or the structure.

44. The Defendants, and each of them, coerced the Plaintiff into closing on the sale of the Subject Property by concealing, hiding and affirmatively omitting known facts, to wit: that the house was built with defects known to the Defendants, whether repaired or not.

45. The Defendants purposefully, and with the intent to deceive the Plaintiffs, failed to identify the known defects, prior water losses, prior warranty repairs and other material misrepresentations or omissions contained on the SRPD.

46. The Defendants made these intentional misrepresentations on the SRPD form in an effort to induce the Plaintiffs to purchase the Subject Property.

25 47. Defendants, and each of them, intended by their false representations to induce
26 the Plaintiffs into entering into said transaction.

48. Plaintiffs would not have completed the transaction had they known of the facts alleged herein and withheld from the Plaintiffs by the Defendants.

49. Plaintiffs relied to their detriment upon the false representations, when they were required to complete the transaction in favor of the Defendants.

50. Defendants, and each of them, including DOES I-X and ROES I-X, directly benefited and/or received the funds paid by the Plaintiff based upon the false representations and Plaintiff's reliance upon those false representations.

51. Defendants, and each of them, including DOES I-X and ROES I-X, knew or should have known that the representations made were false, and that the Defendants knew or should have known that the representations to the Plaintiffs failed to identify the defects or the repairs.

52. Plaintiffs' reliance on the above representations was justified and reasonable in light of the facts and circumstances alleged herein.

53. As a direct and proximate result of Defendants' fraudulent representations, Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

54. The Defendants, and each of them, acted in a willfully, fraudulently, maliciously, oppressively manner and/or with a conscious disregard of Plaintiffs' rights and/or with the intent to vex, annoy or harass Plaintiffs, and as a result of those actions, Plaintiffs are entitled to recover punitive damages from the Defendants in an amount to be proven at the time of trial.

55. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

IV.

SECOND CAUSE OF ACTION

(Negligent Misrepresentation)

56. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 55 inclusive, and incorporate the same as if fully set forth herein.

57. Defendants, and each of them, communicated on or about October 24, 2017, to the Plaintiff that there were no defects in the house, the systems or the structure

1 58. The Defendants, and each of them, induced the Plaintiffs into completing the
2 purchase of the Subject Property, all the while knowing that there were defects in the structure,
3 house and workmanship of the Subject Property.

4 59. Defendants, and each of them intended by their negligent representations to
5 induce the Plaintiff into entering into said transactions.

6 60. Plaintiffs relied upon the negligent representations when the Plaintiffs completed
7 the transaction in favor of the Defendants.

8 61. Plaintiffs would not have completed the transaction had they known of the facts
9 withheld from them by the Defendants.

10 62. The Defendants negligently, and with the intent to deceive the Plaintiffs, failed to
11 identify the defects, prior water losses and other material misrepresentations on the SRPD.

12 63. Defendants, and each of them, including DOES I-X and ROES I-X, directly
13 benefited and/or received the funds paid by the Plaintiff based upon the negligent representations
14 in Plaintiff's reliance upon those false representations.

15 64. Defendants, and each of them, including DOES I-X and ROES I-X, knew or
16 should have known that the representations made were false, and that the Defendants knew or
17 should have known that there was an insufficient basis for making the representations to the
18 Plaintiff.

19 65. Plaintiff's reliance on the above representations was justified and reasonable in
20 light of the facts and circumstances alleged herein.

21 66. The Defendants, and each of them, in the course of entering into the transaction
22 referenced above, in which the Defendants, and each of them, had a pecuniary interest, had a
23 duty to exercise reasonable care or competence in obtaining or communicating information to the
24 Plaintiffs and in conducting that transaction, and the Defendants failed to do so as alleged herein.

25 67. That as a direct and proximate result of Defendant's fraudulent representations,
26 Plaintiffs have been damaged in the sum in excess of \$15,000, an exact amount to be proven at
27 the time of trial.

28

68. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

V.

THIRD CAUSE OF ACTION

(Violation of Nevada Statutes Governing Deceptive Trade Practices –

Violation of NRS 598.010 et seq.)

69. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 68, inclusive, and incorporate the same as if fully set forth herein.

70. Defendants, and each of them, committed deceptive trade practices in violation of Nevada's Deceptive Trade Practices Act ("DPA"), including, but not limited to, NRS 598.015(14) and (15), NRS 598.092(9) and NRS 598.0923(2), by failing to inform the Plaintiffs that there were known defects in the house being purchased by the Plaintiffs from the Defendants.

71. That as a direct and proximate result of Defendant's actions alleged herein, plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

72. As a direct and proximate result of the Defendants' deceptive actions, and each of them, and pursuant to violation of the Nevada DPA, Plaintiffs are entitled to recover treble damages.

73. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

VI.

FOURTH CAUSE OF ACTION

(Violation of Nevada Statutes Governing Sale of Real Property and Disclosure of Known

Defects –

Violation of NRS 113.100 et seq.)

75. Defendants, and each of them, committed violations of Nevada's rules and regulations regarding the Conditions of Residential Property Offered for Sale, and including, but not limited to, NRS 113.100 et seq, and specifically NRS 113.150, by failing to inform the Plaintiff that there were defects known to the Defendants at the time they executed and affirmed compliance with the SRPD regarding the Subject Property, its plumbing system and the structure being purchased by the Plaintiffs from the Defendants.

76. The Nevada Revised Statutes create a separate duty from any contractual duty to disclose the requested information by the Defendants, and this separate duty requires these Defendants to have been candid, honest and forthcoming as to the topics of information, defects and general condition of the property as requested on the SRPD form.

77. That as a direct and proximate result of Defendant's actions alleged herein, plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

78. As a direct and proximate result of the Defendants' violations, and each of them, and pursuant to violation of the Nevada Revised Statutes, Plaintiff is entitled to recover treble damages.

79. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

VII.

FIFTH CAUSE OF ACTION

(Civil RICO Claim)

80. Plaintiffs repeat and realleges the allegations set forth in paragraphs 1 through 79, inclusive, and incorporate the same as if fully set forth herein.

81. Defendants, and each of them, together with their agents, heirs, assigns, employees, managers and or any other persons acting in concert with the defendants, including

DOES I-X and ROES I-X, were parties to an agreement, whether that agreement was explicit or tacit, whose unlawful purpose, aim and/or goal, was to defraud the Plaintiffs out of their money, in an amount in excess of \$15,000.00 by requiring the Plaintiffs to pay for the Subject Property, all the while knowing that the home contained significant defects in its workmanship and structure, and all in violation of the SRPD.

82. The Defendants, and each of them, acted in concert, with the intent to accomplish the unlawful objective of defrauding the Plaintiffs out of their personal property, i.e. lawful money of the United States, when the Defendants, and each of them, using fraudulent and deceptive trade practices, without justification, intentionally defrauded the Plaintiffs out of their personal property, i.e. lawful money of the United States.

83. That as a direct and proximate result of Defendants' actions alleged herein, Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven at the time of trial.

84. The Defendants, and each of them, acted in a willfully, fraudulently, maliciously, oppressively manner and/or with a conscious disregard of Plaintiffs' rights and/or with the intent to vex, annoy or harass Plaintiffs, and as a result of those actions, Plaintiffs are entitled to recover punitive damages from the Defendants in an amount to be proven at the time of trial.

85. Plaintiffs have been required to retain the services of Black & LoBello to prosecute this action, and the Court should order the Defendants to pay any reasonable amount of attorney's fees together with costs of suit incurred herein.

VIII.

SIXTH CAUSE OF ACTION

(Respondent Superior)

86. Plaintiffs repeat and reallege the allegations set forth in paragraphs 1 through 85, inclusive, and incorporate the same as if fully set forth herein.

87. At all times relevant hereto, the Defendants, and each of them, including and not limited to DOES I-x and ROES I-X, were agents, servants and/or employees of the Defendants, and each of them, and was acting within the scope of his agency, and/or employment with the

1 knowledge, purpose, permission and consent of his employers, the Defendants, and each of them,
2 including and not limited to DOES I-x and ROES I-X, who are responsible for the actions of
3 their agent, servants and/or employees, as described herein under the theory of Respondent
4 Superior.

5 88. Pursuant to the theory of Respondent Superior, and as a result of the Defendants,
6 and each of them, including and not limited to DOES I-x and ROES I-X, acted in a willfully,
7 fraudulently, maliciously, oppressively and/or with a conscious disregard of the Plaintiff's rights
8 and/or with the intent to vex, annoy or harass Plaintiffs, and either expressly or with a conscious
9 disregard, affirmed, sanctioned and/or approved of the willful, fraudulent, malicious and or
10 oppressive actions of their employees, and as such are liable for any and all punitive damages
11 awarded as a result of those employees, agents, servants or independent contractors.

12 89. That as a direct and proximate result of Defendants' actions alleged herein,
13 Plaintiffs have been damaged in the sum in excess of \$15,000.00, an exact amount to be proven
14 at the time of trial.

15 90. Plaintiffs have been required to retain the services of Black & LoBello to
16 prosecute this action, and the Court should order the Defendants to pay any reasonable amount of
17 attorney's fees together with costs of suit incurred herein.

18 PRAYER

19 WHEREFORE, Plaintiffs prays for judgment against Defendants as follows:

- 20 1. For general damages in an amount in excess of \$15,000.00;
21 2. For special damages in an amount in excess of \$15,000.00;
22 3. For punitive damages in an amount in excess of \$15,000.00;

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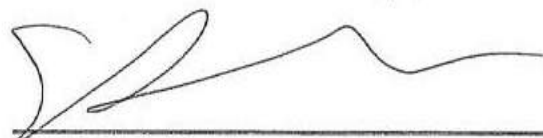
28 ///

4. For treble any damages awarded for Deceptive Trade Practices in an amount in excess of \$15,000.00;
5. For reasonable attorney's fees;
6. For costs incurred in the pursuit of this action; and
7. For such other further relief as the court deems proper.

DATED this ____ day of October, 2018.

BLACK & LOBELLO

#13988



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Attorneys for Plaintiffs

EXHIBIT 1



RESIDENTIAL PURCHASE AGREEMENT

(Joint Escrow Instructions)

Date: 10/19/2017

Joseph Folino and Nicole Folino ("Buyer"), hereby offers to purchase 42 Meadowhawk Lane, Las Vegas, NV 89135 ("Property"), within the city or unincorporated area of Las Vegas, County of Clark County, State of Nevada, Zip 89135, A.P.N. # for the purchase price of \$2,700,000 (two million seven hundred thousand dollars) ("Purchase Price") on the terms and conditions contained herein: BUYER ☒ does -OR- ☐ does not intend to occupy the Property as a residence.

Buyer's Offer

1. FINANCIAL TERMS & CONDITIONS:

\$150,000 A. EARNEST MONEY DEPOSIT ("EMD") is ☐ presented with this offer -OR- ☒ wired to title. Upon Acceptance, Earnest Money to be deposited within one (1) business day from acceptance of offer (as defined in Section 23 herein) or 2 business days if wired to: ☒ Escrow Holder, ☐ Buyer's Broker's Trust Account, -OR- ☐ Seller's Broker's Trust Account. (NOTE: It is a felony in the State of Nevada—punishable by up to four years in prison and a \$5,000 fine—to write a check for which there are insufficient funds. NRS 193.130(2)(d).)

\$ B. ADDITIONAL DEPOSIT to be placed in escrow on or before (date). The additional deposit ☐ will -OR- ☐ will not be considered part of the EMD. (Any conditions on the additional deposit should be set forth in Section 28 herein.)

\$2,160,000 C. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING FOR A NEW LOAN: ☒ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify).

\$ D. THIS AGREEMENT IS CONTINGENT UPON BUYER QUALIFYING TO ASSUME THE FOLLOWING EXISTING LOAN(S): ☐ Conventional, ☐ FHA, ☐ VA, ☐ Other (specify). Interest: ☐ Fixed rate, years -OR- ☐ Adjustable Rate, years. Seller further agrees to provide the Promissory Note and the most recent monthly statement of all loans to be assumed by Buyer within FIVE (5) calendar days of acceptance of offer.

\$ E. BUYER TO EXECUTE A PROMISSORY NOTE SECURED BY DEED OF TRUST PER TERMS IN "FINANCING ADDENDUM" which is attached hereto.

\$390,000 F. BALANCE OF PURCHASE PRICE (Balance of Down Payment) in Good Funds to be paid prior to Close of Escrow ("COE").

\$2,700,000 G. TOTAL PURCHASE PRICE. (This price DOES NOT include closing costs, prorations, or other fees and costs associated with the purchase of the Property as defined herein.)

2. ADDITIONAL FINANCIAL TERMS & CONTINGENCIES:

A. NEW LOAN APPLICATION: Within 2 business days of Acceptance, Buyer agrees to (1) submit a completed loan application to a lender of Buyer's choice and (2) furnish a preapproval letter to Seller based upon a standard factual credit report and review of debt to income ratios. If Buyer fails to complete any of these conditions within the

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

BUYER(S) INITIALS:

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

SELLER(S) INITIALS:

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applicable time frame, Seller reserves the right to terminate this Agreement. In such event, both parties agree to cancel the escrow and return EMD to Buyer. Buyer shall use Buyer's best efforts to obtain financing under the terms and conditions outlined in this Agreement.

B. APPRAISAL CONTINGENCY: Buyer's obligation to purchase the property is contingent upon the property appraising for not less than the Purchase Price. If after the completion of an appraisal by a licensed appraiser, Buyer receives written notice from the lender or the appraiser that the Property has appraised for less than the purchase price (a "Notice of Appraised Value") Buyer may attempt to renegotiate or cancel the RPA by providing written notice to the Seller (with a copy of the Appraisal) no later than 21 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Appraisal Deadline, Buyer shall be deemed to have waived the appraisal contingency.**

C. LOAN CONTINGENCY: Buyer's obligation to purchase the property is contingent upon Buyer obtaining the loan referenced in Section 1(C) or 1(D) of the RPA unless otherwise agreed in writing. Buyer shall remove the loan contingency in writing, attempt to renegotiate, or cancel the RPA by providing written notice to the Seller no later than 26 calendar days after Acceptance of the RPA; whereupon the EMD shall be released to the Buyer without the requirement of written authorization from Seller. **IF this Residential Purchase Agreement is not cancelled, in writing on or before the Loan Contingency Deadline, Buyer shall be deemed to have waived the loan contingency.**

D. CASH PURCHASE: Within n/a business days of Acceptance, Buyer agrees to provide written evidence from a bona fide financial institution of sufficient cash available to complete this purchase. If Buyer does not submit the written evidence within the above period, Seller reserves the right to terminate this Agreement.

3. SALE OF OTHER PROPERTY: This Agreement ☒ is not **-OR-** ☐ is contingent upon the sale (and closing) of another property which address is _____.
Said Property ☐ is ☐ is not currently listed **-OR-** ☐ is presently in escrow with _____.
Escrow Number: _____ Proposed Closing Date: _____.

When Buyer has accepted an offer on the sale of this other property, Buyer will promptly deliver a written notice of the sale to Seller. If Buyer's escrow on this other property is terminated, abandoned, or does not close on time, this Agreement will terminate without further notice unless the parties agree otherwise in writing. If Seller accepts a bona fide written offer from a third party prior to Buyer's delivery of notice of acceptance of an offer on the sale of Buyer's property, Seller shall give Buyer written notice of that fact. Within three (3) calendar days of receipt of the notice, Buyer will waive the contingency of the sale and closing of Buyer's other property, or this Agreement will terminate without further notice. In order to be effective, the waiver of contingency must be accompanied by reasonable evidence that funds needed to close escrow will be available and Buyer's ability to obtain financing is not contingent upon the sale and/or close of any other property.

4. FIXTURES AND PERSONAL PROPERTY: The following items will be transferred, free of liens, with the sale of the Property with no real value unless stated otherwise herein. Unless an item is covered under Section 7(F) of this Agreement, all items are transferred in an "AS IS" condition. All EXISTING fixtures and fittings including, but not limited to: electrical, mechanical, lighting, plumbing and heating fixtures, ceiling fan(s), fireplace insert(s), gas logs and grates, solar power system(s), built-in appliance(s) including ranges/ovens, window and door screens, awnings, shutters, window coverings, attached floor covering(s), television antenna(s), satellite dish(es), private integrated telephone systems, air coolers/conditioner(s), pool/spa equipment, garage door opener(s)/remote control(s), mailbox, in-ground landscaping, trees/shrub(s), water softener(s), water purifiers, security systems/alarm(s);

The following additional items of personal property: all items per MLS, downstairs barstools and couch in media room.

5. ESCROW:

A. OPENING OF ESCROW: The purchase of the Property shall be consummated through Escrow ("Escrow"). Opening of Escrow shall take place by the end of one (1) business day after Acceptance of this Agreement ("Opening of Escrow"), at Chicago Title title or escrow company ("Escrow Company" or "ESCROW HOLDER") with Sandy Moursey ("Escrow Officer") (or such other escrow officer as Escrow Company may assign). Opening of Escrow shall occur upon Escrow Company's receipt of this fully accepted Agreement. ESCROW HOLDER is instructed to notify the Parties (through their respective Agents) of the opening date and

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:

SELLER(S) INITIALS:

	
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the Escrow Number.

B. EARNEST MONEY: Upon Acceptance, Buyer's EMD as shown in Section 1(A), and 1(B) if applicable, of this Agreement, shall be deposited pursuant to the language in Section 1(A) and 1(B) if applicable.

C. CLOSE OF ESCROW: Close of Escrow ("COE") shall be on or before:
30 days after acceptance (date). If the designated date falls on a weekend or holiday, COE shall be the next business day.

D. IRS DISCLOSURE: Seller is hereby made aware that there is a regulation that requires all ESCROW HOLDERS to complete a modified 1099 form, based upon specific information known only between parties in this transaction and the ESCROW HOLDER. Seller is also made aware that ESCROW HOLDER is required by federal law to provide this information to the Internal Revenue Service after COE in the manner prescribed by federal law.

6. TITLE INSURANCE: This Purchase Agreement is contingent upon the Seller's ability to deliver, good and marketable title as evidenced by a policy of title insurance, naming Buyer as the insured in an amount equal to the purchase price, furnished by the title company identified in Section 5(A). Said policy shall be in the form necessary to effectuate marketable title or its equivalent and shall be paid for as set forth in Section 8(A).

7. BUYER'S DUE DILIGENCE: Buyer's obligation is ☒ is not ☐ conditioned on the Buyer's Due Diligence as defined in this section 7(A) below. This condition is referred to as the "Due Diligence Condition" if checked in the affirmative, Sections 7 (A) through (C) shall apply; otherwise they do not. Buyer shall have 12 calendar days from Acceptance (as defined in Section 23 herein) to complete Buyer's Due Diligence. Seller agrees to cooperate with Buyer's Due Diligence. Seller shall ensure that all necessary utilities (gas, power and water) and all operable pilot lights are on for Buyer's investigations and through the close of escrow.

A. PROPERTY INSPECTION/CONDITION: During the Due Diligence Period, Buyer shall take such action as Buyer deems necessary to determine whether the Property is satisfactory to Buyer including, but not limited to, whether the Property is insurable to Buyer's satisfaction, whether there are unsatisfactory conditions surrounding or otherwise affecting the Property (such as location of flood zones, airport noise, noxious fumes or odors, environmental substances or hazards, whether the Property is properly zoned, locality to freeways, railroads, places of worship, schools, etc.) or any other concerns Buyer may have related to the Property. During such Period, Buyer shall have the right to conduct, non-invasive/non-destructive inspections of all structural, roofing, mechanical, electrical, plumbing, heating/air conditioning, water/well/septic, pool/spa, survey, square footage, and any other property or systems, through licensed and bonded contractors or other qualified professionals. Seller agrees to provide reasonable access to the Property to Buyer and Buyer's inspectors. Buyer agrees to indemnify and hold Seller harmless with respect to any injuries suffered by Buyer or third parties present at Buyer's request while on Seller's Property conducting such inspections, tests or walk-throughs. Buyer's indemnity shall not apply to any injuries suffered by Buyer or third parties present at Buyer's request that are the result of an intentional tort, gross negligence or any misconduct or omission by Seller, Seller's Agent or other third parties on the Property. Buyer is advised to consult with appropriate professionals regarding neighborhood or Property conditions, including but not limited to: schools; proximity and adequacy of law enforcement; proximity to commercial, industrial, or agricultural activities; crime statistics; fire protection; other governmental services; existing and proposed transportation; construction and development; noise or odor from any source; and other nuisances, hazards or circumstances. If Buyer cancels this Agreement due to a specific inspection report, Buyer shall provide Seller at the time of cancellation with a copy of the report containing the name, address, and telephone number of the inspector.

B. BUYER'S RIGHT TO CANCEL OR RESOLVE OBJECTIONS: If Buyer determines, in Buyer's sole discretion, that the results of the Due Diligence are unacceptable, Buyer may either: (i) no later than the Due Diligence Deadline referenced in Section 7, cancel the Residential Purchase Agreement by providing written notice to the Seller, whereupon the Earnest Money Deposit referenced in Section 1(A) shall be released to the Buyer without the requirement of further written authorization from Seller; or (ii) no later than the Due Diligence Deadline referenced in Section 7, resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence.

C. FAILURE TO CANCEL OR RESOLVE OBJECTIONS: If Buyer fails to cancel the Residential Purchase Agreement or fails to resolve in writing with Seller any objections Buyer has arising from Buyer's Due Diligence, as provided in Section 7, Buyer shall be deemed to have waived the Due Diligence Condition.

 10/20/17 Buyer's Initials 10/20/17 Buyer's Initials

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:

SELLER(S) INITIALS:

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D. INSPECTIONS: Acceptance of this offer is subject to the following reserved right. Buyer may have the Property inspected and select the licensed contractors, certified building inspectors and/or other qualified professionals who will inspect the Property. Seller will ensure that necessary utilities (gas, power and water and all operable pilot lights) are turned on and supplied to the Property within two (2) business days after Acceptance of this Agreement, to remain on until COE. *It is strongly recommended that Buyer retain licensed Nevada professionals to conduct inspections.* If any inspection is not completed and requested repairs are not delivered to Seller within the Due Diligence Period, Buyer is deemed to have waived the right to that inspection and Seller's liability for the cost of all repairs that inspection would have reasonably identified had it been conducted, except as otherwise provided by law. The foregoing expenses for inspections will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE, along with the applicable invoice.

(Identify which party shall pay for the inspection noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
Energy Audit	n/a	Fungal Contaminant Inspection	n/a	Well Inspection (Quantity)	n/a
Home Inspection	buyer	Mechanical Inspection	n/a	Well Inspection (Quality)	n/a
Termite/Pest Inspection	buyer	Pool/Spa Inspection	buyer	Wood-Burning Device/Chimney Inspection	n/a
Roof Inspection	n/a	Soils Inspection	n/a	Septic Inspection	n/a
Septic Lid Removal	n/a	Septic Pumping	n/a	Structural Inspection	n/a
Survey (type):		Other:		Other:	

E. CERTIFICATIONS: In the event an inspection reveals areas of concern with the roof, septic system, well, wood burning device/chimney or the possible presence of a fungal contaminant, Buyer reserves the right to require a certification. The expenses for certifications will be paid outside of Escrow unless the Parties present instructions to the contrary prior to COE (along with the applicable invoice). A certification is not a warranty.

F. BUYER'S REQUEST FOR REPAIRS: It is Buyer's responsibility to inspect the Property sufficiently as to satisfy Buyer's use. Buyer reserves the right to request repairs, based upon the Seller's Real Property Disclosure or items which materially affect value or use of the Property revealed by an inspection, certification or appraisal. Items of a general maintenance or cosmetic nature which do not materially affect value or use of the Property, which existed at the time of Acceptance and which are not expressly addressed in this Agreement are deemed accepted by the Buyer, except as otherwise provided in this Agreement. The Brokers herein have no responsibility to assist in the payment of any repair, correction or deferred maintenance on the Property which may have been revealed by the above inspections, agreed upon by the Buyer and Seller or requested by one party.

8. FEES, AND PRORATIONS (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

A. TITLE, ESCROW & APPRAISAL FEES:

Type	Paid By	Type	Paid By	Type	Paid By
Escrow Fees	50-50	Lender's Title Policy	buyer	Owner's Title Policy	seller
Real Property Transfer Tax	seller	Appraisal	buyer	Other: n/a	

B. PRORATIONS: Any and all rents, taxes, interest, homeowner association fees, trash service fees, payments on bonds, SIDs, LIDs, and assessments assumed by the Buyer, and other expenses of the property shall be prorated as of the date of the recordation of the deed. Security deposits, advance rentals or considerations involving future lease credits shall be credited to the Buyer. All prorations will be based on a 30-day month and will be calculated as of COE. Prorations will be based upon figures available at closing. Any supplementals or adjustments that occur after COE will be handled by the parties outside of Escrow.

C. PRELIMINARY TITLE REPORT: Within ten (10) business days of Opening of Escrow, Title Company shall provide Buyer with a Preliminary Title Report ("PTR") to review, which must be approved or rejected within five (5) business days of receipt thereof. If Buyer does not object to the PTR within the period specified above, the PTR shall be deemed accepted. If Buyer makes an objection to any item(s) contained within the PTR, Seller shall have five (5) business days after receipt of objections to correct or address the objections. If, within the time specified, Seller fails to have each such

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:

SELLER(S) INITIALS:

<i>JP</i> 10/20/17	<i>NF</i> 10/20/17
<i>JS</i>	

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exception removed or to correct each such objection, Buyer shall have the option to: (a) terminate this Agreement by providing notice to Seller and Escrow Officer, entitling Buyer to a refund of the EMD or (b) elect to accept title to the Property as is. All title exceptions approved or deemed accepted are hereafter collectively referred to as the "Permitted Exceptions."

D. LENDER AND CLOSING FEES: In addition to Seller's expenses identified herein, Seller will contribute \$zero to Buyer's Lender's Fees and/or Buyer's Title and Escrow Fees ☐ including **OR** ☐ excluding costs which Seller must pay pursuant to loan program requirements. Different loan types (e.g., FHA, VA, conventional) have different appraisal and financing requirements, which will affect the parties' rights and costs under this Agreement.

E. HOME PROTECTION PLAN: Buyer and Seller acknowledge that they have been made aware of Home Protection Plans that provide coverage to Buyer after COE. Buyer ☐ waives **OR** ☒ requires a Home Protection Plan with TBD. ☒ Seller **OR** ☐ Buyer will pay for the Home Protection Plan at a price not to exceed \$1200-. Buyer will order the Home Protection Plan. Neither Seller nor Brokers make any representation as to the extent of coverage or deductibles of such plans.

9. TRANSFER OF TITLE: Upon COE, Buyer shall tender to Seller the agreed upon Purchase Price, and Seller shall tender to Buyer marketable title to the Property free of all encumbrances other than (1) current real property taxes, (2) covenants, conditions and restrictions (CC&R's) and related restrictions, (3) zoning or master plan restrictions and public utility easements; and (4) obligations assumed and encumbrances accepted by Buyer prior to COE. Buyer is advised the Property may be reassessed after COE which may result in a real property tax increase or decrease.

10. COMMON-INTEREST COMMUNITIES: If the Property is subject to a Common Interest Community ("CIC"), Seller shall provide AT SELLER'S EXPENSE the CIC documents as required by NRS 116.4109 (collectively, the "resale package"). Seller shall request the resale package within two (2) business days of Acceptance and provide the same to Buyer within one (1) business day of Seller's receipt thereof.

- Pursuant to NRS 116.4109, Buyer may cancel this Agreement without penalty until midnight of the fifth (5th) calendar day following the date of receipt of the resale package. If Buyer elects to cancel this Agreement pursuant to this statute, he/she must deliver, via hand delivery or prepaid U.S. mail, a written notice of cancellation to Seller or his authorized agent.
- If Buyer does not receive the resale package within fifteen (15) calendar days of Acceptance, this Agreement may be cancelled in full by Buyer without penalty. Notice of cancellation shall be delivered pursuant to Section 24 of the RPA.
- Upon such written cancellation, Buyer shall promptly receive a refund of the EMD. The parties agree to execute any documents requested by ESCROW HOLDER to facilitate the refund. If written cancellation is not received within the specified time period, the resale package will be deemed approved. Seller shall pay all outstanding CIC fines or penalties at COE.

A. CIC RELATED EXPENSES: (Identify which party shall pay the costs noted below either: SELLER, BUYER, 50/50, WAIVED or N/A.)

Type	Paid By	Type	Paid By	Type	Paid By
CIC Demand	seller	CIC Capital Contribution	seller	CIC Transfer Fees	seller
Other:					

11. DISCLOSURES: Within five (5) calendar days of Acceptance of this Agreement, Seller will provide the following Disclosures and/or documents. Check applicable boxes.

- ☒ Seller Real Property Disclosure Form: (NRS 113.130) ☐ Open Range Disclosure: (NRS 113.065)
- ☒ Construction Defect Claims Disclosure: If Seller has marked "Yes" to Paragraph 1(d) of the Sellers Real Property Disclosure Form (NRS 40.688)
- ☐ Lead-Based Paint Disclosure and Acknowledgment: required if constructed before 1978 (24 CFR 745.113)
- ☐ Other: (list) _____

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS: JS NF

SELLER(S) INITIALS: JS

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12. FEDERAL FAIR HOUSING COMPLIANCE AND DISCLOSURES: All properties are offered without regard to race, color, religion, sex, national origin, age, gender identity or expression, familial status, sexual orientation, ancestry, or handicap and any other current requirements of federal or state fair housing laws.

13. WALK-THROUGH INSPECTION OF PROPERTY: Buyer is entitled under this Agreement to a walk-through of the Property within 2 calendar days prior to COE to ensure the Property and all major systems, appliances, heating/cooling, plumbing and electrical systems and mechanical fixtures are as stated in Seller's Real Property Disclosure Statement, and that the Property and improvements are in the same general condition as when this Agreement was Accepted by Seller and Buyer. To facilitate Buyer's walk-through, Seller is responsible for keeping all necessary utilities on, including all operable pilot lights. If any systems cannot be checked by Buyer on walk-through due to non-access or no power/gas/water, then Buyer reserves the right to hold Seller responsible for defects which could not be detected on walk-through because of lack of such access or power/gas/water. The purpose of the walk-through is to confirm (a) the Property is being maintained (b) repairs, if any, have been completed as agreed, and (c) Seller has complied with Seller's other obligations. If Buyer elects not to conduct a walk-through inspection prior to COE, then all systems, items and aspects of the Property are deemed satisfactory, and Buyer releases Seller's liability for costs of any repair that would have reasonably been identified by a walk-through inspection, except as otherwise provided by law.

14. DELIVERY OF POSSESSION: Seller shall deliver the Property along with any keys, alarm codes, garage door opener/controls and, if freely transferable, parking permits and gate transponders outside of Escrow, upon COE. Seller agrees to vacate the Property and leave the Property in a neat and orderly, broom-clean condition and tender possession no later than ☒ COE -OR- ☐ . In the event Seller does not vacate the Property by this time, Seller shall be considered a trespasser in addition to Buyer's other legal and equitable remedies. Any personal property left on the Property after the date indicated in this section shall be considered abandoned by Seller.

15. RISK OF LOSS: Risk of loss shall be governed by NRS 113.040. This law provides generally that if all or any material part of the Property is destroyed before transfer of legal title or possession, Seller cannot enforce the Agreement and Buyer is entitled to recover any portion of the sale price paid. If legal title or possession has transferred, risk of loss shall shift to Buyer.

16. ASSIGNMENT OF THIS AGREEMENT: Unless otherwise stated herein, this Agreement is non-assignable unless agreed upon in writing by all parties.

17. CANCELLATION OF AGREEMENT: In the event this Agreement is properly cancelled in accordance with the terms contained herein, then Buyer will be entitled to a refund of the EMD. Neither Buyer nor Seller will be reimbursed for any expenses incurred in conjunction with due diligence, inspections, appraisals or any other matters pertaining to this transaction (unless otherwise provided herein or except as otherwise provided by law).

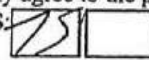
18. DEFAULT:

A. MEDIATION: Before any legal action is taken to enforce any term or condition under this Agreement, the parties agree to engage in mediation, a dispute resolution process, through GLVAR. Notwithstanding the foregoing, in the event the Buyer finds it necessary to file a claim for specific performance, this section shall not apply. Each party is encouraged to have an independent lawyer of their choice review this mediation provision before agreeing thereto. By initialing below, the parties confirm that they have read and understand this section and voluntarily agree to the provisions thereof.

BUYER(S) INITIALS:

 10/20/17 12:34AM EDT

SELLER(S) INITIALS:

 10/20/17 12:15AM EDT

B. IF SELLER DEFAULTS: If Seller defaults in performance under this Agreement, Buyer reserves all legal and/or equitable rights (such as specific performance) against Seller, and Buyer may seek to recover Buyer's actual damages incurred by Buyer due to Seller's default.

C. IF BUYER DEFAULTS: If Buyer defaults in performance under this Agreement, as Seller's sole legal recourse, Seller may retain, as liquidated damages, the EMD. In this respect, the Parties agree that Seller's actual damages would be difficult to measure and that the EMD is in fact a reasonable estimate of the damages that Seller would suffer as a result of Buyer's default. Seller understands that any additional deposit not considered part of the EMD in Section 1(B) herein will be immediately released by ESCROW HOLDER to Buyer.

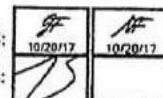
Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

Property Address: 42 Meadowhawk Lane, Las Vegas, NV 89135

BUYER(S) INITIALS:

SELLER(S) INITIALS:

 10/20/17 10/20/17

Instructions to Escrow

19. **ESCROW:** If this Agreement or any matter relating hereto shall become the subject of any litigation or controversy, Buyer and Seller agree, jointly and severally, to hold ESCROW HOLDER free and harmless from any loss or expense, except losses or expenses as may arise from ESCROW HOLDER'S negligence or willful misconduct. If conflicting demands are made or notices served upon ESCROW HOLDER with respect to this Agreement, the parties expressly agree that Escrow is entitled to file a suit in interpleader and obtain an order from the Court authorizing ESCROW HOLDER to deposit all such documents and monies with the Court, and obtain an order from the Court requiring the parties to interplead and litigate their several claims and rights among themselves. Upon the entry of an order authorizing such Interpleader, ESCROW HOLDER shall be fully released and discharged from any obligations imposed upon it by this Agreement; and ESCROW HOLDER shall not be liable for the sufficiency or correctness as to form, manner, execution or validity of any instrument deposited with it, nor as to the identity, authority or rights of any person executing such instrument, nor for failure of Buyer or Seller to comply with any of the provisions of any agreement, contract or other instrument filed with ESCROW HOLDER or referred to herein. ESCROW HOLDER'S duties hereunder shall be limited to the safekeeping of all monies, instruments or other documents received by it as ESCROW HOLDER, and for their disposition in accordance with the terms of this Agreement. In the event an action is instituted in connection with this escrow, in which ESCROW HOLDER is named as a party or is otherwise compelled to make an appearance, all costs, expenses, attorney fees, and judgments ESCROW HOLDER may expend or incur in said action, shall be the responsibility of the parties hereto.

20. **UNCLAIMED FUNDS:** In the event that funds from this transaction remain in an account, held by ESCROW HOLDER, for such a period of time that they are deemed "abandoned" under the provisions of Chapter 120A of the Nevada Revised Statutes, ESCROW HOLDER is hereby authorized to impose a charge upon the dormant escrow account. Said charge shall be no less than \$5.00 per month and may not exceed the highest rate of charge permitted by statute or regulation. ESCROW HOLDER is further authorized and directed to deduct the charge from the dormant escrow account for as long as the funds are held by ESCROW HOLDER.

Brokers

21. **BROKER'S COMPENSATION/FEE:** Buyer herein requires, and Seller agrees, as a condition of this Agreement, that Seller will pay Listing Broker and Buyer's Broker, who becomes by this clause a third party beneficiary to this Agreement, that certain sum and/or percentage of the Purchase Price (commission), that Seller, or Seller's Broker, offered for the procurement of ready, willing and able Buyer via the Multiple Listing Service, any other advertisement or written offer. Seller understands and agrees that if Seller defaults hereunder, Buyer's Broker, as a third-party beneficiary of this Agreement, has the right to pursue all legal recourse against Seller for any commission due. In addition to any amount due to Buyer's Broker from Seller or Seller's Broker, Buyer ☐ will ~~OR~~ ☒ will not pay Buyer's Broker additional compensation in an amount determined between the Buyer and Buyer's Broker.

22. **WAIVER OF CLAIMS:** Buyer and Seller agree that they are not relying upon any representations made by Brokers or Broker's agent. Buyer acknowledges that at COE, the Property will be sold AS-IS, WHERE-IS without any representations or warranties, unless expressly stated herein. Buyer agrees to satisfy himself/herself, as to the condition of the Property, prior to COE. Buyer acknowledges that any statements of acreage or square footage by Brokers are simply estimates, and Buyer agrees to make such measurements, as Buyer deems necessary, to ascertain actual acreage or square footage. Buyer waives all claims against Brokers or their agents for (a) defects in the Property; (b) inaccurate estimates of acreage or square footage; (c) environmental waste or hazards on the Property; (d) the fact that the Property may be in a flood zone; (e) the Property's proximity to freeways, airports or other nuisances; (f) the zoning of the Property; (g) tax consequences; or (h) factors related to Buyer's failure to conduct walk-throughs or inspections. Buyer assumes full responsibility for the foregoing and agrees to conduct such tests, walk-throughs, inspections and research, as Buyer deems necessary. In any event, Broker's liability is limited, under any and all circumstances, to the amount of that Broker's commission/fee received in this transaction.

Other Matters

23. **DEFINITIONS:** "Acceptance" means the date that both parties have consented to a final, binding contract by affixing their signatures to this Agreement and all counteroffers and said Agreement and all counteroffers have been delivered to both parties pursuant to Section 24 herein. "Agent" means a licensee working under a Broker or licensees working under a

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

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BUYER(S) INITIALS:

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developer. "Agreement" includes this document as well as all accepted counteroffers and addenda. "Appraisal" means a written appraisal or Notice of Value as required by any lending institution prepared by a licensed or certified professional. "Bona Fide" means genuine. "Buyer" means one or more individuals or the entity that intends to purchase the Property. "Broker" means the Nevada licensed real estate broker listed herein representing Seller and/or Buyer (and all real estate agents associated therewith). "Business Day" excludes Saturdays, Sundays, and legal holidays. "Calendar Day" means a calendar day from/to midnight unless otherwise specified. "CFR" means the Code of Federal Regulations. "CIC" means Common Interest Community (formerly known as "HOA" or homeowners associations). "CIC Capital Contribution" means a one-time non-administrative fee, cost or assessment charged by the CIC upon change of ownership. "CIC Transfer Fees" means the administrative service fee charged by a CIC to transfer ownership records. "Close of Escrow (COE)" means the time of recordation of the deed in Buyer's name. "Default" means the failure of a Party to observe or perform any of its material obligations under this Agreement. "Delivered" means personally delivered to Parties or respective Agents, transmitted by facsimile machine, electronic means, overnight delivery, or mailed by regular mail. "Down Payment" is the Purchase Price less loan amount(s). "EMD" means Buyer's earnest money deposit. "Escrow Holder" means the neutral party that will handle the closing. "FHA" is the U.S. Federal Housing Administration. "GLVAR" means the Greater Las Vegas Association of REALTORS®. "Good Funds" means an acceptable form of payment determined by ESCROW HOLDER in accordance with NRS 645A.171. "IRC" means the Internal Revenue Code (tax code). "LID" means Limited Improvement District. "N/A" means not applicable. "NAC" means Nevada Administrative Code. "NRS" means Nevada Revised Statutes as Amended. "Party" or "Parties" means Buyer and Seller. "PITI" means principal, interest, taxes, and hazard insurance. "PMI" means private mortgage insurance. "PST" means Pacific Standard Time, and includes daylight savings time if in effect on the date specified. "PTR" means Preliminary Title Report. "Property" means the real property and any personal property included in the sale as provided herein. "Receipt" means delivery to the party or the party's agent. "RPA" means Residential Purchase Agreement. "Seller" means one or more individuals or the entity that is the owner of the Property. "SID" means Special Improvement District. "Title Company" means the company that will provide title insurance. "USC" is the United States Code. "VA" is the Veterans Administration.

24. SIGNATURES, DELIVERY, AND NOTICES:

A. This Agreement may be signed by the parties on more than one copy, which, when taken together, each signed copy shall be read as one complete form. This Agreement (and documents related to any resulting transaction) may be signed by the parties manually or digitally. Facsimile signatures may be accepted as original.

B. Except as otherwise provided in Section 10, when a Party wishes to provide notice as required in this Agreement, such notice shall be sent regular mail, personal delivery, by facsimile, overnight delivery and/or by email to the Agent for that Party. The notification shall be effective when postmarked, received, faxed, delivery confirmed, and/or read receipt confirmed in the case of email. Delivery of all instruments or documents associated with this Agreement shall be delivered to the Agent for Seller or Buyer if represented. Any cancellation notice shall be contemporaneously delivered to Escrow in the same manner.

25. IRC 1031 EXCHANGE: Seller and/or Buyer may make this transaction part of an IRC 1031 exchange. The party electing to make this transaction part of an IRC 1031 exchange will pay all additional expenses associated therewith, at no cost to the other party. The other party agrees to execute any and all documents necessary to effectuate such an exchange.

26. OTHER ESSENTIAL TERMS: Time is of the essence. No change, modification or amendment of this Agreement shall be valid or binding unless such change, modification or amendment shall be in writing and signed by each party. This Agreement will be binding upon the heirs, beneficiaries and devisees of the parties hereto. This Agreement is executed and intended to be performed in the State of Nevada, and the laws of that state shall govern its interpretation and effect. The parties agree that the county and state in which the Property is located is the appropriate forum for any action relating to this Agreement. Should any party hereto retain counsel for the purpose of initiating litigation to enforce or prevent the breach of any provision hereof, or for any other judicial remedy, then the prevailing party shall be entitled to be reimbursed by the losing party for all costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees and costs incurred by such prevailing party.

THIS IS A LEGALLY BINDING CONTRACT. All parties are advised to seek independent legal and tax advice to review the terms of this Agreement.

Each party acknowledges that he/she has read, understood, and agrees to each and every provision of this page unless a particular paragraph is otherwise modified by addendum or counteroffer.

Buyer's Name: Joseph Folino and Nicole Folino

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ADMIN@VHFEV.COM

InstantFORMS

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