

IN THE SUPREME COURT STATE OF NEVADA

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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	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. 81831	

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

**JOINT
APPENDIX ON APPEAL
VOLUME XVI OF XIX
INDEX TO APPELLANTS' APPENDIX OF RECORD**

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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



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

November 16, 2017

Attention: Ms. Nicky Whitfield

**Re: Patio Deck Evaluation
42 Meadowhawk Lane
Clark County, Nevada
Project No.: G-17-044**



Dear Nicky:

This letter presents NOVA Geotechnical and Inspection Services' (NOVA) observations and opinions in regard to the vertical displacement between stone deck panels, reportedly on opposite sides of a channel drain, between the pool and the residence, as well as the cracking of a number of stone deck panels, as detailed in Caveat Emptor's letter dated November 6, 2017 in regard to the "Property Located at 42 Meadowhawk Lane, Las Vegas, NV, 89135". This letter also provides NOVA's recommendations for addressing the issues presented.

A NOVA Professional Engineer, who is the author of this letter, conducted a limited visual observation of the decking material and adjacent residence on the morning of November 15, 2017. The presence of the vertical offset along the reported channel drain was observed, as were the presence of several cracked panels.

It was observed that the non-grouted joint for the channel drain was coincident with the line of the of the basement wall below, with the row of panels over the wall being relatively lower than the row of panels behind the wall, assumed to be over the basement wall backfill. It is our opinion that the vertical displacement is most likely due to the settling of the basement wall. At approximately $\frac{1}{4}$ inch, this amount of settlement is well within the expected performance of the structure and is not indicative of a larger problem; however, this issue is not only cosmetic, but there could be a tripping hazard at this location.

If it is desired to bring the displacement back to level, it is our recommendation that the row of panels on the lower side be removed and reset using standard construction techniques appropriate to the type of material at the same level as the panels on the higher side.

It was observed that there was a concentration of cracked stone deck panels in the pit area near the grill and refrigerator. This pit area has what appears to be a drain in the middle of it since there would be no other way for rainwater to escape. To facilitate this drain, the support for the stone panels was likely sloped toward this drain, and therefore, was likely not uniform enough to provide proper support for the full size panels, resulting in cracks. Typically tile type products, like these stone panels, are cut on a diagonal for this type of application to provide a controlled cracking location along the grout line. This technique was observed at other locations in the decking. It was

observed that there was no noticeable offset along these cracks and therefore, this is only a cosmetic issue.

If repairs are desired, they should consist of removal and replacement of the cracked tiles. In the area near the grill, special care should be taken to prepare the support material or the replacement panels to provide better performance in this location.

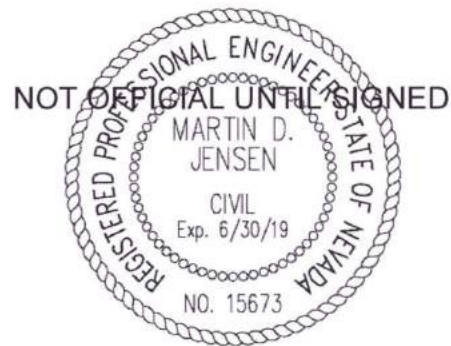
Our professional services were performed using the degree of care and skill ordinarily exercised, under similar circumstances, by reputable geotechnical engineers practicing in this or similar localities. No warranties, either expressed or implied, are intended or made. If you have any questions regarding this letter, please do not hesitate to contact NOVA.

Respectfully,

NOVA Geotechnical & Inspection Services

Martin D. Jensen, P.E.

Geotechnical Department Manager



Rusty Graf

From: Beissel, Stacey <Stacey.Beissel@uponor.com>
Sent: Wednesday, December 13, 2017 12:39 PM
To: Nicole Folino
Cc: Joe Folino
Subject: Uponor Warranty Claim - RMA 746512 (42 Meadowhawk)
Attachments: 746512_As_Received__2_.JPG; Rakeman_746512_42_meadowhawk_invoice.pdf; 746512_-_payout.pdf

Hi Nicole,

I wanted to thank you for taking the time to speak with me today in regards to the Uponor products currently installed in your home. As discussed, Uponor has identified a limited manufacturing related issue with the tubing samples returned to our office for evaluation and are recommending replacement of all red and blue AQUAPEX tubing currently installed in your home with new Uponor AQUAPEX. It is my understanding that you will be discussing this recommendation with your husband and will be following up with me after the 1st of the year to begin conversations on how we can work together to accomplish this task.

Per your request, below please find the information associated with the initial claim submitted to Uponor in February 2017.

Claimant And Jobsite Information

Claimant Information

Builder/Contractor
rakeman plumbing
aaron hawley
4075 losee rd
NORTH LAS VEGAS, NV 89030
US
aaron@rakeman.com
Ph 702 642 8553
Fax 702 399 1410

Jobsite Information

Residential
aaron hawley
42 meadow hawk ln.
LAS VEGAS, NV 89131
US
aaron@rakeman.com
Ph 702 642 8553

Past Occurrences

Estimated Claim Amount

Amount	\$5000 to \$10000
Preferred Reimbursement	Cash
Repairs Complete	No

Past Occurrences

EXHIBIT NO. 16
1-24-20
Swanson
Heidi Konsten, CCR 845

Installation Information

Application

Application Plumbing
Recirculation Yes
Recirc Type Timed/On Demand
Failure Location Supply
Location Detail master bed room closet

Contractor Information

rakeman plumbing
aaron hawley
4075 losee rd
NORTH LAS VEGAS, NV
US
aaron@rakeman.com
Ph 702 642 8553
Installing? Yes

Temperature/Pressure

Temperature Hot
System Temp Hot 120 F
System Pressure 65 PSI

Other Information

Present for destructive
Phase of Construction
Builder

Water Source

Water Source Municipal

Customer Comment(s)

tubing split at fitting. Cu

Dates

Est. Installed Date 19-JUN-2013
Failure Date 16-FEB-2017

Product Information

Item Number	Description	Return
Q4751775	ProPEX EP Reducing Tee, 1" PEX x 3/4" PEX x 3/4" PEX	
Problem: tubing split at fitting		
Review Result: No Failure		
F2060750	3/4" Uponor AquaPEX Red, 300-ft. coil	
Problem: tubing split at fitting		
Review Result: Manufacturing		
F3060750	3/4" Uponor AquaPEX Blue, 300-ft. coil	
Problem: tubing split at fitting		
Review Result: Manufacturing		
F1041000	1" Uponor AquaPEX White, 100-ft. coil	
Problem: tubing split at fitting		
Review Result: No Failure		
Q4690756	ProPEX Ring with Stop, 3/4"	
Problem: tubing split at fitting		
Review Result: No Failure		
Q4691000	ProPEX Ring with Stop, 1"	
Problem: tubing split at fitting		
Review Result: No Failure		

Should you have any questions or concerns with the information supplied, please do not hesitate to reach out. My direct contact information is below.

Thank you
Stacey

Uponor

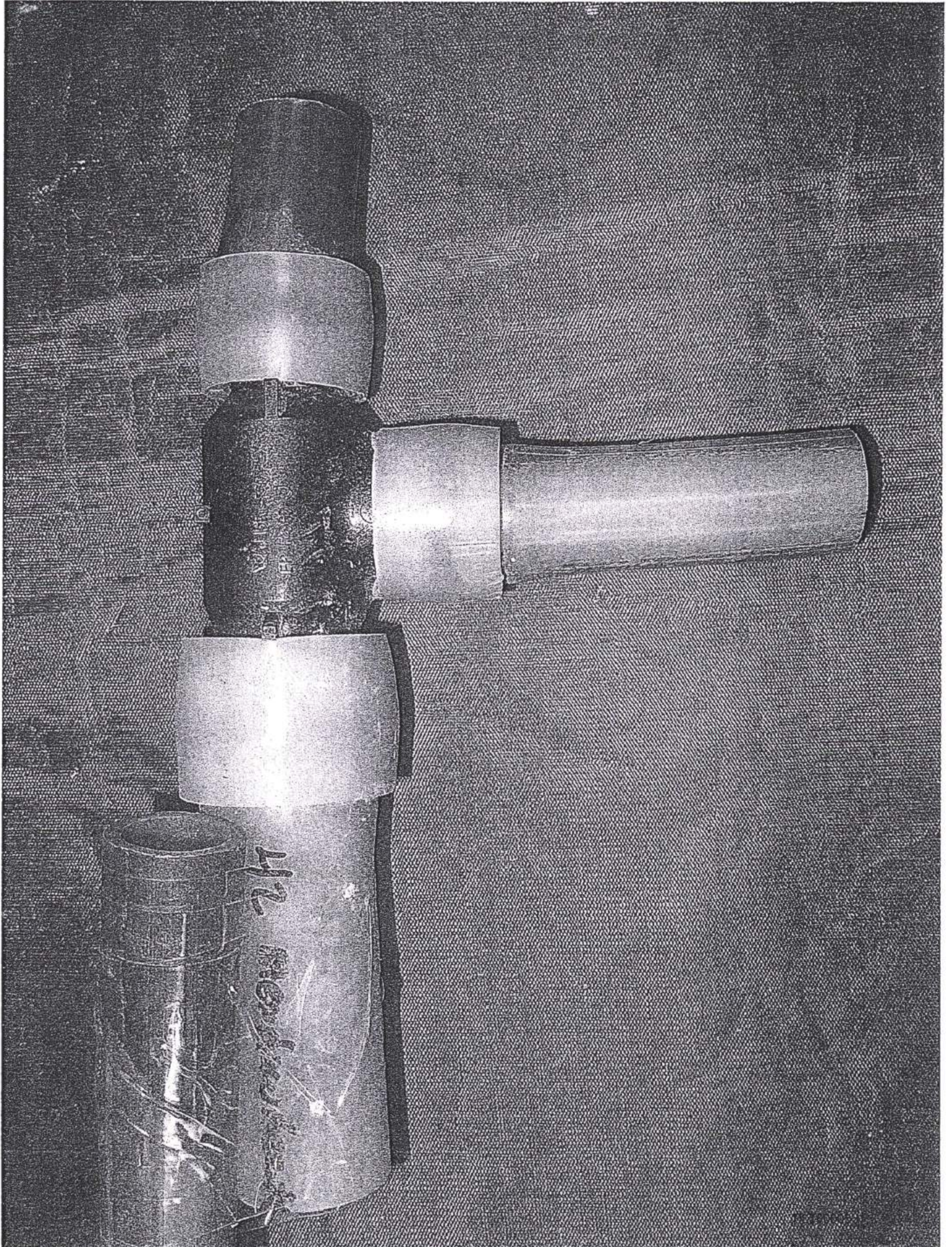
Stacey Beissel
Warranty Manager
Uponor North America

T +19529978984
M +16512531956

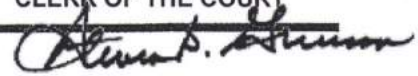
www.uponor-usa.com
www.uponorpro.com

Uponor, Inc.
5925 148th St W
Apple Valley, MN, 55124

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Aaron Hawley



From: Nicky Whitfield <assistant@tswansonmd.com>
Sent: Friday, November 17, 2017 12:09 PM
To: Aaron Hawley
Subject: RE: Scanned image from Rakeman Plumbing

Thank you I have informed the buyers agent.

Best Regards,

Nicky Whitfield
Assistant to Todd V. Swanson, M.D.
10120 W. Flamingo Rd. #4333
Las Vegas, NV 89147
Phone: 702-378-2729
Fax: 702-946-0866
assistant@tswansonmd.com

-----Original Message-----

From: Aaron Hawley [mailto:Aaron@rakeman.com]
Sent: Friday, November 17, 2017 11:49 AM
To: Nicky Whitfield <assistant@tswansonmd.com>
Subject: RE: Scanned image from Rakeman Plumbing

2 weeks maximum, I am pretty sure that it should be about 1 week, but Thanksgiving is next week and that changes a lot of thisng

-----Original Message-----

From: Nicky Whitfield [mailto:assistant@tswansonmd.com]
Sent: Friday, November 17, 2017 11:47 AM
To: Aaron Hawley <Aaron@rakeman.com>
Subject: RE: Scanned image from Rakeman Plumbing

Good afternoon Aaron,

Is there a way you could give us an estimated timeframe for repairs IF the mold spore test come back negative? We understand if the mold spore test comes back positive that it will change the entire timeframe.

Please let me know.

Thank you,

Nicky Whitfield
Assistant to Todd V. Swanson, M.D.
10120 W. Flamingo Rd. #4333
Las Vegas, NV 89147



Phone: 702-378-2729
Fax: 702-946-0866
assistant@tswansonmd.com

-----Original Message-----

From: Aaron Hawley [mailto:Aaron@rakeman.com]
Sent: Friday, November 17, 2017 11:32 AM
To: Nicky Whitfield <assistant@tswansonmd.com>
Subject: FW: Scanned image from Rakeman Plumbing

This is the letter I sent to Mr Swanson this morning. No time frame has been given, as I don't know the results of the air spore test and I do not run the closet organizer company and can't speak for them.

-----Original Message-----

From: Aaron Hawley
Sent: Friday, November 17, 2017 8:41 AM
To: 'tvs@tswansonmd.com' <tvs@tswansonmd.com>
Subject: FW: Scanned image from Rakeman Plumbing



November 16, 2017

Dr. Todd Swanson
42 Meadow Hawk Lane
Las Vegas, Nevada 89135

Good day Dr. Swanson,

As I discussed with you on the telephone, Rakeman Plumbing will take responsibility to re-build the damages that arose from the recent leak on the Uponor piping at the access panel, the repairs will be strictly limited to the repairs only from the latest leak. The damages are in the closet and affect the carpet, base of the closet organizer, baseboard and possibly paint and drywall. Rakeman Plumbing has also authorized to have an outside hygienist do an air spore test. These damages and the air spore test will be fixed and paid for by Rakeman Plumbing.

Also, you have requested Rakeman Plumbing to do a test on the water system to make sure that the water distribution system is holding pressure. Rakeman Plumbing will put on a pressure test and also check the meter to make sure that the water system is tight and has no leaks at this time.

Also Rakeman Plumbing will do a simple walk-thru visual inspection of all plumbing fixtures and piping in the house. If we find any issues with the plumbing, we will list on the invoice what problem or issues we find. We will not do an individual report, per fixture, as that would add a lot more time and expense to this work that is not necessary. Rakeman Plumbing will not make any repairs at this time, unless authorized by you, after the inspection. This pressure test and inspection will be paid for by you, Dr. Swanson, not the buyer.

This is only a visual inspection and Rakeman Plumbing does not accept any responsibility for any issues or damages if a leak occurs after the inspection.

Thank you for your time and business,

Aaron L. Hawley

JA002987
PL1000056

Todd Swanson

From: Todd Swanson
Sent: Friday, December 15, 2017 9:12 AM
To: Ivan Sher
Cc: Austin Sherwood
Subject: 42 Meadowhawk

Ivan,

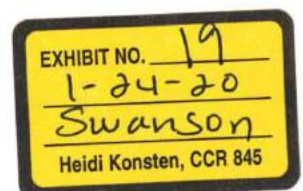
Can you call me today to discuss a new issue at 42 Meadowhawk? It appears that because of the water leaks at the residence, the water line manufacturer is going to replace all of the water lines in the entire house. This is good and bad news. I'm glad they are going to (hopefully) prevent future water leaks in the house, but I talked to Rakeman Plumbing who will be doing the work, and he said that it will be a major job—taking 1 month with multiple (>200) drywall holes. Apparently, the buyer had a meltdown when he told her—and began talking about a lawsuit for not disclosing the problem to her prior to closing.

I think we need to discuss. I don't want another lawsuit, and I'm sure you don't either. Call me at your convenience.

Thanks.

Todd V. Swanson, M.D.
2360 E. Evans Ave., Apt. #837
Denver, CO 80210

(702) 249-9219
tvs@tswansonmd.com



Nicky Whitfield

From: Todd Swanson
Sent: Thursday, November 16, 2017 1:35 PM
To: Nicky Whitfield
Subject: plumbing

Can you ask Rakeman if there is a test they can do with the plumbing to assure there are no other weak spots in the water lines that may result in another leak? Maybe a pressure test or something like that? We will need that to close.

Thanks.

Todd V. Swanson, M.D.
2360 E. Evans Ave., Apt. #837
Denver, CO 80210

(702) 249-9219
tvs@tswansonmd.com



Nicky Whitfield

From: Rhonda Hawley <rhawley@cpirestorationlv.com>
Sent: Tuesday, November 21, 2017 3:09 PM
To: Nicky Whitfield
Subject: RE: 42 Meadowhawk

Thank you.

The plumbing inspection was done for Mr. Swanson and there is no report it's just the visual inspection and water pressure test. If you want to give her a copy of your invoice showing it was done that is up to Mr. Swanson. We do not have anything to give them and we will not provide a copy of the invoice unless we get something in writing letting us know we can send a copy of the invoice to them.

Thank you

Rhonda Hawley

From: Nicky Whitfield [mailto:assistant@tswansonmd.com]
Sent: Tuesday, November 21, 2017 2:22 PM
To: Rhonda Hawley <rhawley@cpirestorationlv.com>
Subject: 42 Meadowhawk

Hi Rhonda,

Please see the Buyers information below. Thanks again for all your hard work! I greatly appreciate it.

Nicole Folino
702-812-3834
Nfolino@sandlerpartners.com

Best regards,

Nicky Whitfield



From: Todd Swanson
Sent: Sunday, August 9, 2015 12:18 PM
To: Henry Regnault
Cc: Chris Myers
Subject: 42 Meadowhawk
Attachments: AV Water Damage.pdf

Henry,

Well, everything is dry at 42 Meadowhawk, and some of the repairs are being done. The drywallers came in last week to start fixing the water damage in the garage. The items I need addressed (that I know of) due to the water leaks are:

1. Finish drywalling and painting the garage, and install new access panel to the attic area
2. Replace the electronics that were ruined in my garage (previously sent to you, but I am attaching again)
3. Install new carpet in my master closet
4. Fix the built-in cabinets in my master closet (some of the base pieces had to be ripped out to access the water)
5. Touch-up some faux paint in the master bedroom that got scratched by something—possibly a dehumidifier (they are fairly minor—2 or 3 spots)
6. Paint the stucco that was repaired on the side of the house

I presume Rakeman plumbing will cover these repairs. I can coordinate the faux painter to come out and touch up the master bedroom. I can coordinate for the electronics to be replaced/repared. And I can call Jay at Absolute because he needs to fix a couple other items here. I just need to know that Rakeman will cover the charges. Will you coordinate the other items? Or do you want to coordinate them all?

I also need to door company to come and address a few issues with my doors:

1. The theater slider still does not lock the way it should. When anyone but myself goes through that door and locks it, they usually do not actually get it latched. This has happened numerous times, leaving the door unlocked until I discover it.
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3. I have 2 double screen doors that need a stop in the center (master bedroom and main office). The way they are now, both screens will slide way off to the right or the left of the doorway, leaving an open gap on either side of the screen doors. I think it's a pretty simple fix
4. The weather stripping on my main entrance door came loose and needs to be replaced

Let me know what you want me to coordinate and what you will take care of. I'd like to get settled back in and get all these items repaired.

Thanks.

Todd

Todd V. Swanson, M.D.
Desert Orthopaedic Center
2800 E. Desert Inn Rd., #100
Las Vegas, NV 89121

(702) 731-1616
Fax: (702) 731-0741



AFFIDAVIT OF TODD V. SWANSON, M.D.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

TODD V. SWANSON, M.D., being first sworn, deposes and says under penalty of perjury as follows:

I have personal knowledge of the facts contained herein, and am competent to testify thereto.

Lyons Development, LLC was the owner and seller of property located at 42 Meadowhawk Lane, Las Vegas, Nevada (the "Property"). The sole member of Lyons Development, LLC is Tiger's Tail Management Trust, an irrevocable Nevada spendthrift trust. Shannon Evans, Esq., and I are co-trustees of Tiger's Tail Management Trust.

I moved into the Property in April 2015.

On about August 2, 2015, I experienced 2 leaks in my master closet and bedroom: (1) The recirculating pump leaked into the closet; and (2) A fitting underneath the master sink came apart causing water in the master bathroom.

I also experienced another recirculating pump leak in the garage (on the other side of the house) which was discovered the next morning.

All leaks were repaired by Rakeman Plumbing.

During the repair, Rakeman Plumbing replaced both recirculating pumps with, in their terms "better ones."

Rakeman Plumbing also reattached the water pipe under the master sink and went through all the visible plumbing fittings throughout the house to be sure they were attached securely.

Rakeman Plumbing also sent out a water remediation company to dry out the master closet, bathroom, bedroom, and garage.

Various trades were also sent out to repair everything, including the carpet and cabinet



SWANSON000195

JA003006

bases which were damaged by the water.

To my knowledge, the water leak problem was completely repaired by Rakeman Plumbing.

In January 2017, I discovered a small pinhole leak in one of the plastic water pipes in the wall. Rakeman Plumbing fixed the leak.

On October 19, 2017, Lyons Development, LLC, the Seller, contracted with Joseph and Nicole Folino, the Buyers, to purchase the Property. The closing was set for November 17, 2017.

Because my new residence (11267 La Madre) would not be ready for my occupancy by the closing date, I asked the Folinos if I could stay at 42 Meadowhawk after the November 17, 2017 closing, up to and including November 28, 2017. The reason for my request was discussed with the Folinos, and they granted my request to remain at the Property until November 28th.

The Folinos charged me \$2,000 for the lease-back, by reducing the price they were going to pay for some personal property items from \$5,000 to \$3,000.

On or about October 24, 2017, I prepared Seller's Real Property Disclosures.

When I prepared the Disclosures, I knew there had been two previous water leaks. However, the leaks and all associated damages were repaired by a licensed plumbing company, Rakeman Plumbing.

At that time, to my knowledge, the work done by Rakeman Plumbing fixed all the problems with the plumbing system.

I was unaware of any defects in the plumbing that could materially affected the value of the house.

On November 7, 2017, my assistant, Nicky Whitfield, discovered a water leak in the master closet. On November 8, 2017, my agent was informed that a leak had occurred.

Between November 7, 2017 and the November 17, 2017, it is my understanding that the Folinos (primarily Nicole Folino) came to the Property on several occasions to plan for their move-in. It is also my understanding that the Folinos had full access to the Property, including

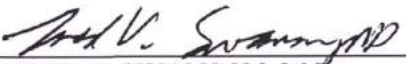
the master bedroom and master closet where the November 7, 2017 water problem was visible.

On November 15, 2017, I informed the Folinos of the leak via amended disclosures (Addendum No. 4-A to the Residential Purchase Agreement). I made this disclosure before the November 17, 2017 closing date.

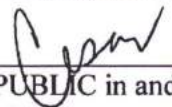
About one month after the closing, on or around December 12, 2017, Aaron Hawley of Rakeman Plumbing informed me that the Folinos were claiming the entire house needed to be replumbed. That was the first time I was made aware that the plumbing might be defective. At that time, I also learned the Folinos were contemplating suing me.

I was informed that the manufacturer was going to replace all that water lines in the entire house, at no expense to the Folinos. It is my understanding that the pipe replacement has been completed.

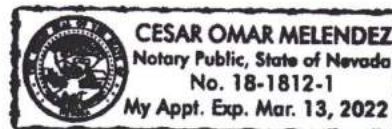
FURTHER AFFIANT SAITH NAUGHT


TODD V. SWANSON, M.D.

SUBSCRIBED AND SWORN to before me
this 13 day of August, 2018.



NOTARY PUBLIC in and for said
County and State



SWANSON000197

JA003008

RECEIPT

Frank Cruz
(702) 498-6177

DATE: MAY 24, 2017

PAYMENT METHOD	CHECK NO.	JOB
Cash		

QTY	ITEM #	DESCRIPTION	UNIT PRICE	NUMBER	LINE TOTAL
1		Repair leaks in media room mini-split air conditioner system. Address: 42 Meadowhawk Lane	\$480.00	1	\$480.00
			TOTAL DISCOUNT		
				TOTAL	\$480.00

Frank Cruz

Signed

5-24-17

Date

PAID IN FULL



SWANSON000237

JA003009

From: Todd Swanson
Sent: Wednesday, August 5, 2015 6:44 PM
To: Henry Regnault (HRegnault@blueheron.com)
Cc: cmyers@blueheron.com
Subject: FW: Water Damage Garage
Attachments: AV Water Damage.pdf

Henry,

I received this invoice from EH Design for replacing the damaged electrical equipment from the water leak in the garage. I presume Rakeman will take care of this. Can they pay directly, or do I need to pay and be reimbursed? I prefer the former.

Let me know.

Thanks.

Todd V. Swanson, MD
Desert Orthopaedic Center
2800 E. Desert Inn Rd., #100
Las Vegas, NV 89121

(702) 731-1616
Fax: (702) 731-0741

-----Original Message-----

From: Ed Hogan [mailto:edhogan@me.com]
Sent: Wednesday, August 5, 2015 12:25 PM
To: Todd Swanson
Subject: Water Damage Garage

Hello Todd,
Attached is your invoice for replacing the equipment that was water damaged in the garage.
Thank you
Ed Hogan
EH Designs



EH Designs

5634 DEER CREEK FALLS CT
LAS VEGAS, NV 89118
(702)321-6213
edhogan@me.com

INVOICE

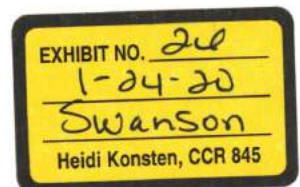
BILL TO
Todd Swanson
42 Meadow Hawk
Las Vegas, NV 89135

INVOICE # 1090
DATE 08/05/2015
TERMS Due on receipt

ACTIVITY	QTY	RATE	AMOUNT
Labor	1	95.00	95.00
Determine what was damaged by water in the garage.			
Parts	1	999.00	999.00T
Control 4 7 Touch Screen			
Replace in Garage / Water Dammage			
Parts	1	3,350.00	3,350.00T
Pakedge S24Hav 24 Port POE Switch			
The Touchscreen in the garage that was damaged by water was powered using this POE switch that is located in the Hall Closet. It shorted out the network port that the touchscreen was connected to.			
Parts	2	245.00	490.00T
Tru-audio GP-6 2 way in-ceiling speaker, 6.5"			
Labor	6	125.00	750.00
Install and Progam 7 Touchscreen, 24 port POE Switch and Speakers			

NV Contractors Lic# 0077864
MONETARY BID LIMIT: \$200,000.00
RESIDENTIAL CONSTRUCTION RECOVERY FUND: (Payment may be available from the Residential Recovery Fund, if you are damaged financially by a project performed on your residence pursuant to a contract, including construction, remodeling, repair or other improvements, and the damage resulted from certain specified violations of Nevada law by a contractor licensed in this state. To obtain information relating to the Residential Recovery Fund and filing a claim for recovery from the Fund, you may contact the Nevada State Contractors Board at the following locations:
NEVADA STATE CONTRACTORS BOARD: 2310 Corporate Circle, Suite 200(Henderson, Nevada 89074((702) 486-1100

SUBTOTAL	5,684.00
TAX (8.1%)	391.96
TOTAL	6,075.96
BALANCE DUE	\$6,075.96



SWANSON000219

JA003011

EH Designs

5634 DEER CREEK FALLS CT
LAS VEGAS, NV 89118
(702)321-6213
edhogan@me.com

INVOICE

BILL TO
Blue Heron Companies
6835 S. Eastern Ave.
Suite 110
Las Vegas, NV 89119
VPO # 003335

INVOICE # 1099
DATE 10/01/2015
TERMS Due on receipt

ACTIVITY	QTY	RATE	AMOUNT
Installation	6	125.00	750.00
Install and Program 7 Touchscreen, 24 port POE Switch and Speakers			
Labor	1	95.00	95.00
Determine what was damaged by water in the garage.			

NV Contractors Lic# 0077864

MONETARY BID LIMIT: \$200,000.00

RESIDENTIAL CONSTRUCTION RECOVERY FUND: (Payment may be available from the Residential Recovery Fund, if you are damaged financially by a project performed on your residence pursuant to a contract, including construction, remodeling, repair or other improvements, and the damage resulted from certain specified violations of Nevada law by a contractor licensed in this state. To obtain information relating to the Residential Recovery Fund and filing a claim for recovery from the Fund, you may contact the Nevada State Contractors Board at the following locations:

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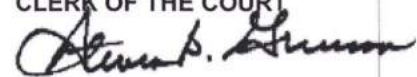
BALANCE DUE

\$845.00



SWANSON000220

JA003012



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
Attorneys for Todd Swanson, et al.

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

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

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 its counsel of record Christopher
M. Young, Esq., and JAY T. HOPKINS of the law firm of Christopher M. Young, P.C., hereby
submits the following motion seeking dismissal of Plaintiff's Second Amended Complaint.

///

///

///



Todd Swanson

From: Todd Swanson
Sent: Friday, December 15, 2017 9:12 AM
To: Ivan Sher
Cc: Austin Sherwood
Subject: 42 Meadowhawk

Ivan,

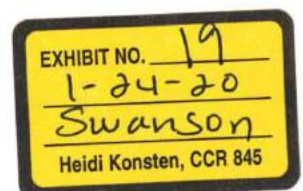
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I think we need to discuss. I don't want another lawsuit, and I'm sure you don't either. Call me at your convenience.

Thanks.

Todd V. Swanson, M.D.
2360 E. Evans Ave., Apt. #837
Denver, CO 80210

(702) 249-9219
tvs@tswansonmd.com



Nicky Whitfield

From: Todd Swanson
Sent: Thursday, November 16, 2017 1:35 PM
To: Nicky Whitfield
Subject: plumbing

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Thank you.

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Sent: Tuesday, November 21, 2017 2:22 PM
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Subject: 42 Meadowhawk

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Nfolino@sandlerpartners.com

Best regards,

Nicky Whitfield



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Desert Orthopaedic Center
2800 E. Desert Inn Rd., #100
Las Vegas, NV 89121

(702) 731-1616
Fax: (702) 731-0741



AFFIDAVIT OF TODD V. SWANSON, M.D.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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SWANSON000195

JA003006

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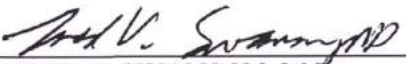
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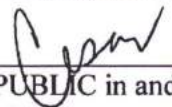
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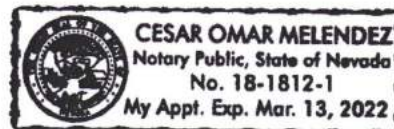
FURTHER AFFIANT SAITH NAUGHT


TODD V. SWANSON, M.D.

SUBSCRIBED AND SWORN to before me
this 13 day of August, 2018.



NOTARY PUBLIC in and for said
County and State



SWANSON000197

JA003008

RECEIPT

Frank Cruz
(702) 498-6177

DATE: MAY 24, 2017

PAYMENT METHOD	CHECK NO.	JOB
Cash		

QTY	ITEM #	DESCRIPTION	UNIT PRICE	NUMBER	LINE TOTAL
1		Repair leaks in media room mini-split air conditioner system. Address: 42 Meadowhawk Lane	\$480.00	1	\$480.00
			TOTAL DISCOUNT		
				TOTAL	\$480.00

Frank Cruz

Signed

5-24-17

Date

PAID IN FULL



SWANSON000237

JA003009

From: Todd Swanson
Sent: Wednesday, August 5, 2015 6:44 PM
To: Henry Regnault (HRegnault@blueheron.com)
Cc: cmyers@blueheron.com
Subject: FW: Water Damage Garage
Attachments: AV Water Damage.pdf

Henry,

I received this invoice from EH Design for replacing the damaged electrical equipment from the water leak in the garage. I presume Rakeman will take care of this. Can they pay directly, or do I need to pay and be reimbursed? I prefer the former.

Let me know.

Thanks.

Todd V. Swanson, MD
Desert Orthopaedic Center
2800 E. Desert Inn Rd., #100
Las Vegas, NV 89121

(702) 731-1616
Fax: (702) 731-0741

-----Original Message-----

From: Ed Hogan [mailto:edhogan@me.com]
Sent: Wednesday, August 5, 2015 12:25 PM
To: Todd Swanson
Subject: Water Damage Garage

Hello Todd,
Attached is your invoice for replacing the equipment that was water damaged in the garage.
Thank you
Ed Hogan
EH Designs



EH Designs

5634 DEER CREEK FALLS CT
LAS VEGAS, NV 89118
(702)321-6213
edhogan@me.com

INVOICE

BILL TO
Todd Swanson
42 Meadow Hawk
Las Vegas, NV 89135

INVOICE # 1090
DATE 08/05/2015
TERMS Due on receipt

ACTIVITY	QTY	RATE	AMOUNT
Labor	1	95.00	95.00
Determine what was damaged by water in the garage.			
Parts	1	999.00	999.00T
Control 4 7 Touch Screen			
Replace in Garage / Water Dammage			
Parts	1	3,350.00	3,350.00T
Pakedge S24Hav 24 Port POE Switch			
The Touchscreen in the garage that was damaged by water was powered using this POE switch that is located in the Hall Closet. It shorted out the network port that the touchscreen was connected to.			
Parts	2	245.00	490.00T
Tru-audio GP-6 2 way in-ceiling speaker, 6.5"			
Labor	6	125.00	750.00
Install and Progam 7 Touchscreen, 24 port POE Switch and Speakers			

NV Contractors Lic# 0077864
MONETARY BID LIMIT: \$200,000.00
RESIDENTIAL CONSTRUCTION RECOVERY FUND: (Payment may be available from the Residential Recovery Fund, if you are damaged financially by a project performed on your residence pursuant to a contract, including construction, remodeling, repair or other improvements, and the damage resulted from certain specified violations of Nevada law by a contractor licensed in this state. To obtain information relating to the Residential Recovery Fund and filing a claim for recovery from the Fund, you may contact the Nevada State Contractors Board at the following locations:
NEVADA STATE CONTRACTORS BOARD: 2310 Corporate Circle, Suite 200(Henderson, Nevada 89074((702) 486-1100

SUBTOTAL	5,684.00
TAX (8.1%)	391.96
TOTAL	6,075.96
BALANCE DUE	\$6,075.96



SWANSON000219

JA003011

EH Designs

5634 DEER CREEK FALLS CT
LAS VEGAS, NV 89118
(702)321-6213
edhogan@me.com

INVOICE

BILL TO
Blue Heron Companies
6835 S. Eastern Ave.
Suite 110
Las Vegas, NV 89119
VPO # 003335

INVOICE # 1099
DATE 10/01/2015
TERMS Due on receipt

ACTIVITY	QTY	RATE	AMOUNT
Installation	6	125.00	750.00
Install and Program 7 Touchscreen, 24 port POE Switch and Speakers			
Labor	1	95.00	95.00
Determine what was damaged by water in the garage.			

NV Contractors Lic# 0077864

MONETARY BID LIMIT: \$200,000.00

RESIDENTIAL CONSTRUCTION RECOVERY FUND: (Payment may be available from the Residential Recovery Fund, if you are damaged financially by a project performed on your residence pursuant to a contract, including construction, remodeling, repair or other improvements, and the damage resulted from certain specified violations of Nevada law by a contractor licensed in this state. To obtain information relating to the Residential Recovery Fund and filing a claim for recovery from the Fund, you may contact the Nevada State Contractors Board at the following locations:

NEVADA STATE CONTRACTORS BOARD: 2310 Corporate Circle, Suite 200(Henderson, Nevada 89074)((702) 486-1100

BALANCE DUE

\$845.00



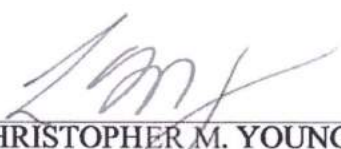
SWANSON000220

JA003012

1 This motion is made and based upon the pleading and papers on file, together with the
2 following Points and Authorities with exhibits and the arguments at the hearing.

3 DATED this 24th day of September, 2019.

4 Respectfully Submitted,

5
6 
7 CHRISTOPHER M. YOUNG, ESQ.
8 Nevada Bar No. 7961
9 JAY T. HOPKINS, ESQ.
10 Nevada Bar No. 3223
11 CHRISTOPHER M. YOUNG, PC
12 2460 Professional Court, #200
13 Las Vegas, Nevada 89128
14 Tel: (702) 240-2499
15 Fax: (702) 240-2489
16 cyoung@cotomlaw.com
17 jaythopkins@gmail.com
18 Attorneys for Todd Swanson, et al.
19
20
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28

1 **NOTICE OF MOTION**

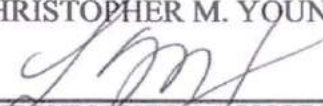
2 TO: TO ALL INTERESTED PARTIES AND THEIR COUNSEL:

3 PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for
4 hearing on the ____ day of _____, 2019, at the hour of _____ a.m./p.m. or as soon
5 thereafter as counsel may be heard, in the Eighth Judicial District Court, Department XXIV,
6 Courtroom

7 DATED this 24th day of September, 2019.

8 Respectfully Submitted,

9 CHRISTOPHER M. YOUNG, PC

10 
11 _____
12 CHRISTOPHER M. YOUNG, ESQ.

13 Nevada Bar No. 7961

14 JAY T. HOPKINS, ESQ.

15 Nevada Bar No. 3223

16 2460 Professional Court, Suite 200

17 Las Vegas, Nevada 89128

18 cyoung@cotomlaw.com

19 jaythopkins@gmail.com

20 *Attorneys for Defendant Clark County Nevada*
21 *Department of Aviation*

22 **I.**

23 **INTRODUCTION**

24 This is a lawsuit relating to the sale of real property in which the buyers claim the sellers
25 concealed information which materially affected the value of the property. The buyers allege the
26 sellers' failure to disclose a water leak establishes the sellers knew the plumbing system had a
27 "systemic defect." The buyers' claims for fraud and statutory concealment under NRS Chapter
28 113 cannot stand for two reasons:

- The undisputed facts show that the water leak was completely repaired. As such, under Nevada law, the sellers did not have knowledge of a "defect or condition" materially affecting the value of the property. Defendants request a ruling from this Court that the

1 completed repair negated the sellers' duty to disclose, thus barring the buyers'
2 concealment claim based on NRS Chapter 113;

3 • The same undisputed facts - that the water leak was repaired and that the Defendants did
4 not know of a defect - negates the intent element of the buyers' fraud claim. Summary
5 judgment is warranted on this ground as well.

6 II.

7 **PROCEDURAL RECAP**

8 The Court is well-versed in the procedural history and factual issues in this case because
9 the Court has already considered and ruled on two previous motions to dismiss. However, the
10 following recap is presented to put the instant motion into context: *On October 19, 2018, the*
11 *Plaintiffs filed their initial Complaint*

12 The Plaintiffs' based their case entirely on the Defendants' alleged failure to disclose a
13 known water leak prior to the sale of real property and concealed their knowledge that the water
14 leak was a "systemic defect" in the plumbing system.

15 *On February 4, 2019, the Defendants filed a motion to dismiss under NRCP 12(b)(5)*

16 The Court did not rule on the substance of the motion to dismiss but granted the
17 Plaintiffs' request for leave to amend to cure the pleading deficiencies.

18 *On April 18, 2019, the Plaintiffs filed their First Amended Complaint*

19 The First Amended Complaint did not change the allegations or claims raised in the
20 original Complaint, but simply added a Seventh Cause of Action for Piercing the Corporate
21 Veil/Alter Ego. The Plaintiffs' First Amended Complaint incorporated several exhibits,
22 including an invoice from Rakeman Plumbing, the plumbing company that repaired the subject
23 water leak. (See Exhibits 8 & 9 to the Plaintiffs Complaint).¹

24 *On May 20, 2019, the Defendants filed a motion to dismiss the Plaintiffs' First Amended*
25 *Complaint*

26
27 ¹ The same exhibits were also attached as exhibits to the Plaintiffs First and Second Amended
28 Complaints and are incorporated by reference, together with the arguments and other information
in the two previous motions to dismiss.

1 The Defendants sought dismissal of each of the Plaintiffs' seven claims. Based on the
2 Rakeman Plumbing invoice and related documents attached to the Plaintiffs' First Amended
3 Complaint, the Defendants argued the invoice showed the leak had been repaired, thus negating
4 the duty to disclose under *Nelson v. Heer*, 123 Nev. 217, 223-224, 163 P.3d 420, 425 (2007).

5 ***On July 18, 2019, this Court held a hearing on Defendants' Motion to Dismiss***

6 At the hearing, the Court dismissed all but two claims: (1) the Plaintiffs' fraud claim; and
7 (2) the Plaintiffs' concealment claim under NRS Chapter 113.

8 The Court refused to dismiss the NRS Chapter 113 claim, stating that the Rakeman
9 Plumbing invoices did not establish that the water leak had been *completely repaired*, as required
10 by the *Nelson* case. The Court also ruled that the fraud claim could stand because it involved a
11 question of fact.

12 ***On September 4, 2019, the Plaintiffs filed their Second Amended Complaint***

13 The Plaintiffs' Second Amended Complaint asserted claims for fraud and concealment
14 under NRS Chapter 113, as ordered by the Court.

15 ***The Instant Motion***

16 The instant Motion for Summary Judgment is supported by undisputed (indisputable)
17 evidence that Rakeman Plumbing completely repaired the water leak, thus negating the
18 Defendants' purported "knowing concealment."

19 Following the Court's Order on the Motion to Dismiss the Plaintiffs' First Amended
20 Complaint, the Defendants obtained an affidavit from Aaron Hawley, the owner of Rakeman
21 Plumbing, who has knowledge regarding the adequacy of Rakeman's repair and what was
22 communicated to the Defendants. (Exhibit A). Mr. Hawley stated that Rakeman Plumbing
23 completely repaired the leak and no further information was conveyed to the Defendants. With
24 these new facts, the Defendants request a ruling from this Court that neither of the Plaintiffs'
25 claims can survive summary judgment. The concealment claim fails because under *Nelson* and
26 NRS Chapter 113, the completed repair negates the duty to disclose. Because the Defendants did
27 not have "knowledge" under the *Nelson* standards, summary judgment on the Plaintiffs' fraud
28

claim is also warranted.²

III.

UNDISPUTED FACTS

The following facts are not disputed or cannot be disputed:

- That there was a previous water leak at the property. (Exhibit A);
- That a licensed plumbing contractor, Rakeman Plumbing, came to the property on May 23, 2017 and completely repaired the leak. *Id.*
- That no information other than that the repair was completed was communicated to the Defendants; *Id.*
- That Rakeman Plumbing was the plumbing company that invoiced and submitted a warranty claim to the plumbing manufacturer, Uponor. *Id.*
- That the Defendants did not disclose the previous water leak in their October 24, 2017 Sellers Real Property Disclosure Form (SRPD). (Exhibit B).

IV.

ARGUMENT

A. Summary Judgment is Warranted on the Plaintiffs' Second Claim for Concealment

1. The Rakeman Plumbing Affidavit Establishes Undisputed Evidence Supporting Summary Judgment

Under NRCP 56(a), "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602, 172 P.3d 131, 134 (2007); *Wood v. Safeway, Inc.*, 731, 121 P.3d 1026, 1031 (2005).

///

///

² The documents attached to the Plaintiffs' pleadings are incorporated into the pleadings, which together with the allegations can be viewed under NRCP 12(b)(5)'s standards. *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993). However, because the affidavit from Aaron Hawley of Rakeman Plumbing presents facts outside the pleadings, this Court must invoke the summary judgment standards in NRCP 56. *Kopicko v. Young*, 114 Nev. 1333, 1335-1336, 971 P.2d 789, 790 (1998).

1 Under NRCPP 56(c)1(A), facts can be established by affidavit. The affidavit “must be
2 made on personal knowledge, set out facts that would be admissible in evidence, and show that
3 the affiant or declarant is competent to testify on the matters stated.” NRCPP 56(c)(4). *See also*
4 EDCR 2.21. Here, the Rakeman Plumbing affidavit satisfies these requirements. Mr. Hawley
5 testified he has personal knowledge as the owner of Rakeman Plumbing with oversight of its
6 operations. Further Mr. Hawley testified that he is competent to testify regarding the facts stated
7 in his affidavit.

8 2. The Undisputed Evidence Supports Summary Judgment

9 In cases like this where the Plaintiffs have the burden of proof at trial, once the
10 Defendants present evidence which negates an element of the Plaintiffs’ case, the burden shifts
11 to the Plaintiffs to present *specific facts* showing a material issue of fact. *Cuzze*, 123 Nev. at 602,
12 172 P.3d at 134. (Emphasis added). Here, the evidence presented in this motion cannot be
13 controverted.

14 Under *Nelson* and the specific language of NRS §113.140, the Defendants *could not* have
15 *knowledge* of a defect which triggers the duty to disclose. “NRS §113.140 states the following:
16 “NRS §113.130 does not require a seller to disclose a *defect* in residential property of which the
17 seller is not aware.” Tracking the statute, the *Nelson* court explained that “[t]he ‘term ‘aware’
18 means ‘marked by realization, perception, or knowledge.’” Giving the term “‘aware’ its plain
19 meaning,” the court “determine(d) that the seller of residential real property does not have a duty
20 to disclose a defect or condition that ‘materially affects the value or use of residential property in
21 an adverse manner, *if* the seller does not realize, perceive, or have knowledge of that defect or
22 condition.” The *Nelson* court stated that “[a]ny other interpretation of the statute would be
23 unworkable, as it is *impossible* for a seller to disclose conditions in the property of which he or
24 she has no *realization, perception, or knowledge*.” *Nelson*, 163 P.3d 420, 425, 123 Nev. 217,
25 224.

26 3. *Nelson v. Heer* is Directly on Point and Mandates Summary Judgment

27 Although the *Nelson* case was briefed in earlier motions to dismiss, the Defendants
28 include the same discussion in this motion because this case is on all fours with *Nelson*. The

1 Nevada Supreme Court rule from *Nelson*, is that a seller repairing a water leak negates the
2 seller's duty to disclose. *Nelson*, 123 Nev. at 220, 163 P.3d at 423.

3 The facts in *Nelson* are remarkably similar to this case. In *Nelson*, a water pipe on the
4 third floor of the owner's cabin "burst, flooding the cabin." As in this case, the property owner
5 hired a general contractor who repaired the broken water pipe. Much worse than this case, the
6 leak in *Nelson* caused extensive water damage and the owner had to replace the "flooring, ceiling
7 tiles, several sections of wallboard, insulation, kitchen cabinets, bathroom vanities, kitchen
8 appliances, and certain furniture." At that time, the owner did not conduct any mold remediation.

9 Four years later, the owner listed the cabin for sale and completed a Seller's Real
10 Property Disclosure Form (SRPD). The owner did not disclose the previous water damage.
11 Without being informed of *any* water leaks, the buyer closed on the property. The buyer later
12 learned the damage would cost \$81,000 to repair.

13 The jury found in favor of the plaintiff. On appeal, following the district court's denial of
14 the defendants' motion for judgment notwithstanding the verdict, the court considered whether
15 the seller had a duty to disclose the earlier damages which had been repaired. The Nevada
16 Supreme Court found that the seller did not violate the disclosure rules because the earlier water
17 flood and damages *were repaired*, and the seller *could not have knowledge* of a defect. Using
18 the terms in the statute and the disclosure form, the court noted the seller was not aware of a
19 "defect or condition" that "materially lessened the value or use of the cabin" because the water
20 damage was repaired. *Id.*

21 Here, the Plaintiffs allege the Defendants failed to disclose a water leak in their October
22 24, 2017 disclosures. The exhibits attached to this motion show that the leak was completely
23 repaired. As in *Nelson*, the Defendants could not have any "realization, perception or
24 knowledge" of a defective condition because the prior water leak was fixed. This negates the
25 Plaintiffs' allegations the Defendants had the "knowledge or belief" that answering "no" on the
26 SRPD form was a false statement. The complete repair of the leak negated the Defendants' duty
27 of disclosure. Summary judgment regarding the Plaintiffs' second claim for relief is warranted.

28 ///

1 **B. The Plaintiffs Fraud Claim Fails as a Matter of Law**

2 In short, if this Court grants summary judgment on the concealment claim, the Plaintiffs'
3 fraud claim automatically fails. Under NRCP 56, the Plaintiffs' fraud claim fails because the
4 undisputed evidence "negates an essential element of [their] claim," and shows "there is an
5 absence of evidence to support their case." *Cuzze* 123 Nev. at 602-603, 172 P.3d at 134.

6 The first two elements for fraud are: (1) that the Defendant made a false representation or
7 misrepresentation of fact; and (2) that the Defendant had knowledge or belief that the
8 representation was false. *Jordan v. State ex rel. Dep't of Motor Vehicles & Pub. Safety*, 121 Nev.
9 44, 75, 110 P.3d 30, 51 (2005). The Plaintiffs cannot establish either element. Rakeman
10 Plumbing's completed repair eviscerates the factual allegation that the Defendants made a false
11 representation. With the repair completed and with no other information from the plumbing
12 company that fixed the leak, the Defendants could not have the knowledge necessary for the
13 intent element for the fraud claim. Summary judgment is warranted.

14 V.

15 **CONCLUSION**

16 The instant motion and the viability of the Plaintiffs' entire action boils down to one fact,
17 as recognized by this Court: whether the work done by Rakeman Plumbing completely repaired
18 the leak which is the basis of the Plaintiffs' claims for fraud and concealment. The evidence
19 presented in the affidavit of Aaron Hawley of Rakeman Plumbing establishes two critical facts:
20 First, it establishes that the leak was repaired by Rakeman Plumbing, a licensed plumbing
21 contractor. Second, it establishes that the Defendants did not have any knowledge of a defect
22 which the Plaintiffs allege the Defendants concealed.

23 ///

24 ///

25 ///

26 ///

27 ///

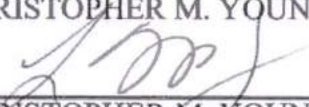
28 ///

1 Under Nevada law, the Plaintiffs' claims fail. The Defendants request that this Court
2 grant summary judgment and enter an order dismissing the Plaintiffs' case in its entirety, with
3 prejudice.

4 DATED this 24th day of September, 2019.

5 Respectfully Submitted,

6 CHRISTOPHER M. YOUNG, PC

7 
8 _____
9 CHRISTOPHER M. YOUNG, ESQ.

10 Nevada Bar No. 7961

11 JAY T. HOPKINS, ESQ.

12 Nevada Bar No. 3223

13 2460 Professional Court, Suite 200

14 Las Vegas, Nevada 89128

15 cyoung@cotomlaw.com

16 jaythopkins@gmail.com

17 *Attorneys for Defendant Clark County Nevada*
18 *Department of Aviation*
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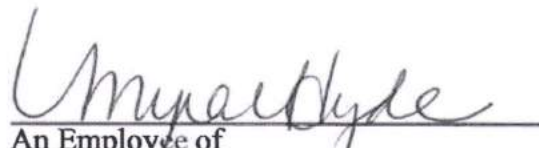
CERTIFICATE OF E-SERVICE

Pursuant to Nevada Rules of Civil Procedure 5(b), Administrative Order 14-2, and N.E.F.C.R. 9, I hereby certify that on the 24th day of September, 2019, I caused the foregoing

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED

COMPLAINT to be electronically filed and e-served on counsel as follows:

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


An Employee of
CHRISTOPHER M. YOUNG, PC

H:\Open Case Files\0300.003\MTN DIS 2nd AMD COMP

EXHIBIT A

EXHIBIT A

AFFIDAVIT OF AARON HAWLEY

STATE OF NEVADA)
 :
COUNTY OF CLARK) ss.

1. Aaron Hawley, being first duly sworn, deposes and states as follows:

2. I am the owner of Rakeman Plumbing. I have been a plumber since 1982 and have owned Rakeman Plumbing since 2006.

3. This affidavit is made and based upon my personal knowledge.

4. I am competent to testify to all matters and information contained herein, and hereby swear and certify that the Exhibits attached to this Affidavit were kept in the regular course of my business as Rakeman Plumbing's owner.

5. I oversee my employees and have personal knowledge regarding the work they perform on behalf of Rakeman Plumbing.

6. On May 23, 2017, my company received a call regarding a plumbing leak in the master bedroom at 42 Meadowhawk Lane, Las Vegas, Nevada 89135.

7. Rakeman Plumbing was familiar with the Uponor plumbing system installed at the residence because Rakeman Plumbing had installed it during construction of the house. I recall that the leak was in the side wall in the master closet.

8. Rakeman Plumbing technician William "Rocky" Gerber went to 42 Meadowhawk Lane to repair the reported leak. Mr. Gerber met a person at the residence, who informed Mr. Gerber that she was Dr. Todd Swanson's assistant.

9. On site, Mr. Gerber found the following and took the following corrective action:

"Tech found 3/4 Uponor tee leaking on the hot side of the plumbing system.

Cut out leaking fitting and replace with new fitting and restore water with no further leaks.

Rakeman had to remove toe kicks on built in cabinets in closet cut out drywall, carpet pad and place equipment to dry out closet.

After everything is dry, Rakeman repaired all drywall to match existing texture and color and repaired all damaged built in closets the (sic) reset all carpet."

(Exhibit A, PO #13382, Invoice #232809).

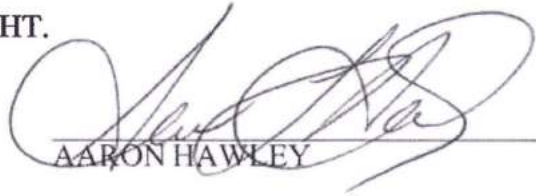
10. The May 23, 2017 leak was fully and completely repaired, and we did not expect any further problems. As such, nothing further was conveyed to Dr. Swanson, other than that the leak was repaired and that we remediated the damage to the drywall, paint and carpet.

11. I invoiced Uponor, the manufacturer of the repaired pipe because the pipes at the residence were under a 25-year Uponor warranty.

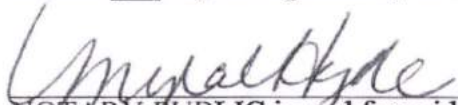
12. Uponor paid the Rakeman Plumbing invoice on June 9, 2017. (Exhibit B).

1 13. The attached Exhibits A & B are business records of Rakeman Plumbing. Those records
2 were kept in the regular course of business. I have personal knowledge that the invoice
3 was created at or near the time the leak was repaired on or about May 23, 2017 and that
the June 9, 2017 letter from Uponsor was received by Rakeman on or shortly after June 9,
2017.

4 FURTHER AFFIANT SAYETH NAUGHT.

5
6 
AARON HAWLEY

7 SUBSCRIBED AND SWORN to before
8 me this 23 day of September, 2019.

9 
10 NOTARY PUBLIC in and for said
County and State



26 H:\Open Case Files\0300.003\AFF-RAKEMAN

**AFFIDAVIT
EXHIBIT A**

**AFFIDAVIT
EXHIBIT A**



INVOICE

INVOICE NO
232809

Rakeman Plumbing, Inc.
4075 Losee Road
N. Las Vegas, NV 89030
Phone: (702) 642-8553
Fax: (702) 399-1410

CUST UPONOR
5925 148TH ST WEST
APPLE VALLEY, MN 55124

SITE SWANSON RESIDENCE
42 MEADOWHAWK LN
Las Vegas, NV 89135

ACCOUNT NO	INVOICE DATE	TERMS	DUE DATE	PAGE
UPONOR	5/23/2017	Net 30	6/22/2017	1

ORDER 13382, PO

RESOLUTION RMA # 747000

TECH FOUND 3/4 UPONOR TEE LEAKING ON THE HOT SIDE OF THE PLUMBING SYSTEM.

CUT OUT LEAKING FITTING AND REPLACE WITH NEW FITTING AND RESTORE WATER WITH NO FURTHER LEAKS.

RAKEMAN HAD TO REMOVE TOE KICKS ON BUILT IN CABINETS IN CLOSET, CUT OUT WET DRYWALL, CARPET PAD AND PLACE EQUIPMENT TO DRY OUT CLOSET.

AFTER EVERYTHING IS DRY RAKMAN REPAIRED ALL DRYWALL TO MATCH EXISTING TEXTURE & COLOR AND REPAIRED ALL DAMAGED BUILT IN CLOSETS THE RESET ALL CARPET.

ITEM NO	QUANTITY	DESCRIPTION	UNIT PRICE	EXTENDED
BID ACCEPTED	1	BID ACCEPTED	2496.00	2,496.00*

Your Business is Appreciated!

* means item is non-taxable

**INVOICE**INVOICE NO
232609

Rakeman Plumbing, Inc.
4075 Losee Road
N. Las Vegas, NV 89030
Phone: (702) 642-8553
Fax: (702) 399-1410

CUST UPONOR
5925 148TH ST WEST
APPLE VALLEY, MN 55124

SITE SWANSON RESIDENCE
42 MEADOWHAWK LN
Las Vegas, NV 89135

ACCOUNT NO	INVOICE DATE	TERMS	DUE DATE	PAGE
UPONOR	5/23/2017	Net 30	6/22/2017	2

TOTAL AMOUNT 2,496.00

**AFFIDAVIT
EXHIBIT B**

**AFFIDAVIT
EXHIBIT B**



June 9, 2017

Rakeman Plumbing
ATTN: Aaron Hawley
4075 Lossee Rd
NORTH LAS VEGAS, NV 89030

Re: Uponor Reference No.: RMA 746512

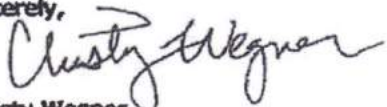
Dear Mr. Hawley:

I am responding to the claim you submitted under the above referenced RMA number.

Enclosed please find a check in the amount of \$2,496.00 offered by Uponor in full and complete satisfaction of all claims and damages you have or may have relating to the above referenced claim. Be assured that we take these matters seriously and are working to make sure this does not happen again.

Should you require any other information or have any additional questions, please do not hesitate to contact me at (952) 997-5383. Thank you for your assistance.

Sincerely,


Christy Wegner
Claims Coordinator
Christy.Wegner@uponor.com

Enclosure: Check

Uponor North America

Uponor, Inc.
5925 148th Street West
Apple Valley, MN 55124
Tel: (800) 321-4739
Fax: (952) 891-2008
Web: www.uponor-usa.com

Uponor Ltd
2000 Argentia Road
Plaza 1, Suite 200
Mississauga, ON L5N 1W1
Tel: (888) 994-7726
Fax: (800) 638-9517
Web: www.uponor.ca

JA003031

014805

Uponor 5925 148TH STREET WEST, APPLE VALLEY, MN 55124

10000 RAKEMAN PLUMBING Jun 7, 2017 1005

OUR REF NUMBER	INVOICE NUMBER	INVOICE DATE	INVOICE DESCRIPTION	NET AMOUNT
418340	RMA746512	Jun 7, 2017		2,496.00
TOTAL AMOUNT				\$2,496.00

UPONOR 5925 148TH STREET WEST
APPLE VALLEY, MN 55124

PNC Bank
National Association
Jeannette, PA
60-182433

014805

Check Date
07-Jun-2017

Check Amount
\$2,496.00

PAY TO THE ORDER OF Two Thousand Four Hundred Ninety Six Dollars And Zero Cents

RAKEMAN PLUMBING
422 LOSEE ROAD
NORTH LAS VEGAS, NV 89000
United States

[Signature]

⑈014805⑈ ⑆043301627⑆ 1001149485⑈

EXHIBIT B

EXHIBIT B

JA003034

Property conditions, improvements and additional information: YES NO N/A
Are you aware of any of the following?:

1. Structure:
 - (a) Previous or current moisture conditions and/or water damage? ☒ ☐ ☐
 - (b) Any structural defect? ☒ ☐ ☐
 - (c) Any construction, modification, alterations, or repairs made without required state, city or county building permits? ☐ ☐ ☐
 - (d) Whether the property is or has been the subject of a claim governed by NRS 40.600 to 40.695 (construction defect claims)? ☐ ☐ ☐

(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED)
2. Land / Foundation:
 - (a) Any of the improvements being located on unstable or expansive soil? ☐ ☐ ☐
 - (b) Any foundation sliding, settling, movement, upheaval, or earth stability problems that have occurred on the property? ☐ ☐ ☐
 - (c) Any drainage, flooding, water seepage, or high water table? ☐ ☐ ☐
 - (d) The property being located in a designated flood plain? ☐ ☐ ☐
 - (e) Whether the property is located next to or near any known future development? ☐ ☐ ☐
 - (f) Any encroachments, easements, zoning violations or nonconforming uses? ☐ ☐ ☐
 - (g) Is the property adjacent to "open range" land? ☐ ☐ ☐

(If seller answers yes, FURTHER DISCLOSURE IS REQUIRED under NRS 113.065)
3. Roof: Any problems with the roof? ☐ ☐ ☐
4. Pool/spa: Any problems with structure, wall, liner, or equipment? ☐ ☐ ☐
5. Infestation: Any history of infestation (termites, carpenter ants, etc.)? ☐ ☐ ☐
6. Environmental:
 - (a) Any substances, materials, or products which may be an environmental hazard such as but not limited to, asbestos, radon gas, urea formaldehyde, fuel or chemical storage tanks, contaminated water or soil on the property? ☐ ☐ ☐
 - (b) Has property been the site of a crime involving the previous manufacture of Methamphetamine where the substances have not been removed from or remediated on the Property by a certified entity or has not been deemed safe for habitation by the Board of Health? ☐ ☐ ☐
7. Fungi / Mold: Any previous or current fungus or mold? ☐ ☐ ☐
8. Any features of the property shared in common with adjoining landowners such as walls, fences, road, driveways or other features whose use or responsibility for maintenance may have an effect on the property? ☐ ☐ ☐
9. Common Interest Communities: Any "common areas" (facilities like pools, tennis courts, walkways or other areas co-owned with others) or a homeowner association which has any authority over the property? ☐ ☐ ☐
 - (a) Common Interest Community Declaration and Bylaws available? ☐ ☐ ☐
 - (b) Any periodic or recurring association fees? ☐ ☐ ☐
 - (c) Any unpaid assessments, fines or liens, and any warnings or notices that may give rise to an assessment, fine or lien? ☐ ☐ ☐
 - (d) Any litigation, arbitration, or mediation related to property or common area? ☐ ☐ ☐ (SID or LID)
 - (e) Any assessments associated with the property (excluding property taxes)? ☐ ☐ ☐
 - (f) Any construction, modification, alterations, or repairs made without required approval from the appropriate Common Interest Community board or committee? ☐ ☐ ☐
10. Any problems with water quality or water supply? ☐ ☐ ☐
11. Any other conditions or aspects of the property which materially affect its value or use in an adverse manner? ☐ ☐ ☐
12. Lead-Based Paint: Was the property constructed on or before 12/31/77? ☐ ☐ ☐
(If yes, additional Federal EPA notification and disclosure documents are required)
13. Water source: Municipal ☒ Community Well ☐ Domestic Well ☐ Other ☐
If Community Well: State Engineer Well Permit # _____ Revocable ☐ Permanent ☐ Cancelled ☐
Use of community and domestic wells may be subject to change. Contact the Nevada Division of Water Resources for more information regarding the future use of this well.
14. Conservation Easements such as the SNWA's Water Smart Landscape Program: Is the property a participant? ☐ ☐ ☐
15. Solar panels: Are any installed on the property? ☐ ☐ ☐
If yes, are the solar panels: Owned... ☐ Leased... ☐ or Financed... ☐
16. Wastewater disposal: ☒ Municipal Sewer ☐ Septic System ☐ Other ☐
17. This property is subject to a Private Transfer Fee Obligation? ☐ ☐ ☐ (standard transfer tax)

EXPLANATIONS: Any "Yes" must be fully explained on page 3 of this form

TS
Seller(s) Initials

TS
Buyer(s) Initials

EXPLANATIONS: Any "Yes" to questions on pages 1 and 2 must be fully explained here.
Attach additional pages if needed.

75
Seller(s) Initials


12/12/17
7:54PM EST
Buyer(s) Initials

Buyers and sellers of residential property are advised to seek the advice of an attorney concerning their rights and obligations as set forth in Chapter 113 of the Nevada Revised Statutes regarding the seller's obligation to execute the Nevada Real Estate Division's approved "Seller's Real Property Disclosure Form". For your convenience, Chapter 113 of the Nevada Revised Statutes provides as follows:

CONDITION OF RESIDENTIAL PROPERTY OFFERED FOR SALE

NRS 113.100 Definitions. As used in NRS 113.100 to 113.150, inclusive, unless the context otherwise requires:

1. "Defect" means a condition that materially affects the value or use of residential property in an adverse manner.
2. "Disclosure form" means a form that complies with the regulations adopted pursuant to NRS 113.120.
3. "Dwelling unit" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one person who maintains a household or by two or more persons who maintain a common household.
4. "Residential property" means any land in this state to which is affixed not less than one nor more than four dwelling units.
5. "Seller" means a person who sells or intends to sell any residential property.

(Added to NRS by 1995, 842; A 1999, 1446)

NRS 113.110 Conditions required for "conveyance of property" and to complete service of document. For the purposes of NRS 113.100 to 113.150, inclusive:

1. A "conveyance of property" occurs:
 - (a) Upon the closure of any escrow opened for the conveyance; or
 - (b) If an escrow has not been opened for the conveyance, when the purchaser of the property receives the deed of conveyance.
2. Service of a document is complete:
 - (a) Upon personal delivery of the document to the person being served; or
 - (b) Three days after the document is mailed, postage prepaid, to the person being served at his last known address.

(Added to NRS by 1995, 842)

NRS 113.120 Regulations prescribing format and contents of form for disclosing condition of property. The Real Estate Division of the Department of Business and Industry shall adopt regulations prescribing the format and contents of a form for disclosing the condition of residential property offered for sale. The regulations must ensure that the form:

1. Provides for an evaluation of the condition of any electrical, heating, cooling, plumbing and sewer systems on the property, and of the condition of any other aspects of the property which affect its use or value, and allows the seller of the property to indicate whether or not each of those systems and other aspects of the property has a defect of which the seller is aware.
2. Provides notice:
 - (a) Of the provisions of NRS 113.140 and subsection 5 of NRS 113.150.
 - (b) That the disclosures set forth in the form are made by the seller and not by his agent.
 - (c) That the seller's agent, and the agent of the purchaser or potential purchaser of the residential property, may reveal the completed form and its contents to any purchaser or potential purchaser of the residential property.

(Added to NRS by 1995, 842)

NRS 113.130 Completion and service of disclosure form before conveyance of property; discovery or worsening of defect after service of form; exceptions; waiver.

1. Except as otherwise provided in subsection 2:
 - (a) At least 10 days before residential property is conveyed to a purchaser:
 - (1) The seller shall complete a disclosure form regarding the residential property; and
 - (2) The seller or the seller's agent shall serve the purchaser or the purchaser's agent with the completed disclosure form.
 - (b) If, after service of the completed disclosure form but before conveyance of the property to the purchaser, a seller or the seller's agent discovers a new defect in the residential property that was not identified on the completed disclosure form or discovers that a defect identified on the completed disclosure form has become worse than was indicated on the form, the seller or the seller's agent shall inform the purchaser or the purchaser's agent of that fact, in writing, as soon as practicable after the discovery of that fact but in no event later than the conveyance of the property to the purchaser. If the seller does not agree to repair or replace the defect, the purchaser may:
 - (1) Rescind the agreement to purchase the property; or
 - (2) Close escrow and accept the property with the defect as revealed by the seller or the seller's agent without further recourse.
2. Subsection 1 does not apply to a sale or intended sale of residential property:
 - (a) By foreclosure pursuant to chapter 107 of NRS.
 - (b) Between any co-owners of the property, spouses or persons related within the third degree of consanguinity.
 - (c) Which is the first sale of a residence that was constructed by a licensed contractor.
 - (d) By a person who takes temporary possession or control of or title to the property solely to facilitate the sale of the property on behalf of a person who relocates to another county, state or country before title to the property is transferred to a purchaser.
3. A purchaser of residential property may not waive any of the requirements of subsection 1. A seller of residential property may not require a purchaser to waive any of the requirements of subsection 1 as a condition of sale or for any other purpose.
4. If a sale or intended sale of residential property is exempted from the requirements of subsection 1 pursuant to paragraph (a) of subsection 2, the trustee and the beneficiary of the deed of trust shall, not later than at the time of the conveyance of the property to the purchaser of the residential property, or upon the request of the purchaser of the residential property, provide:
 - (a) Written notice to the purchaser of any defects in the property of which the trustee or beneficiary, respectively, is aware; and
 - (b) If any defects are repaired or replaced or attempted to be repaired or replaced, the contact information of any asset management company who provided asset management services for the property. The asset management company shall provide a service report to the purchaser upon request.

5. As used in this section:

- (a) "Seller" includes, without limitation, a client as defined in NRS 645H.060.
- (b) "Service report" has the meaning ascribed to it in NRS 645H.150.

(Added to NRS by 1995, 842; A 1997, 349; 2003, 1339; 2005, 598; 2011, 2832)

TS
Seller(s) Initials

[Signature]
Buyer(s) Initials

NRS 113.135 Certain sellers to provide copies of certain provisions of NRS and give notice of certain sell reports; initial purchaser entitled to rescind sales agreement in certain circumstances; waiver of right to rescind.

1. Upon signing a sales agreement with the initial purchaser of residential property that was not occupied by the purchaser for more than 120 days after substantial completion of the construction of the residential property, the seller shall:

(a) Provide to the initial purchaser a copy of NRS 11.202 to 11.206, inclusive, and 40.600 to 40.605, inclusive;

(b) Notify the initial purchaser of any soil report prepared for the residential property or for the subdivision in which the residential property is located; and

(c) If requested in writing by the initial purchaser not later than 5 days after signing the sales agreement, provide to the purchaser without cost each report described in paragraph (b) not later than 5 days after the seller receives the written request.

2. Not later than 20 days after receipt of all reports pursuant to paragraph (c) of subsection 1, the initial purchaser may rescind the sales agreement.

3. The initial purchaser may waive his right to rescind the sales agreement pursuant to subsection 2. Such a waiver is effective only if it is made in a written document that is signed by the purchaser.

(Added to NRS by 1999, 1446)

NRS 113.140 Disclosure of unknown defect not required; form does not constitute warranty; duty of buyer and prospective buyer to exercise reasonable care.

1. NRS 113.130 does not require a seller to disclose a defect in residential property of which he is not aware.

2. A completed disclosure form does not constitute an express or implied warranty regarding any condition of residential property.

3. Neither this chapter nor chapter 645 of NRS relieves a buyer or prospective buyer of the duty to exercise reasonable care to protect himself.

(Added to NRS by 1995, 843; A 2001, 2896)

NRS 113.150 Remedies for seller's delayed disclosure or nondisclosure of defects in property; waiver.

1. If a seller or the seller's agent fails to serve a completed disclosure form in accordance with the requirements of NRS 113.130, the purchaser may, at any time before the conveyance of the property to the purchaser, rescind the agreement to purchase the property without any penalties.

2. 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.

3. Rescission of an agreement pursuant to subsection 2 is effective only if made in writing, notarized and served not later than 4 working days after the date on which the purchaser is informed of the defect:

(a) On the holder of any escrow opened for the conveyance; or

(b) If an escrow has not been opened for the conveyance, on the seller or the seller's agent.

4. Except as otherwise provided in subsection 5, if a seller conveys residential property to a purchaser without complying with the requirements of NRS 113.130 or otherwise providing the purchaser or the purchaser's agent with written notice of all defects in the property of which the seller is aware, and there is a defect in the property of which the seller was aware before the property was conveyed to the purchaser and of which the cost of repair or replacement was not limited by provisions in the agreement to purchase the property, the purchaser is entitled to recover from the seller treble the amount necessary to repair or replace the defective part of the property, together with court costs and reasonable attorney's fees. An action to enforce the provisions of this subsection must be commenced not later than 1 year after the purchaser discovers or reasonably should have discovered the defect or 2 years after the conveyance of the property to the purchaser, whichever occurs later.

5. A purchaser may not recover damages from a seller pursuant to subsection 4 on the basis of an error or omission in the disclosure form that was caused by the seller's reliance upon information provided to the seller by:

(a) An officer or employee of this State or any political subdivision of this State in the ordinary course of his or her duties; or

(b) A contractor, engineer, land surveyor, certified inspector as defined in NRS 645D.040 or pesticide applicator, who was authorized to practice that profession in this State at the time the information was provided.

6. A purchaser of residential property may waive any of his or her rights under this section. Any such waiver is effective only if it is made in a written document that is signed by the purchaser and notarized.

(Added to NRS by 1995, 843; A 1997, 350, 1797)

The above information provided on pages one (1), two (2) and three (3) of this disclosure form is true and correct to the best of seller's knowledge as of the date set forth on page one (1). **SELLER HAS DUTY TO DISCLOSE TO BUYER AS NEW DEFECTS ARE DISCOVERED AND/OR KNOWN DEFECTS BECOME WORSE (See NRS 113.130(1)(b)).**

Seller(s): John V. Surman Date: 10/24/2017
Co-trustee, the Shiraz Trust
Seller(s): Manager, Lyons Development LLC Date: _____

BUYER MAY WISH TO OBTAIN PROFESSIONAL ADVICE AND INSPECTIONS OF THE PROPERTY TO MORE FULLY DETERMINE THE CONDITION OF THE PROPERTY AND ITS ENVIRONMENTAL STATUS. Buyer(s) has/have read and acknowledge(s) receipt of a copy of this Seller's Real Property Disclosure Form and copy of NRS Chapter 113.100 to 113.150, inclusive, attached hereto as pages four (4) and five (5).

Buyer(s): Joseph Folino Date: 10/25/2017
Buyer(s): Nicole Folino Date: 10/25/2017

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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

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

Plaintiffs,

vs. Case No. A-18-782494-C
Dept. No. XXIV

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.

VIDEOTAPED DEPOSITION OF

NICOLE WHITFIELD

Taken on January 29, 2020

at 10:01 a.m.

By a Certified Court Reporter

Las Vegas, Nevada

Stenographically reported by:
Heidi K. Konsten, RPR, CCR
Nevada CCR No. 845 - NCRA RPR No. 816435
JOB NO. 597256

1 Videotaped deposition of NICOLE
2 WHITFIELD, Volume 1, stenographically taken at
3 10777 West Twain Avenue, Las Vegas, Nevada, on
4 Wednesday, January 29, 2020, at 10:01 a.m., before
5 Heidi K. Konsten, Certified Court Reporter in and
6 for the State of Nevada.

7

8 APPEARANCES OF COUNSEL

9 For the Plaintiffs:

10 RUSTY GRAF, ESQ.
11 Black & LoBello
12 10777 West Twain Avenue
13 Third Floor
14 Las Vegas, Nevada 89135
15 (702) 869-8801
16 (702) 869-2669 Fax

17 For the Defendants:

18 JEFFREY L. GALLIHER, ESQ.
19 Galliher Legal, P.C.
20 1850 East Sahara Avenue
21 Suite 107
22 Las Vegas, Nevada 89104
23 (702) 735-0049

24 Also present: Terrell Holloway, Videographer

25

26 * * * * *

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1 LAS VEGAS, NEVADA

2 Wednesday, January 29, 2020

3 10:01 a.m.

4 DEPOSITION OF NICOLE WHITFIELD

5 * * * * *

6 (Exhibit Nos. 1 through 24 were
7 marked for identification.)

8 THE VIDEOGRAPHER: This is the beginning
9 of Media No. 1 in the deposition of Nicole
10 Whitfield in the matter of Folino, Joseph vs.
11 Swanson, Todd, held at Black & LoBello on
12 January 29th, 2020, at 10:01 a.m.

13 The court reporter is Heidi Konsten. I
14 am Terrell Holloway, the videographer, an employee
15 of Litigation Services.

16 This deposition is being videotaped at
17 all times, unless specified to go off the video
18 record.

19 Would all present please identify
20 themselves, beginning with the witness.

21 THE WITNESS: Nicole Whitfield.

22 MR. GALLIHER: Jeff Galliher for the
23 defendants and the witness.

24 MR. GRAF: Rusty Graf representing the
25 Folinos.

1 THE VIDEOGRAPHER: Will the court
2 reporter please swear in the witness.

3
4 Whereupon,

5 NICOLE WHITFIELD,
6 was called as a witness, and having been first duly
7 sworn to testify to the truth, was examined and
8 testified as follows:

9
10 EXAMINATION

11 BY MR. GRAF:

12 Q Ms. Whitfield, if you would, please
13 state your name and spell your last name for the
14 record.

15 A Nicole Whitfield, W-H-I-T-F-I-E-L-D.

16 Q And how do you spell your first name?

17 A N-I-C-O-L-E.

18 Q Okay. Is it okay if I call you Nicole?

19 A Sure. I would prefer if you called me
20 Nicky. Only my mother calls me Nicole.

21 Q Oh, all right.

22 So we're here to take your deposition in
23 a case captioned Joe and Nicole Folino vs. Todd
24 Swanson, et al.

25 Are you aware of that?

1 A Yes.

2 Q And you're aware of that litigation?

3 A Yes.

4 Q Okay. It's my understanding that you
5 are Dr. Swanson's personal assistant?

6 A Correct.

7 Q Okay. So have you ever had your
8 deposition taken before?

9 A No.

10 Q All right. So a deposition is just
11 really a formal conversation between you, me, your
12 attorney, and the court reporter and the
13 videographer here today. They're going to
14 transcribe and videotape this proceeding so that
15 we have a clear and accurate record of the
16 questions that I asked, as well as the answers
17 that you gave. Okay?

18 A All right.

19 Q So included in that process is the fact
20 that we want to have a clear record. So
21 "uh-huhs," "huh-uhs," gestures of the hand, nods
22 of the head, even though we're videotaping this
23 proceeding, they don't or may not transcribe very
24 well. That's still the official record that needs
25 to be presented at the time if we have a trial or

1 a hearing in this matter.

2 So if I ask you to otherwise verbalize
3 your response with a "yes" or a "no" or some other
4 verbal response, I'm not trying to be rude or
5 curt. I'm just trying to make sure we have a
6 clear record.

7 Do you have that understanding?

8 A Understood.

9 Q Okay. One of the other things is when
10 we're talk, during normal conversations, you and I
11 may talk over each other. You may know where the
12 last part of my sentence is going, and you may
13 want to respond early. I would ask you not to do
14 that in the sense that the court reporter will
15 get -- she'll tell us to stop doing that. Okay?

16 If there's at any point in time that you
17 don't understand, would like me to rephrase, or
18 simply don't hear a question, just ask me to do
19 so, and I will. Okay?

20 A Okay.

21 Q I'm going to assume during this process
22 that if you answer a question, you have answered
23 the question that I've posed.

24 Is that a fair assumption?

25 A Yes.

1 Q So along those lines, if I ask you some
2 question during this proceeding and you don't
3 understand or it's not clear to you, ask me to
4 rephrase it, and I will. Okay?

5 A I will.

6 Q All right. So are you taking any
7 prescribed medications or any other intoxicating
8 substances that would inhibit your ability to
9 testify truthfully here today?

10 A No.

11 Q Okay. Do you have any questions about
12 the process?

13 A Not at this time. If I do, I will ask.

14 Q All right. So you're going to be given
15 the opportunity in approximately ten working
16 days -- actually, we're going to expedite this.
17 You're going to be given the opportunity in the
18 next few days to review your transcript and make
19 any changes that you deem appropriate.

20 The one thing that I'll caution you on
21 is this: If you make any changes whatsoever,
22 substantive or not, those changes can be brought
23 to the attention of a trier of fact, whether
24 that's a judge or a jury.

25 Are you aware of that?

1 A Yes.

2 Q Okay. So the only other thing is you
3 were just sworn in by the court reporter.

4 A Yes.

5 Q And you're aware that you're going to be
6 held to the same level of truthfulness or
7 solemnity as you would be as if you were appearing
8 in front of a judge or a jury?

9 A Yes.

10 Q Okay. All right. Are you ready to
11 proceed?

12 A Yes.

13 Q It's my understanding that you are
14 represented by counsel here today. Is that a fair
15 statement?

16 A Yes.

17 Q And is Mr. Galliher representing you?

18 A Yes.

19 Q Okay. And you're aware that
20 Mr. Galliher represents Dr. Swanson in this
21 action?

22 A Yes.

23 Q Okay. All right. What did you do in
24 preparation for your deposition here today?

25 A I reviewed text messages and a timeline,

1 just kind of refreshed my brain on the
2 information.

3 Q So I think I saw that in one of
4 Dr. Swanson's written discovery responses, that
5 you prepared a timeline.

6 A I assisted in preparing a timeline.

7 Q Okay. So who else -- who did you
8 assist?

9 A Dr. Todd Swanson.

10 Q Okay. And when did you prepare that
11 timeline?

12 A A couple of months prior to mediation.
13 I don't remember when mediation was.

14 Q Okay. And are -- that timeline, does it
15 exist today?

16 A Yes, I do have it.

17 Q Do you have it with you?

18 A Yes, I do.

19 Q Can I see it?

20 A Yes, you may.

21 Would you like to hand me my purse?

22 MR. GRAF: Watch your --

23 THE WITNESS: You can actually just grab
24 the manila envelope out.

25 MR. GALLIHER: Is this it?

1 THE WITNESS: Yes, it is.

2 MR. GRAF: Now, has this been produced?

3 MR. GALLIHER: I don't know.

4 MR. GRAF: I don't think it has. The
5 timeline hasn't. I recognize the documents.

6 MR. GALLIHER: Let me see the timeline
7 quick. This is before my -- it says June 14,
8 2018.

9 MR. GRAF: Can we go off the record?

10 MR. GALLIHER: Yeah, let's go off.

11 THE VIDEOGRAPHER: Off the video record
12 at 10:08.

13 (Whereupon, a recess was taken.)

14 THE VIDEOGRAPHER: Back on the video
15 record at 10:12.

16 BY MR. GRAF:

17 Q You're aware you're still under oath,
18 Ms. Whitfield?

19 A Yes, I'm aware.

20 MR. GRAF: All right. Let's go ahead
21 and mark that as next.

22 MR. GALLIHER: This is 1?

23 MR. GRAF: Yeah, we'll go with one. I
24 was lamenting with Heidi that I forgot to have her
25 bring the doctor's exhibits.

1 MR. GALLIHER: I have them.

2 MR. GRAF: I do, too, but we wouldn't
3 have a copy for her, so ...

4 MR. GALLIHER: Right. And I wrote some
5 notes and stuff on here, too, a couple of them,
6 e-mail addresses.

7 (Exhibit No. 1B was marked for
8 identification.)

9 BY MR. GRAF:

10 Q So you've been handed what's been marked
11 as Exhibit 1 for purposes of this deposition.
12 It's the timeline we were just talking about on
13 and off the record.

14 So it's your understanding -- or is it
15 your testimony that you prepared this document
16 with Dr. Swanson?

17 A Yes.

18 Q Okay. So we'll go through this after I
19 get through some of the other preliminary stuff.

20 So we were talking about what you had
21 done in preparation for your deposition. So you
22 reviewed the timeline, the text messages, some of
23 the other documents.

24 Anything else that you did in
25 preparation for your deposition here today?

1 A No.

2 Q Did you meet with counsel? And I'll
3 preface that by saying I don't want to know what
4 you discussed or anything like that. Just when
5 and if you did meet with counsel.

6 A I did speak with Jay and Jeff both on
7 the phone.

8 Q Okay. And when did that happen?

9 A I spoke with Jeff yesterday, and I spoke
10 with Jay two days ago.

11 Q All right.

12 A They kind of gave me the run -- the same
13 rundown you gave me of, "Hey, this is what this
14 is." I've never come to anything like this
15 before.

16 Q All right. Did you talk to Dr. Swanson
17 in preparation for your deposition?

18 A Not in preparation. I informed him that
19 I had been subpoenaed to come here and informed
20 him of the date and time that I have to be here.

21 Q Okay.

22 A But we did not prep anything or really
23 discuss anything.

24 Q Did you talk to Dr. Swanson about any of
25 the facts or circumstances of this litigation?

1 A Not recently, no.

2 Q Okay. When was the last time you did
3 talk to him about it?

4 A Shortly after mediation. It hasn't --
5 it's not really a topic of conversation.

6 Q Okay. So what did you talk to him
7 about?

8 A How mediation went, how I felt it was a
9 waste of time. This is a waste of all of our
10 times. I can't believe we're spending so many
11 hours on this. Pretty much how I feel about it.

12 Q Okay. Any discussion regarding the
13 facts or circumstances of the transaction or the
14 repairs to the house, anything like that?

15 MR. GALLIHER: Objection. Compound.

16 Go ahead. You can answer.

17 THE WITNESS: Can you restate the
18 question?

19 BY MR. GRAF:

20 Q So --

21 A He caught me off guard with what he
22 said, because I don't understand what he said.

23 Q Yep. So he's going to make some
24 objections as we go through this process here
25 today. Unless he instructs you not to answer, you

1 still answer the question.

2 MR. GRAF: And the first part of my
3 question was what?

4 (Whereupon, the record was read.)

5 THE WITNESS: I mean, we discussed that
6 all the repairs were completed. I did initiate
7 repairs when the leak -- because I found the leak,
8 so obviously I initiated repairs. We discussed
9 the repairs that I was in charge of for the
10 request for repairs, so we discussed those.

11 BY MR. GRAF:

12 Q Anything else?

13 A No. No.

14 Q Okay. So anything else that you did in
15 preparation for your deposition here today?

16 A No.

17 Q Did you talk to anybody from Rakeman
18 Plumbing?

19 A No. I have not talked to anyone from
20 Rakeman Plumbing since -- actually, I want to say
21 I talked to somebody right before the mediation
22 when I was preparing this information to get
23 information for this.

24 Q Okay. And when you say "this," you're
25 talking about the timeline?

1 A Yes, the timeline.

2 Q Okay. So we'll go through this, and
3 then you can tell me if you got that information
4 from Rakeman or if it's something that you had on
5 your own.

6 All right. Let's talk about your
7 background here a little bit.

8 What is your date of birth?

9 A 8/4/85.

10 Q How long have you lived in Las Vegas?

11 A I moved back to Las Vegas when I was 22,
12 23. So I've been here about 12 years -- back in
13 Las Vegas for 12 years.

14 Q Okay. What's your current address?

15 A 2435 Marlene Way.

16 Q Can you spell that?

17 A M-A-R-L-E-N-E Way, Henderson, Nevada,
18 89014.

19 Q Are you married?

20 A Yes.

21 Q To whom are you married?

22 A Shaun, S-H-A-U-N, Whitfield.

23 Q How long have you been married?

24 A Almost six years.

25 Q Do you have any children?

1 A Yes.

2 Q How many?

3 A One natural, two step.

4 Q What are their ages?

5 A 16, 15, and 11.

6 Q Okay. And let's talk about your
7 educational background here a little bit.

8 Did you graduate from high school?

9 A Yes.

10 Q What high school?

11 A GED program. I was living out of the
12 country.

13 Q Okay. And that's what I was going to
14 ask.

15 Where did you obtain the GED?

16 A In Kansas City, Missouri.

17 Q Okay.

18 A Or Kansas City, Kansas. Sorry.

19 Q And any college?

20 A Some.

21 Q Where?

22 A CSN and High-Tech Institute.

23 Q For CSN, what was your primary area of
24 study?

25 A General.

1 Q Okay. And did you obtain an associate's
2 degree?

3 A No.

4 Q And High-Tech, what was that for?

5 A Dental assisting.

6 Q When did you go?

7 A Over a decade ago. I do not recall the
8 dates.

9 Q Do you get, like, a certificate of
10 completion or --

11 A Yes, I did.

12 Q -- some sort of degree?

13 A Yes, I got a certificate.

14 MR. GALLIHER: Let him finish the
15 question before you answer, please.

16 THE WITNESS: Oh, sorry.

17 BY MR. GRAF:

18 Q No, you're good.

19 Okay. And where did you attend that
20 school?

21 A Here in Las Vegas.

22 Q All right. Did you ever work as a
23 dental assistant?

24 A Yes.

25 Q Okay. So before we go over that, let's

1 talk about any other educational or trade school
2 type of education.

3 A Yes. I am a prior HOA community
4 manager.

5 Q Are you currently licensed?

6 A No.

7 Q Were you previously licensed?

8 A Yes.

9 Q When were you licensed?

10 A It was, like, eight years ago, so 2012.
11 I'm estimating -- I'm guessing here, maybe 2012.

12 Q So one of the other admonitions I didn't
13 give you is -- and you did a good job just now.
14 If you feel like you have to guess, tell me, and
15 I'll try --

16 A Yeah.

17 Q -- to rephrase the question or something
18 like that. It's not a memory exam here today, but
19 I am entitled to your best estimate. So kind of
20 what you just did in your head, slash, on the
21 record here a few seconds ago was you thought that
22 it was back eight years ago and/or in 2012.
23 That's --

24 A Yeah, somewhere -- I mean, I was
25 definitely working as an HOA community manager in

1 that time. I do not recall the year I was
2 licensed.

3 Q All right. And we're going to go over
4 some of those -- your work history, so you can
5 tell me -- we'll kind of go backwards in terms of
6 your work history.

7 Any other licenses that you held in your
8 lifetime?

9 A No.

10 Q Okay. Do you have to have a license as
11 a dental assistant?

12 A No.

13 Q Okay.

14 A You do have to be certified.

15 Q Okay. And you got that?

16 A Yes.

17 Q All right. So what happened with your
18 HOA community manager's license?

19 A I let it lapse. I chose not to take on
20 that profession.

21 Q Okay.

22 A Not worth the hours and the low pay.

23 Q Okay. All right. Let's talk about --
24 your current employer is who or what?

25 A Dr. -- I have two jobs. So Dr. Todd

1 Swanson, I'm his personal assistant.

2 Q Okay.

3 A And I am an independent contractor as a
4 transaction coordinator for multiple real estate
5 agents in Las Vegas.

6 Q What is -- what is that?

7 A I handle the prepping of documentation
8 for buyers and sellers. I schedule inspections
9 and appointments for buyers and sellers on behalf
10 of their agents. And I do the compliance of real
11 estate transactions under my specified agents.

12 Q Okay. So which -- currently, what real
13 estate agents do you do that for?

14 A I have Tara Spangler. All of these are
15 actually with Realty ONE Group.

16 Q Can you spell Tara's --

17 A T-A-R-A. Last name is S-P-A-N-G-L-E-R.

18 Q Okay.

19 A Crystal Miller, just how it sounds. And
20 Jamie Lacombe. Normal spelling on Jamie. Lacombe
21 is L-A-C-O-M-B-E.

22 Q Anybody else?

23 A That's it, the three of them.

24 Q And you said what brokerage was that at?

25 A All three of them work for Realty ONE

1 Group. Two different offices, though, but still
2 the same brokerage.

3 Q Okay. How long have you done that?

4 A About five years.

5 Q Okay. Do you have a real estate license
6 or anything of that nature?

7 A No, I do not.

8 Q Have you previously done that work for
9 other real estate agents?

10 A Yes.

11 Q Okay. Who --

12 A Lenny --

13 Q -- and when?

14 A Lenny Zbinden, L-E-N-N-Y, Z-B-I-N-D-E-N.
15 I worked with him from 2016 to 2019. Cindy Choi,
16 C-I-N-D-Y, C-H-O-Y -- or O-I. I'm sorry.
17 C-H-O-I. I'm guesstimating on the year. I think
18 maybe 2016 to 2017. Could have been 2017 to 2018.

19 Q Okay.

20 A And Heather Jemison. Last name is
21 J-E-M-I-S-O-N. And that's it.

22 Q And what years did you work for Heather?

23 A Heather was 2015 to 2017.

24 Q And how do you get compensated by the --
25 the Realtors?

1 A I'm paid per contract.

2 Q Okay. And it sounds like a flat fee?

3 A Yes.

4 Q All right. And they 1099 you, I'm
5 assuming?

6 A Yes.

7 Q All right. Any others that you've
8 worked for in the past?

9 A No.

10 Q All right. How long have you worked for
11 Dr. Swanson?

12 A Since March of 2017.

13 Q Until present?

14 A Correct.

15 Q And what was your title again? I'm
16 sorry.

17 A Personal assistant.

18 Q All right. What does a personal
19 assistant do for Dr. Swanson?

20 A Anything the doctor asks, pretty much.

21 Q Okay.

22 A You know, I take care of -- he does not
23 live here, as you're aware. Well, he lives here
24 part time. So I manage his house that is here
25 that he lives in, makes sure the property is in



Rakeman Plumbing

4075 Losee Rd.

North Las Vegas NV 89030

Phone: (702) 642-8553

Fax: (702) 399-1410

servicecall@rakeman.com

www.Rakeman.com

Work Order

Service Information	
SWANSON RESIDENCE 42 Meadowhawk Ln	
Las Vegas NV 89135-5201	
Contact:	
Phone: (702) 249-9219	Fax:
Alt Contact:	Alt Phone
E-Mail:	

Job Name	☐ Call Ahead	☐ Confirmed
SWANSON RESIDENCE - 20180423		

Job Type
Commercial - REPAIR

Item
MISCELLANEOUS - MISCELLANEOUS

Billing Information	
UPONOR	
5925 148Th St W	
Apple Valley MN 55124-8197	

Marketing Campaign			
Sales Rep	Terms	Type	Class
	Net 30		
Route	Scheduled	Start	End
#02 Rocky	1/5/2018	08:00 AM	08:30 AM

Account Balance: \$0.00

Quantity	Additional Item(s)	Rate	Amount
----------	--------------------	------	--------

Scheduled Job Subtotal:	
Additional Items:	
Additional Tax:	
Total Due:	

GATE CODE	CROSS STREET	YEAR BUILT	BILLING/COLLECT	DISCOUNT	ADD NOTE
	0	0		0	

POINT OF CONTACT	PHONE #	NTE	PO#

Job Notes and Instructions

AlisonB - Alison Brooks - 1/12/2018 11:13:41 AM -

LEAK

CALLLED OUT FOR LEAK IN MASTER BATH CLOSET. WHEN TECH ARRIVED TO THE HOUSE CARPET, DRYWALL AND BUILT IN CUSTOM CABINETS HAD WATER DAMAGE. ON OPPOSITE WALL IN CLOSET TECH FOUND 3/4 UPONOR PIPE LEAKING FROM SPLIT RIGHT PAST COLLAR/RING UNDER TANKLESS WATER HEATERS. THE WATER HEATERS ARE LOCATED BEHIND BUILT-IN CABINETS FOR MASTER CLOSET AND HAD TO BE REMOVED TO MAKE REPAIRS DUE TO INCLOSED/SMALL AREA. AFTER WATER LINE WAS REPAIRED ALL WATER DAMAGED DRYWALL, CABINET AND CARPET WAS REMOVED AND WATER WAS EXTRACTED AND MACHINES WERE PLACED TO DRY AREA OUT. ALL DRYOUT EQUIPMENT WAS IN PLACE FOR 6 DAYS TO DRY AREA OUT. INSIDE OF CONTAINMENT (MASTER BATH AND MASTER CLOSET) AFTER AREA WAS DRY, ALL DRYWALL THAT WAS DAMAGED BY WATER WAS REPAIRED AND THE ORIGINAL COMPANY THAT BUILT MASER CLOSTET CABINETS HAD TO REPAIR/REBUILD CABINETS TO MATCH EXISTING ALL DRYWALL WAS DONE TO MATCH GRADE 5 SMOOTH FINISG WALL TEXTURE AND COORINATE WITH CARPET AND PAINT TO BE

JA002988
Docket 81252 Document 2021073107



\$500,000.00 LIMIT

237000

4075 LOSEE ROAD
NORTH LAS VEGAS, NV 89030
"A FLUSH BEATS A FULL HOUSE"
(702) 642-8553

LIC. #21952-1

NAME	Viktor			DATE	1/15/18
STREET	42 Meadowbrook			P.O. #	
CITY	STATE	ZIP	PHONE		
LV	NV				
MAKE	MODEL	SERIAL NUMBER	VISA/MC AUTHORIZATION #		

DESCRIPTION OF WORK

SERVICE

- CALLED OUT FOR LEAK IN MASTER BATH CLOSET.

- WHEN TECH ARRIVED TO THE HOUSE CARPET, PEYEWALL AND BUILT-IN CUSTOM CABINETS HAD WATER DAMAGE, ON OPPOSITE WALL IN CLOSET TECH FOUND 3/4 UPONOR PIPE LEAKING FROM SPLIT RIGHT SIDE COLLOID/RING UNDER TANKLESS WATER HEATER. THE WATER HEATERS ARE LOCATED BEHIND THE BUILT-IN CABINETS. FOR MASTER CLOSET AND HAD TO BE REMOVED TO MAKE REPAIRS DUE TO NUCLEATED SMALL AREA.

E-MAILED



TOTAL PARTS

SUBCONTRACTOR

TOTAL OTHER CHARGES

TOTAL OTHER CHARGES

TECHNICIAN SIGNATURE

Rakay

LABORERS CHARGES

HRS @

/HR

TECHNICIAN CHARGES

HRS @

/HR

TERMS: DUE UPON COMPLETION

HAVE THE AUTHORITY TO ORDER THE ABOVE WORK AND DO SO ORDER AS OUTLINED ABOVE. IT IS AGREED THAT THE SELLER WILL RETAIN TITLE TO ANY EQUIPMENT OR MATERIAL FURNISHED UNTIL FINAL & COMPLETE PAYMENT IS MADE AND IF SETTLEMENT IS NOT MADE AS AGREED, THE SELLER SHALL HAVE THE RIGHT TO REMOVE SAME AND THE SELLER WILL BE HELD HARMLESS FOR ANY DAMAGES RESULTING FROM THE REMOVAL THEREOF.

1-1/2% PER MONTH (18% PER ANNUM) FINANCE CHARGE WILL BE ASSESSED ON ALL BALANCES OVER 30 DAYS.

PARTS WARRANTY

All parts as recorded are warranted as per manufacturer specifications.

LABOR GUARANTY

The labor charge as recorded here relative to the equipment serviced as noted, is guaranteed to a period of 30 days. We do not, of course, guaranty other parts than those we install. If repairs later become necessary due to other defective parts, they will be charged separately.

TOTAL AMOUNT DUE

14,459.00

ABOVE ORDERED WORK HAS BEEN COMPLETED AND I ACKNOWLEDGE RECEIPT OF MY COPY.

X

AUTHORIZED SIGNATURE

X

PLT000058

DATE



4075 LOSEE ROAD
NORTH LAS VEGAS, NV 89030
"A FLUSH BEATS A FULL HOUSE"
(702) 642-8553

\$500,000.00 LIMIT

236828

WARRANTY

LIC. #21952-A

NAME UPONOR / SWANSON RES.
STREET 42 MEADOWHAWK CN
CITY STATE ZIP 89135
DATE 12/06/17
P.O. #
PHONE

MAKE	MODEL	SERIAL NUMBER	VISA/MC AUTHORIZATION #
RIINA1	RL94	FE. CA - 059387	WEST SIDE FE. CA - 060435
"	"	FE. CA - 059387	EAST SIDE
"	"	FE. CA - 059388	

DESCRIPTION OF WORK
TURNON W/H Check/Tester NO HOT WATER

① CHECKED DAIKYN CHAINED R94'S ON EAST SIDE OF HOUSE UNIT 5TH 059388 GOOD + OPERATING UNIT 5TH 059387 CODE 11 Ignition FAILURE CLEANED FRAMES SENSORS + CLEANED CLEANED FILTER SCREEN ON BOTH UNITS BOTH WORKING NORMALLY

② CHECKED DAIKYN CHAINED R94'S ON WEST SIDE OF HOUSE - CLEANED FILTERS ON BOTH UNITS, TURNED ON BOTH UNITS WORKING FINE
LABORERS CHARGE HOT WATER ALL GOOD
TECHNICIAN CHARGES HRS @ 125⁰⁰ THR 125⁰⁰

TOTAL OTHER CHARGES

TECHNICIAN SIGNATURE MIC #13 / Hunter
PARTS WARRANTY All parts as recorded are warranted as per manufacturer specifications.
LABOR GUARANTEE The labor charge as recorded here relative to the equipment serviced as noted, is guaranteed to a period of 30 days. We do not, of course, guaranty other parts than those we install. If repairs later become necessary due to other defective parts, they will be charged separately.

ABOVE ORDERED WORK HAS BEEN COMPLETED AND I ACKNOWLEDGE RECEIPT OF MY COPY.

X

PLT0000059
DATE

QTY

UNIT PRICE

DESCRIPTION

PART #

PRICE

TOTAL PARTS

SUBCONTRACTOR

TOTAL OTHER CHARGES

TERMS: DUE UPON COMPLETION

I HAVE THE AUTHORITY TO ORDER THE ABOVE WORK AND DO SO ORDER AS OUTLINED ABOVE. IT IS AGREED THAT THE SELLER WILL RETAIN TITLE TO ANY EQUIPMENT OR MATERIAL FURNISHED UNTIL FINANCE COMPLETE PAYMENT IS MADE AND IF SETTLEMENT IS NOT MADE AS AGREED, THE SELLER SHALL HAVE THE RIGHT TO REMOVE SAME AND THE SELLER WILL BE HELD HARMLESS FOR ANY DAMAGES RESULTING FROM THE REMOVAL THEREOF.

1-1/2% PER MONTH (18% PER ANNUM) FINANCE CHARGE WILL BE ASSESSED ON ALL BALANCES OVER 30 DAYS.

X

AUTHORIZED SIGNATURE

JVV

(702) 249-9219

Site Notes

Billed to uponor

2 car

Garage 3364

Alarm off 1077

Labor Used		Price	Amount
Hours	Description		
_____	_____	_____	_____
_____	_____	_____	_____
		Total Labor	_____
		Tax	_____
		Other:	_____
		TOTAL:	_____

ite Completed: ____/____/____

hereby acknowledge the satisfactory completion of the above work.

Isomer Signature: _____

TOTAL: _____

2348

JA002991
PLT000060



\$500,000.00 LIMIT
236151

4075 LOSEE ROAD
NORTH LAS VEGAS, NV 89030
"A FLUSH BEATS A FULL HOUSE"
(702) 642-8553

LIC. #21952-A

(Billing)

QTY	PART #	DESCRIPTION	UNIT PRICE	PRICE
1	BT0004	3/8" comp Hose bib.		\$210.00
4		Pressure Tested backyard hose bib and Vacuum breaker Leaking. Had to Replace Hose Bib. Pressure Tested held at 70 PSI.		
5		Had to shut-off Pool Pump. To stop water at PUB for all Tests.		
TOTAL PARTS				
SUBCONTRACTOR				
TOTAL OTHER CHARGES				

POSTED

TOTAL OTHER CHARGES

TERMS: DUE UPON COMPLETION

I HAVE THE AUTHORITY TO ORDER THE ABOVE WORK AND DO SO ORDER AS OUTLINED ABOVE. IT IS AGREED THAT THE SELLER WILL RETAIN TITLE TO ANY EQUIPMENT OR MATERIAL FURNISHED UNTIL FINAL & COMPLETE PAYMENT IS MADE AND IF SETTLEMENT IS NOT MADE AS AGREED, THE SELLER SHALL HAVE THE RIGHT TO REMOVE SAME AND THE SELLER WILL BE HELD HARMLESS FOR ANY DAMAGES RESULTING FROM THE REMOVAL THEREOF.

1-1/2% PER MONTH (18% PER ANNUM) FINANCE CHARGE WILL BE ASSESSED ON ALL BALANCES OVER 30 DAYS.

x Nicky Whitfield

AUTHORIZED SIGNATURE

NAME	Todd Swanson		
STREET	42 Meadowhawk		
CITY	Las Vegas	STATE	NV
ZIP	89135	SERIAL NUMBER	
MAKE		MODEL	
PHONE			
VISA/MC AUTHORIZATION #			

DESCRIPTION OF WORK	SERVICE
1. Pressure test and all piping checked in the entire home.	
2. Did a visual Plumbing inspection on all Fixtures. No concerns on any Plumbing	
3. Pressure tested front nose bib and shut-off meter. Held at 70 PSI for 10 minutes. Also shut off irrigation.	

LABORERS CHARGES	HRS @	/HR
TECHNICIAN CHARGES	HRS @	/HR
TOTAL OTHER CHARGES		\$125.00

TECHNICIAN SIGNATURE	Randy Walker
----------------------	--------------

PARTS WARRANTY	All parts as recorded are warranted as per manufacturer specifications.
----------------	---

LABOR GUARANTY	The labor charge as recorded here relative to the equipment serviced as noted, is guaranteed to a period of 30 days. We do not, of course, guaranty other parts than those we install. If repairs later become necessary due to other defective parts, they will be charged separately.
----------------	---

TOTAL AMOUNT DUE	\$125.00
------------------	----------

DATE	11/17/17
------	----------

* Before *

SW

V

Work completed this visit
11/17 - @ 11:48 OK w/ Nikki-AC

110 101

7.31.15^{PL}

LIC. #21952-A



4075 LOSEE ROAD
NORTH LAS VEGAS, NV 89030
"A FLUSH BEATS A FULL HOUSE"
(702) 642-8553

NAME UPONOR		DATE 5/23/17
STREET 4550		P.O. #
CITY	STATE	ZIP
MAKE	MODEL	SERIAL NUMBER
DESCRIPTION OF WORK		VISA/MC AUTHORIZATION #
SERVICE		
- CALLED OUT FOR LEAK IN MASTER BEDROOM CLOSET AT 42 MENDONHAWK FOUND 3/4 UPONOR TEE LEAKING ON THE HOT SIDE OF THE PLUMBING SYSTEM. CUT OUT LEAKING FITTING AND REPLACE WITH NEW FITTING AND RESTORE WATER NO. 42 E-MAILED		
LEAKS.		
LABORERS CHARGES HRS @		
TECHNICIAN CHARGES HRS @		
TOTAL OTHER CHARGES		
TECHNICIAN SIGNATURE Rachy		PARTS WARRANTY All parts as recorded are warranted as per manufacturer specifications.
LABOR GUARANTY The labor charge as recorded here relative to the equipment serviced as noted, is guaranteed to a period of 30 days. We do not, of course, guaranty other parts than those we install. If repairs later become necessary due to other defective parts, they will be charged separately.		TAX
TOTAL AMOUNT DUE		2,496.00
ABOVE ORDERED WORK HAS BEEN COMPLETED AND I ACKNOWLEDGE RECEIPT OF MY COPY.		
X		

Rakeman Plumbing, Inc.
4075 Losee Road
N. Las Vegas, NV 89030
(702) 642-8553

13382 Ticket #TK20807 GiveTo: #2 RAFAE
: (none) 05/23/17 08:38
ed: 04/05/17
sed: 04/05/17 by Alison Brooks
ode: ..

Cust: UPONOR
Site: SWANSON RESIDENCE
42 MEADOWHAWK LN
Las Vegas, NV 89135

(702) 249-9219

-----Site Notes-----

Request:
LEAK IN MASTER BEDROOM

Work completed this visit

Qty	Material Used	Price	Amount
	Description		
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
Total Material			_____

Hours	Labor Used	Price	Amount
	Description		
_____	_____	_____	_____
_____	_____	_____	_____
Total Labor			_____

Job Completed: ____/____/____

I hereby acknowledge the satisfactory completion of the above work.

Customer Signature: _____

Other: _____

TOTAL: _____

December 7, 2017

Ms. Rhonda Hawley
Rakeman Plumbing
4075 Losee Road
North Las Vegas, NV 89030

Subject: PRV Report

Visible and Airborne Fungal Post Remediation Verification (PRV)
Water and Fungal Damaged Residence
Master Bedroom Closet and Master Bathroom
42 Meadow Hawk Lane
Las Vegas, NV 89135

Dear Ms. Hawley:

In accordance with your request and authorization for services, Infinity Environmental Services, LLC (Infinity) of Las Vegas, Nevada provided the subject services on December 5, 2017. The Visible and Airborne Fungal Post Remediation Verification (PRV) was requested to assess visual and airborne fungal levels in the above mentioned water and fungal damaged areas of the subject residence after CPI Restoration performed the fungal remediation activities.

Scope of Services

The Visible and Airborne Fungal Post Abatement Verification (PRV) testing included the professional services of Mr. Steven Havens, the owner of Infinity, who has extensive experience and training in fungal growth assessment and control consulting services. The following services were provided:

1. The fungal remediation in the above mentioned areas of the subject residence was visually assessed using nondestructive methods.
2. Air sampling was conducted in two areas of the containment system (master bedroom closet and master bathroom) to assess for airborne fungal spore levels after the remediation activities were performed. In addition, one outdoor airborne fungal spore sample was collected for the purpose of comparison (back of the residence).



Methods

Forensic Analytical Laboratories (Forensic) of Las Vegas, Nevada analyzed the airborne fungal particulate samples. Forensic participates in the American Industrial Hygiene Association's (AIHA) Environmental Microbiology Proficiency Analytical Testing (EMPAT) program and is accredited under the AIHA Environmental Microbiology Laboratory Accreditation Program (EMLAP).

Airborne fungal particulate samples were collected per ASTM method D7788-14 *Standard Practice for Collection of Total Airborne Fungal Structures via Inertial Impaction Methodology*. Airborne samples were collected using Air-O-Cell cassettes with fifteen liters per minute of air drawn through them for five minutes (75 liters total). The flow rate of the preset constant flow pump (Zefon Bio-Pump Plus) was checked before and after sampling with a secondary calibrator (ZBP-302 Air-O-Cell Cassette) that is calibrated using a primary calibrator (TSI 4046 air flow calibrator) by the manufacturer. The samples were collected at breathing zone heights (i.e., approximately four to five feet above the floor). The Air-O-Cell cassettes were placed in a 6-mil zip lock poly bag and delivered using chain-of-custody procedures to Forensic for microscopic analysis.

Results and Discussion

The visual assessment of the above mentioned areas of the subject residence indicated no readily identifiable surface fungal contamination. The assessment indicated that they had been adequately cleaned to prevent dispersal of airborne spores, if present.

The results of the Air-O-Cell cassette samples (enclosed reports titled Non-Viable Air Fungal Analysis) collected in the above mentioned areas indicated zero spores detected.

Conclusion

Based upon the previously described results, the following conclusion is made:

The results of the airborne fungal particulate sampling in the subject areas of the residence indicated the areas are as safe as what is typical of the outdoors fungal spores identified and at the specific time of sampling.

Recommendation

Based upon the previously described results and conclusions, the following recommendation is made:

Any future water intrusion should be fixed as soon as possible and dried within 48 hours to prevent fungal growth.

Limitations

This report is for the use of Rakeman Plumbing as it applies to the above mentioned areas of the subject residence. Infinity is not responsible for any claims or damages associated with interpretation of available information. Infinity is not responsible for any contamination or its proliferation. We applied our conclusions and recommendations using appropriate professional standards, but cannot guarantee particular results. This assessment should not be regarded as a guarantee that no other hazardous conditions exist in the subject residence. In the event that changes in the nature of the property occur, or additional relevant information about the property is brought to our attention, the conclusions and recommendations contained in this assessment may not be valid unless these changes and additional relevant information are reviewed and our conclusions and recommendations are modified in writing.

Thank you for the opportunity to be of service. Should you have any questions regarding the information provided in this report, please do not hesitate to call.

Respectfully submitted,

Infinity Environmental Services, LLC

Andrew Havens

Steven Havens
Owner

FOR

Encl: Infinity Environmental Services, Chain of Custody Form
Forensic Analytical Laboratories, Laboratory Results



Forensic Analytical Laboratories, Inc.

Microbial Analysis Request Form (COC)

Company: Infinity Environmental Services, LLC		Client No.: L1234		Date: 12-5-17			
Street: 9594 Newton Grove Court		City: Las Vegas		State: Nevada			
Contact: Steven Havens		Phone: 702-449-1479		Fax: N/A			
Site: 42 Meadow Hawk Lane		Contact: Steven Havens		Job No. 17-0572-02			
Comments:							
Turn Around Time: Next Day		DUE DATE: 12-6-2017		DUE TIME:			
Report Via: E-Mail							
Sample ID	Date / Time	Sample Location / Substrate	FOR AIR SAMPLES ONLY		Analysis Requested	Sample Type	Culture Media Viable Samples
			Time On/Off	Avg. LPM	Total Time	Air Volume	
MHL - IA - 01	12-5-17 0955	Master Bedroom Closet	0955 1000	15	5 Min	75 L	MOLD Air-o-cell N/A
MHL - IA - 02	12-5-17 1001	Master Bathroom	1001 1006	15	5 Min	75 L	Mold Air-o-cell N/A
MHL - OA - 03	12-5-17 1015	Outdoors In Back of the Residence	1015 1020	15	5 Min	75 L	Mold Air-o-cell N/A
Sampled By: Steven Havens		Date 12-5-17				Sampling Time 0955 Thru 1020	
Shipped Via: Drop Off							
Relinquished By: Steven Havens		Relinquished By:		Date / Time:		Condition Acceptable? ☒ Yes ☐ No	
Date / Time: 12-5-17		Date / Time:		Condition Acceptable? ☐ Yes ☒ No		Received By:	
Condition Acceptable? ☐ Yes ☒ No		Condition Acceptable? ☐ Yes ☒ No		Date / Time:		Condition Acceptable? ☐ Yes ☒ No	
Received By: J. Williams		Received By:		Date / Time:		Condition Acceptable? ☐ Yes ☒ No	
Date / Time: 12/5/17 10:52am		Date / Time:		Condition Acceptable? ☒ Yes ☐ No		Condition Acceptable? ☐ Yes ☒ No	

Los Angeles Office: 2959 Pacific Commerce Drive, Rancho Dominguez, California 90221 / Telephone: (310)763-2374 * (888)813-9417 / Fax: (310)763-4450
Las Vegas Office: 6765 S. Eastern Avenue, Suite 3, Las Vegas, Nevada 89119 / Telephone: (702)784-0040 / Fax: (702)784-0030

SWANSON000207

Non-Viable Air Fungal Analysis

Infinity Environmental Services
Steve Havens
9594 Newton Grove Court

Las Vegas, NV 89148

Sample Type: Alr-O-Cell
Analysis: Direct Microscopy; FALI Method IAQ 101; Modified ASTM D7391
Job ID / Site: 17-0572-02, 42 Meadow Hawk Lane

Client ID: L1234
Report Number: F123905
FALI Job ID: L1234
Date Received: 12/05/17
Date Analyzed: 12/06/17
Date Printed: 12/06/17
First Reported: 12/06/17

Total Samples Submitted: 3

Total Samples Analyzed: 3

[illegible]



Non-Viable Air Fungal Analysis

Infinity Environmental Services
Steve Havens
9594 Newton Grove Court

Las Vegas, NV 89148

Sample Type: Air-O-Cell
Analysis: Direct Microscopy; FALI Method IAQ 101; Modified ASTM D7391
Job ID / Site: 17-0572-02, 42 Meadow Hawk Lane

Client ID: L1234
Report Number: F123905
FALI Job ID: L1234
Date Received: 12/05/17
Date Analyzed: 12/06/17
Date Printed: 12/06/17
First Reported: 12/06/17

Total Samples Submitted: 3
Total Samples Analyzed: 3

Explanations:

Spores ⁺	Actual number of spores counted in portion of sample examined
%	Percent of Total
LOD	Limit of Detection (Units are the same as result units)
S/m ³	Spores per cubic meter of air sampled
Spores/S	Number of spores per sample
*	Not included in Totals Calculations
ND	None Detected
Particulate Density	Amount of background particulate present
-	Not Applicable

Background Particulate Density Estimated As Follows:

Trace	Very little present
Minor	Present but not in large quantity
Major	Present in most of sample
Abundant	Covering almost entire sample
Overloaded	Covering entire sample

Guidelines For Interpretation:

No accepted quantitative regulatory standards currently exist by which to assess the health risks related to mold exposure. Molds have been associated with a variety of health effects and sensitivity varies from person to person.

Several organizations, including: the American Conference of Governmental Industrial Hygienists (ACGIH); the American Industrial Hygiene Association (AIHA); the Indoor Air Quality Association (IAQA); the United States Environmental Protection Agency (USEPA); the Centers for Disease Control (CDC), as well as the California Department of Health Services (CADHS), have all published guidelines for assessment and interpretation of mold resulting from water intrusion in buildings.

FALI reports solely the organisms observed on the sample(s). The limit of detection is based on observing one spore/colony per area analyzed. This is not an inclusive list of the fungal types identified in the microbiology laboratory.

Sharon L. Harney, Ph.D.

Sharon Harney, Microbiology Laboratory Supervisor, Las Vegas Laboratory

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Page 2 of 2

6765 S. Eastern Avenue, Suite 3, Las Vegas, NV 89119 / Telephone: (702) 387-0040 / Fax: (702) 784-0030

SWANSON000209

JA003001

Todd Swanson

From: Todd Swanson
Sent: Friday, December 15, 2017 9:12 AM
To: Ivan Sher
Cc: Austin Sherwood
Subject: 42 Meadowhawk

Ivan,

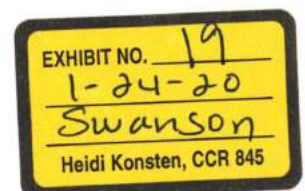
Can you call me today to discuss a new issue at 42 Meadowhawk? It appears that because of the water leaks at the residence, the water line manufacturer is going to replace all of the water lines in the entire house. This is good and bad news. I'm glad they are going to (hopefully) prevent future water leaks in the house, but I talked to Rakeman Plumbing who will be doing the work, and he said that it will be a major job—taking 1 month with multiple (>200) drywall holes. Apparently, the buyer had a meltdown when he told her—and began talking about a lawsuit for not disclosing the problem to her prior to closing.

I think we need to discuss. I don't want another lawsuit, and I'm sure you don't either. Call me at your convenience.

Thanks.

Todd V. Swanson, M.D.
2360 E. Evans Ave., Apt. #837
Denver, CO 80210

(702) 249-9219
tvs@tswansonmd.com



Nicky Whitfield

From: Todd Swanson
Sent: Thursday, November 16, 2017 1:35 PM
To: Nicky Whitfield
Subject: plumbing

Can you ask Rakeman if there is a test they can do with the plumbing to assure there are no other weak spots in the water lines that may result in another leak? Maybe a pressure test or something like that? We will need that to close.

Thanks.

Todd V. Swanson, M.D.
2360 E. Evans Ave., Apt. #837
Denver, CO 80210

(702) 249-9219
tvs@tswansonmd.com



Nicky Whitfield

From: Rhonda Hawley <rhawley@cpirestorationlv.com>
Sent: Tuesday, November 21, 2017 3:09 PM
To: Nicky Whitfield
Subject: RE: 42 Meadowhawk

Thank you.

The plumbing inspection was done for Mr. Swanson and there is no report it's just the visual inspection and water pressure test. If you want to give her a copy of your invoice showing it was done that is up to Mr. Swanson. We do not have anything to give them and we will not provide a copy of the invoice unless we get something in writing letting us know we can send a copy of the invoice to them.

Thank you

Rhonda Hawley

From: Nicky Whitfield [mailto:assistant@tswansonmd.com]
Sent: Tuesday, November 21, 2017 2:22 PM
To: Rhonda Hawley <rhawley@cpirestorationlv.com>
Subject: 42 Meadowhawk

Hi Rhonda,

Please see the Buyers information below. Thanks again for all your hard work! I greatly appreciate it.

Nicole Folino
702-812-3834
Nfolino@sandlerpartners.com

Best regards,

Nicky Whitfield



From: Todd Swanson
Sent: Sunday, August 9, 2015 12:18 PM
To: Henry Regnault
Cc: Chris Myers
Subject: 42 Meadowhawk
Attachments: AV Water Damage.pdf

Henry,

Well, everything is dry at 42 Meadowhawk, and some of the repairs are being done. The drywallers came in last week to start fixing the water damage in the garage. The items I need addressed (that I know of) due to the water leaks are:

1. Finish drywalling and painting the garage, and install new access panel to the attic area
2. Replace the electronics that were ruined in my garage (previously sent to you, but I am attaching again)
3. Install new carpet in my master closet
4. Fix the built-in cabinets in my master closet (some of the base pieces had to be ripped out to access the water)
5. Touch-up some faux paint in the master bedroom that got scratched by something—possibly a dehumidifier (they are fairly minor—2 or 3 spots)
6. Paint the stucco that was repaired on the side of the house

I presume Rakeman plumbing will cover these repairs. I can coordinate the faux painter to come out and touch up the master bedroom. I can coordinate for the electronics to be replaced/repared. And I can call Jay at Absolute because he needs to fix a couple other items here. I just need to know that Rakeman will cover the charges. Will you coordinate the other items? Or do you want to coordinate them all?

I also need to door company to come and address a few issues with my doors:

1. The theater slider still does not lock the way it should. When anyone but myself goes through that door and locks it, they usually do not actually get it latched. This has happened numerous times, leaving the door unlocked until I discover it.
2. The sliding door in my kitchen nook is so sticky that some people can hardly open or close it. I'm not sure what the problem is, but someone needs to take a look at it.
3. I have 2 double screen doors that need a stop in the center (master bedroom and main office). The way they are now, both screens will slide way off to the right or the left of the doorway, leaving an open gap on either side of the screen doors. I think it's a pretty simple fix
4. The weather stripping on my main entrance door came loose and needs to be replaced

Let me know what you want me to coordinate and what you will take care of. I'd like to get settled back in and get all these items repaired.

Thanks.

Todd

Todd V. Swanson, M.D.
Desert Orthopaedic Center
2800 E. Desert Inn Rd., #100
Las Vegas, NV 89121

(702) 731-1616
Fax: (702) 731-0741



AFFIDAVIT OF TODD V. SWANSON, M.D.

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

TODD V. SWANSON, M.D., being first sworn, deposes and says under penalty of perjury as follows:

I have personal knowledge of the facts contained herein, and am competent to testify thereto.

Lyons Development, LLC was the owner and seller of property located at 42 Meadowhawk Lane, Las Vegas, Nevada (the "Property"). The sole member of Lyons Development, LLC is Tiger's Tail Management Trust, an irrevocable Nevada spendthrift trust. Shannon Evans, Esq., and I are co-trustees of Tiger's Tail Management Trust.

I moved into the Property in April 2015.

On about August 2, 2015, I experienced 2 leaks in my master closet and bedroom: (1) The recirculating pump leaked into the closet; and (2) A fitting underneath the master sink came apart causing water in the master bathroom.

I also experienced another recirculating pump leak in the garage (on the other side of the house) which was discovered the next morning.

All leaks were repaired by Rakeman Plumbing.

During the repair, Rakeman Plumbing replaced both recirculating pumps with, in their terms "better ones."

Rakeman Plumbing also reattached the water pipe under the master sink and went through all the visible plumbing fittings throughout the house to be sure they were attached securely.

Rakeman Plumbing also sent out a water remediation company to dry out the master closet, bathroom, bedroom, and garage.

Various trades were also sent out to repair everything, including the carpet and cabinet



SWANSON000195

JA003006

bases which were damaged by the water.

To my knowledge, the water leak problem was completely repaired by Rakeman Plumbing.

In January 2017, I discovered a small pinhole leak in one of the plastic water pipes in the wall. Rakeman Plumbing fixed the leak.

On October 19, 2017, Lyons Development, LLC, the Seller, contracted with Joseph and Nicole Folino, the Buyers, to purchase the Property. The closing was set for November 17, 2017.

Because my new residence (11267 La Madre) would not be ready for my occupancy by the closing date, I asked the Folinos if I could stay at 42 Meadowhawk after the November 17, 2017 closing, up to and including November 28, 2017. The reason for my request was discussed with the Folinos, and they granted my request to remain at the Property until November 28th.

The Folinos charged me \$2,000 for the lease-back, by reducing the price they were going to pay for some personal property items from \$5,000 to \$3,000.

On or about October 24, 2017, I prepared Seller's Real Property Disclosures.

When I prepared the Disclosures, I knew there had been two previous water leaks. However, the leaks and all associated damages were repaired by a licensed plumbing company, Rakeman Plumbing.

At that time, to my knowledge, the work done by Rakeman Plumbing fixed all the problems with the plumbing system.

I was unaware of any defects in the plumbing that could materially affected the value of the house.

On November 7, 2017, my assistant, Nicky Whitfield, discovered a water leak in the master closet. On November 8, 2017, my agent was informed that a leak had occurred.

Between November 7, 2017 and the November 17, 2017, it is my understanding that the Folinos (primarily Nicole Folino) came to the Property on several occasions to plan for their move-in. It is also my understanding that the Folinos had full access to the Property, including

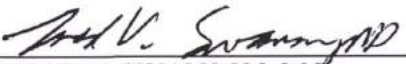
the master bedroom and master closet where the November 7, 2017 water problem was visible.

On November 15, 2017, I informed the Folinos of the leak via amended disclosures (Addendum No. 4-A to the Residential Purchase Agreement). I made this disclosure before the November 17, 2017 closing date.

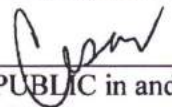
About one month after the closing, on or around December 12, 2017, Aaron Hawley of Rakeman Plumbing informed me that the Folinos were claiming the entire house needed to be replumbed. That was the first time I was made aware that the plumbing might be defective. At that time, I also learned the Folinos were contemplating suing me.

I was informed that the manufacturer was going to replace all that water lines in the entire house, at no expense to the Folinos. It is my understanding that the pipe replacement has been completed.

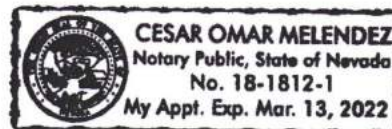
FURTHER AFFIANT SAITH NAUGHT


TODD V. SWANSON, M.D.

SUBSCRIBED AND SWORN to before me
this 13 day of August, 2018.



NOTARY PUBLIC in and for said
County and State



SWANSON000197

JA003008

RECEIPT

Frank Cruz
(702) 498-6177

DATE: MAY 24, 2017

PAYMENT METHOD	CHECK NO.	JOB
Cash		

QTY	ITEM #	DESCRIPTION	UNIT PRICE	NUMBER	LINE TOTAL
1		Repair leaks in media room mini-split air conditioner system. Address: 42 Meadowhawk Lane	\$480.00	1	\$480.00
			TOTAL DISCOUNT		
				TOTAL	\$480.00

Frank Cruz

Signed

5-24-17

Date

PAID IN FULL



SWANSON000237

JA003009

From: Todd Swanson
Sent: Wednesday, August 5, 2015 6:44 PM
To: Henry Regnault (HRegnault@blueheron.com)
Cc: cmyers@blueheron.com
Subject: FW: Water Damage Garage
Attachments: AV Water Damage.pdf

Henry,

I received this invoice from EH Design for replacing the damaged electrical equipment from the water leak in the garage. I presume Rakeman will take care of this. Can they pay directly, or do I need to pay and be reimbursed? I prefer the former.

Let me know.

Thanks.

Todd V. Swanson, MD
Desert Orthopaedic Center
2800 E. Desert Inn Rd., #100
Las Vegas, NV 89121

(702) 731-1616
Fax: (702) 731-0741

-----Original Message-----

From: Ed Hogan [mailto:edhogan@me.com]
Sent: Wednesday, August 5, 2015 12:25 PM
To: Todd Swanson
Subject: Water Damage Garage

Hello Todd,
Attached is your invoice for replacing the equipment that was water damaged in the garage.
Thank you
Ed Hogan
EH Designs



EH Designs

5634 DEER CREEK FALLS CT
LAS VEGAS, NV 89118
(702)321-6213
edhogan@me.com

INVOICE

BILL TO
Todd Swanson
42 Meadow Hawk
Las Vegas, NV 89135

INVOICE # 1090
DATE 08/05/2015
TERMS Due on receipt

ACTIVITY	QTY	RATE	AMOUNT
Labor	1	95.00	95.00
Determine what was damaged by water in the garage.			
Parts	1	999.00	999.00T
Control 4 7 Touch Screen			
Replace in Garage / Water Dammage			
Parts	1	3,350.00	3,350.00T
Pakedge S24Hav 24 Port POE Switch			
The Touchscreen in the garage that was damaged by water was powered using this POE switch that is located in the Hall Closet. It shorted out the network port that the touchscreen was connected to.			
Parts	2	245.00	490.00T
Tru-audio GP-6 2 way in-ceiling speaker, 6.5"			
Labor	6	125.00	750.00
Install and Progam 7 Touchscreen, 24 port POE Switch and Speakers			

NV Contractors Lic# 0077864
MONETARY BID LIMIT: \$200,000.00
RESIDENTIAL CONSTRUCTION RECOVERY FUND: (Payment may be available from the Residential Recovery Fund, if you are damaged financially by a project performed on your residence pursuant to a contract, including construction, remodeling, repair or other improvements, and the damage resulted from certain specified violations of Nevada law by a contractor licensed in this state. To obtain information relating to the Residential Recovery Fund and filing a claim for recovery from the Fund, you may contact the Nevada State Contractors Board at the following locations:
NEVADA STATE CONTRACTORS BOARD: 2310 Corporate Circle, Suite 200(Henderson, Nevada 89074((702) 486-1100

SUBTOTAL	5,684.00
TAX (8.1%)	391.96
TOTAL	6,075.96
BALANCE DUE	\$6,075.96



SWANSON000219

JA003011

EH Designs

5634 DEER CREEK FALLS CT
LAS VEGAS, NV 89118
(702)321-6213
edhogan@me.com

INVOICE

BILL TO
Blue Heron Companies
6835 S. Eastern Ave.
Suite 110
Las Vegas, NV 89119
VPO # 003335

INVOICE # 1099
DATE 10/01/2015
TERMS Due on receipt

ACTIVITY	QTY	RATE	AMOUNT
Installation	6	125.00	750.00
Install and Program 7 Touchscreen, 24 port POE Switch and Speakers			
Labor	1	95.00	95.00
Determine what was damaged by water in the garage.			

NV Contractors Lic# 0077864

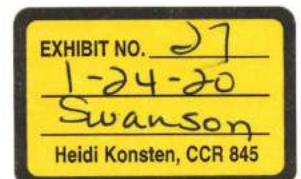
MONETARY BID LIMIT: \$200,000.00

RESIDENTIAL CONSTRUCTION RECOVERY FUND: (Payment may be available from the Residential Recovery Fund, if you are damaged financially by a project performed on your residence pursuant to a contract, including construction, remodeling, repair or other improvements, and the damage resulted from certain specified violations of Nevada law by a contractor licensed in this state. To obtain information relating to the Residential Recovery Fund and filing a claim for recovery from the Fund, you may contact the Nevada State Contractors Board at the following locations:

NEVADA STATE CONTRACTORS BOARD: 2310 Corporate Circle, Suite 200(Henderson, Nevada 89074)((702) 486-1100

BALANCE DUE

\$845.00



SWANSON000220

JA003012

1 good working order. I take care of some of his
2 financial aspects. Not all. I take care of and
3 check his mail. I pay his bills.

4 Q Okay.

5 A You know, if he's in town and says,
6 "Hey, can you take something to dry cleaning," it
7 goes to the dry cleaning. I assist in preparation
8 for anything he needs.

9 Q Okay. What -- so prior to -- and how
10 many hours a week do you do the work for
11 Dr. Swanson?

12 A That varies very often.

13 Q Okay. And I don't want to know how much
14 you get paid, but how do you get paid? Is it
15 hourly? Is it -- what is it?

16 A It's a salary.

17 Q Salary. All right.

18 And you're paid weekly? Biweekly?
19 Monthly?

20 A Twice a month.

21 Q Okay. Does Dr. Swanson have an office
22 that you work out of, or where do you work out of?

23 A He does have a home office, and I work
24 out of his home office and my own home office.

25 Q Okay. Any other current employers?

1 A No.

2 Q So Dr. Todd Swanson, though, he hired --
3 he employs you individually? Bad question.

4 He, as an individual, employs you as an
5 individual?

6 MR. GALLIHER: Objection. Calls for a
7 legal conclusion.

8 THE WITNESS: I don't quite understand
9 your question.

10 BY MR. GRAF:

11 Q Is it one of the entities that is the
12 defendant here today that cuts you your salary
13 check, like Shiraz Trust --

14 A Yes.

15 Q -- or -- okay. So which is it?

16 A It is ILJ, which is a member of Shiraz
17 Trust. But that is not always where I was paid
18 from. I -- prior, about six months ago, we
19 switched over to ILJ from PLLC, which is also a
20 member of Shiraz Trust.

21 We did that because he didn't -- no
22 longer needed to pay payroll fees. So myself and
23 his bookkeeper were on actual payroll with, I
24 think, QuickBooks or something. I don't know.
25 She handled all of that.

1 Q Okay.

2 A But -- so we had switched it from that.

3 Q And who is the bookkeeper?

4 A Her name is Jill Powers, F-O-W-E-R-S.

5 Q Is that B or F?

6 A F as in Frank.

7 Q Sorry. The wind and I'm deaf. Okay.

8 Was she the bookkeeper prior to you
9 getting employed there?

10 A We were actually hired in the same
11 month.

12 Q Okay.

13 A I don't know who started first, but it
14 was the same month.

15 Q It's not a competition. No, I'm
16 kidding.

17 A Are you serious? I thought it was.

18 Q All right. So a couple of other
19 background questions here.

20 Prior to Dr. Swanson, what did you do?

21 A As we just discussed, I was in real
22 estate.

23 Q Okay. So the real estate background
24 seems to go back to about 2016?

25 A 2015.

1 Q 2015.

2 So prior to 2015, what did you do?

3 A HOA community managers, as we already
4 discussed.

5 Q And who did you work for?

6 A Level Property Management.

7 Q Level, L-E-V-E-L?

8 A Yes.

9 Q What was your title there?

10 A HOA community manager.

11 Q How long did you work for them?

12 A About four years, I want to say.

13 Q Okay. And who was your boss there?

14 A Ann Calcarco is the owner.

15 C-A-L-C-A-R-C-O, I think.

16 Q Okay. So that gets us back to, like,
17 2011?

18 A About, yeah.

19 Q About. And you said you came --

20 A 2011.

21 Q -- to town in 2000 and what? '8?

22 A '7.

23 Q Or '7?

24 A 2007.

25 Q All right. So let's go back just a

1 little bit further.

2 Prior to Level One Property Management,
3 where did you work?

4 A Gosh, you're really working my brain,
5 aren't you? It would be easier if I could just do
6 it from 2007. Can I just say from when I moved to
7 Vegas, where I worked?

8 Q Sure.

9 A That's easier than me trying to go --

10 Q Backwards?

11 A Yeah. Forward is easier.

12 So 2007, I moved back to Las Vegas. I
13 worked at the Orleans Hotel & Casino.

14 Q What did you do there?

15 A Front desk.

16 Q And how long did you work there?

17 A A few years.

18 Q Okay.

19 A I was probably there about two years,
20 and then I started dental assisting school. I was
21 in dental assisting school for a year, and then I
22 still worked there during my intern dental
23 assisting. And then after my intern, I left the
24 Orleans and went to work for Rain -- not Rain
25 Springs. Not Blue Diamond.

1 It's Pacific Dental Services, is the
2 corporation name, and I worked between Mountain
3 Dental Group, Blue Diamond Group, and Henderson
4 Dental Group.

5 After I left Henderson Dental Group was
6 when I was hired at Level Property Management as
7 an administrative assistant and worked my way to
8 up to HOA community manager.

9 Q Okay. So how long did you work for
10 Pacific Dental, approximately?

11 A Couple of years.

12 Q So like 2012, I think is where we got
13 to?

14 A I don't want to say an exact year. I
15 really could not tell you, off the top of my head.
16 I'm not good with dates and years like that.

17 Q Okay.

18 A If you notice, I keep guessing what
19 year.

20 Q Got it.

21 And I'm assuming while you were Pacific
22 Dental, you were working as a dental assistant?

23 A Actually, partially working as a dental
24 assistant, but mostly I did front desk benefits.

25 Q Okay.

1 A I was a benefits coordinator. I'm
2 better with people than I am with tools.

3 Q Okay. And prior to coming back to
4 Las Vegas, where did you live?

5 A Do you just want to start from where I
6 was born? Would that be easier?

7 Q No. Just prior to Las Vegas.

8 A Prior to Las Vegas, I lived in Joplin,
9 Missouri. Prior to that, Kansas City, Missouri.
10 Prior to that, Overland Park, Kansas. Prior to
11 that, Orem, Utah; Provo, Utah. Then prior to
12 that, Las Vegas. Prior to that, Scotland.

13 Q Okay. Were you ever in the military?

14 A No.

15 Q Have you ever been convicted of a crime?

16 A Yes.

17 Q What crime?

18 A Is this relevant?

19 Q Yes.

20 MR. GALLIHER: It may be.

21 BY MR. GRAF:

22 Q I'll ask all the follow-up questions.

23 But, yeah, what's the crime you were convicted of?

24 A I had a DUI.

25 Q When?

1 A Ten years ago, maybe.

2 Q Okay.

3 A Estimating, again.

4 Q Yep.

5 Here in Las Vegas?

6 A Yes.

7 Q Okay. And what kind of DUI was it?

8 A I was pulled over.

9 MR. GALLIHER: That -- you don't --

10 MR. GRAF: No, that's not what I mean.

11 THE WITNESS: I mean, I don't --

12 BY MR. GRAF:

13 Q Was it a misdemeanor? Was it a --

14 A It was completely dropped to reckless
15 driving.

16 Q Okay. Any other crimes that you've been
17 convicted of?

18 A No.

19 Q Okay. All right. Let's talk about your
20 business relationship with Dr. Swanson.

21 So you were hired in March of 2017?

22 A '17, yes.

23 Q How did you come to be aware of the
24 possible position?

25 A A friend of mine actually was working

1 for him at the time.

2 Q Which is who?

3 A Elizabeth Grable.

4 Q Can you spell the last name?

5 A G-R-A-B-L-E.

6 Q Okay.

7 A She found the job on LinkedIn or Indeed,
8 and she took it as a in-between position. And I
9 said, "Hey, that job seems pretty easy, and it's
10 only a few hours a day. If you quit, let me
11 know." I was, like, it's easy money. And she
12 found another job, and I interviewed with him and
13 then I was hired.

14 Q Okay. When do you think that first
15 happened, the first time you met with Dr. Swanson?

16 A March of 2017.

17 Q Okay. And has the title been the same
18 the whole time that you've worked with
19 Dr. Swanson?

20 A Yes.

21 Q Have the duties and responsibilities
22 been the same the whole time you've worked with
23 Dr. Swanson?

24 A No.

25 Q Okay. So talk to me about that.

1 How have the duties changed since March
2 of 2017?

3 A He -- when I first started with him, he
4 did live here full time, so I was actually in my
5 office in the 42 Meadowhawk home. I had an
6 office, he had an office, and I would be there
7 about four hours a day, Monday through Friday.

8 Q Say that again. I'm sorry. I was
9 writing something else.

10 What hours were you normally there?

11 A Four hours a day, Monday through Friday.

12 Q What times would you normally be there?

13 A It would vary, but mostly between
14 9:00 and 1:00.

15 Q Okay.

16 A And then he moved to Colorado for
17 school, so the time -- I could be in office less
18 and work from home more. The duties changed,
19 because he was not there, so there was no dry
20 cleaning anymore. There was no dishes. There was
21 no groceries, things like that. So those things
22 did change.

23 Q Okay.

24 A He stopped practicing medicine, so there
25 was less work due to that as well.

1 Q In terms of his practice, what did you
2 do?

3 A Mostly what I did was -- he had a phone
4 that I guess was forwarded for medical purposes.
5 He was on a sabbatical when I started for him --

6 Q Okay.

7 A -- so he wasn't, like, fully practicing.
8 But I would have to, you know, take calls and, you
9 know, transcribe those calls and give him the
10 messages.

11 Q Okay.

12 A But I didn't really do anything with --
13 anything to do with his medical practice.

14 Q Do you have an understanding or estimate
15 as to when Dr. Swanson moved to Denver?

16 A Summer of 2017, because he -- I -- or
17 was it spring? I do not recall if he started --
18 because I started with him in March, so the -- I
19 don't know if he started the summer semester or if
20 he started the fall semester. I honestly don't
21 recall.

22 Q Okay. What was your understanding as to
23 the school that he was going to?

24 A He said he wanted to get an engineering
25 degree so he could, you know, build things and

1 create things.

2 Q Okay. Did you ever work for Tiger Tail
3 Management?

4 A It's an entity that he has. I don't how
5 I could -- I don't understand, like, how I could
6 work. I do work with Tiger's Tail. Like, I have
7 to take care and pay bills out of Tiger's Tail and
8 things like that, but I don't know how --

9 Q Okay. What types of bills do you pay
10 for Tiger Tail Management?

11 A I would have to look that information up
12 and tell you.

13 Q Okay. And I'm not asking for specific
14 vendors. I'm just saying, like, what types of
15 bills would you be paying? Like category.

16 A Taxes.

17 Q Okay. And when you say "taxes," are you
18 talking about property taxes? Are you talking
19 about business taxes?

20 A Business taxes.

21 Q Okay. What does Tiger Tail Management
22 do?

23 A I don't know.

24 Q Okay. Have you ever done any work for
25 Lyons Development?

1 A I have a question.

2 What do you mean, like, "work for"? So,
3 like, Lyons was the entity that -- so, first, let
4 me be completely honest. I don't understand how
5 all of this entity stuff works. So if you're
6 asking me questions to do with, like, certain
7 entities and how the entities work, I don't
8 personally understand them.

9 I have a sheet that goes by the entity
10 structure for when I need to pay things off, and I
11 go by that entity structure of which entity goes
12 under which.

13 Q Okay.

14 A I don't fully understand it.

15 Q All right.

16 A So I may not be able to answer your
17 questions properly.

18 Q Okay.

19 A So, like, Lyons --

20 Q I'll ask --

21 A I know --

22 Q I'll ask a different question.

23 A Okay.

24 Q So do you ever pay bills on behalf of
25 Lyons Development?

1 A When Lyons was active. Lyons is no
2 longer active after the sale of 42 Meadowhawk.

3 Q Okay.

4 A So majority of the bills for 42
5 Meadowhawk were paid from Lyons' account.

6 Q All right. That makes sense.

7 A Okay.

8 Q So for -- what about, do you do anything
9 for Shiraz Trust?

10 A Well, Shiraz Trust is the owner of
11 pretty much every entity.

12 Q Okay. So do you do anything directly on
13 behalf of Shiraz Trust or Dr. Swanson, as the
14 trustee of the Shiraz Trust?

15 A I pay bills.

16 Q Okay. And what types of bills do you
17 pay on behalf of Shiraz Trust?

18 A Any bills that come in that are due.

19 Q So, like, what types of categories of
20 bills?

21 A I pay the bookkeeper. She's under ILJ,
22 which is also under Shiraz Trust.

23 Q Okay.

24 A I would need to look at this
25 information. I'm trying to -- I kind of just go

1 in, do my work, type everything up, get it over
2 and done with. I don't really look into his
3 things.

4 Q Okay.

5 A I don't -- like, that's no interest of
6 me.

7 Q Okay. So, like, the paying of the
8 bills, do you -- do you print or issue checks?

9 A Bill pay or with a credit card, and then
10 the credit card is paid off by bill pay.

11 Q Okay. So you're not the one signing
12 checks on behalf of any of those entities that we
13 talked to?

14 A No, I don't sign checks for Dr. Todd
15 Swanson --

16 Q Okay.

17 A -- or any of this entities.

18 Q The doctor signs all the checks?

19 A Correct.

20 Q Okay. So let's talk about -- well,
21 let's go over the -- the Exhibit 1 that we've
22 marked here, which is the timeline. It has a date
23 at the top where -- actually it says "42
24 Meadowhawk timeline," and then it says in parens,
25 "Nicky's."

1 Do you see that?

2 A Yes.

3 Q And then it has June 14, 2018, at the
4 top.

5 Does that help to refresh your
6 recollection as to when this document was
7 prepared?

8 A Yes. It was prepared in June of 2018.

9 Q All right. Did you type this out or did
10 the doctor?

11 A We both did.

12 Q Okay. Were there other versions or
13 iterations of this document?

14 A I don't think so.

15 Q How was it created? Did you, like, just
16 create it all over time and go back in and insert
17 stuff?

18 A No, it --

19 Q Or was this one sitting and you inputted
20 all of the information?

21 A It was pretty much we have -- I mean, we
22 share a OneDrive and Dropbox. So I go in there
23 and started to put information in, he kind of
24 edited it a little bit.

25 Q Okay.

1 A So it was worked on, you know, for a
2 week or two prior to mediation.

3 Q All right. So we've got, like, March of
4 2017, you're hired; right?

5 A Correct.

6 Q We've already gone over that.

7 So August of 2017, that first entry, A,
8 it says "The tenant at Dr. Swanson's rental home
9 at La Madre Ridge notified that he would be
10 vacating the home by October 21, 2017."

11 Do you see that?

12 A Yes.

13 Q What's the import of that statement in
14 this timeline?

15 A That's the home he was going to be
16 moving into.

17 Q Okay. What's the chicken and what's the
18 egg here? Did the person tell him he was moving
19 out, and he decided to sell the home at
20 Meadowhawk? Or did he want to sell the house at
21 Meadowhawk, and he was waiting until the person
22 moved out at La Madre?

23 MR. GALLIHER: Speculation. Foundation.

24 BY MR. GRAF:

25 Q If you know.

1 A He wanted to sell his home at 42
2 Meadowhawk, because the house was much too large
3 for him. He is a single person, and 6,000 square
4 feet was too much for him. So he decided that he
5 would like to sell that home, renovate the La
6 Madre house, and move into the La Madre home,
7 because it was a smaller home and that did not --
8 he wouldn't have to buy another house. And he
9 really likes the La Madre house.

10 Q Okay. So next it says that "Dr. Swanson
11 requested Ms. Whitfield to start the process to
12 list 42 Meadowhawk."

13 Did you do that?

14 A Yes, I started to put things in order
15 within the home, to tidy things up, to get it
16 ready for photos, and for his real estate agent.

17 Q Okay. And that's what I'm asking.

18 Did -- did Dr. Swanson have a Realtor
19 that he was going to use regarding the transaction
20 already?

21 MR. GALLIHER: Speculation. Foundation.

22 THE WITNESS: I don't know when he hired
23 his real estate agent.

24 BY MR. GRAF:

25 Q So it's -- Ivan Sher is the Realtor on

1 this -- on 42 Meadowhawk. Is that your
2 understanding?

3 A I thought Kelly was and Ivan was the
4 broker.

5 Q Okay. Kelly Contenta?

6 A Yes.

7 Q Okay. So -- and that's kind of my
8 question. Did Dr. Swanson already have Kelly in
9 place --

10 A I don't know.

11 Q -- or did you go hire her?

12 A No, I did not hire her.

13 Q Okay. So when it says to start the
14 process to list 42 Meadowhawk, did he tell you,
15 "Go contact Kelly"?

16 A No. As I already stated, he had me
17 prepare the house to get it ready for photos and
18 to organize everything for the renovations for the
19 La Madre home.

20 Q Okay.

21 A So it's clearing clutter, making things
22 cleaner, packing some boxes. You know, preparing
23 a house for a listing.

24 Q Okay. So do you know when the home got
25 listed?

1 A No.

2 Q Okay. Did you participate in the
3 process of listing the home?

4 A No.

5 Q So Dr. Swanson did that himself?

6 A Yes.

7 Q Okay. The next entry -- and I was just
8 reading partially from 10/14/17. The next entry
9 for 10/23/17 says "Kelly Contenta, agent at
10 Shapiro & Sher, texted Ms. Whitfield that the
11 buyer would like to look at the home."

12 Are we talking about the Folinos there
13 as the buyer?

14 A Yes.

15 Q And it says "Mrs. Whitfield was unaware
16 that a residential purchase agreement had been
17 signed."

18 A Correct.

19 Q Okay. And do you know when it got
20 signed?

21 A No.

22 Q You just know by reading this document
23 that it was sometime -- sometime prior to 10/23?

24 A Yes.

25 Q Okay. And then it says you called

1 Dr. Swanson. He informed you that there would be
2 a real estate purchase agreement and closing
3 within 30 days?

4 A Yes.

5 Q Is that your recollection?

6 A Yes.

7 Q All right. Did you meet with
8 Ms. Folino, it looks like, on 10/24?

9 A Yes. That was when she came with her
10 kitchen designer.

11 Q Okay. And what's the purpose of stating
12 that Dr. -- or, excuse me, that Mrs. Folino
13 mentioned the close of escrow of 11/20/2017?

14 A Because the La Madre home would not be
15 ready by then.

16 Q Okay.

17 A And he told me about 30 days after the
18 23rd, which 11/20 is less than 30 days.

19 Q Okay.

20 A So that put me into a panic, because my
21 job was to pack the entire house, oversee all of
22 the renovations at La Madre, make sure all of the
23 renovations were completed, and get everything
24 moved from 42 Meadowhawk to the La Madre home.
25 The La Madre renovations would not be done by

1 11/20.

2 Q Okay. So it looks like on October 30,
3 you were notified that the buyers wanted to come
4 into the 42 Meadowhawk property on November 23rd,
5 2017; is that correct?

6 A Yes.

7 Q Okay. Do you know what the purpose of
8 that inspection was?

9 A It wasn't an inspection. Mrs. Folino
10 wanted to bring her contractors over to discuss
11 the brand-new designs of the interior and exterior
12 of the home.

13 Q Okay. Did you talk to Mrs.--
14 Mrs. Folino on that date?

15 A Yes.

16 Q Okay. Anything about the house that you
17 discussed with Mrs. Folino?

18 A How much she loved it and all of her
19 design plans.

20 Q Okay. Anything else that you guys
21 discussed?

22 A Not that I recall.

23 Q As of November 3rd, 2017, had -- had you
24 discovered the water leak in the master bathroom?

25 A No, because I discovered it on

1 November 7th.

2 Q Okay. So we'll get to that as we go.

3 I'm just trying to see where we're at in terms of
4 that process.

5 So let's talk about November 1, 2017,
6 still on page one.

7 It says "Dr. Swanson e-mailed Nicky
8 Whitfield to contact Blue Heron regarding the roof
9 stucco issue."

10 What was the roof stucco issue?

11 A The home inspection report I guess had
12 shown that there was some stucco coming off of
13 different parts of the roof and sides of the wall.
14 So in the request for repairs, they requested for
15 that to be repaired. So I contacted Blue Heron,
16 because it's a two-year-old home. Stucco
17 shouldn't be falling off the wall.

18 Q Okay. Did you contact Blue Heron?

19 A Yes.

20 Q And what was their response?

21 A I actually had to fight with Blue Heron
22 to get Blue Heron to come out. And Mrs. Folino is
23 aware of that. The buyer's agent is aware.
24 Dr. Todd Swanson is aware. Everybody is aware. I
25 was calling them many, many times, sending a lot

1 of e-mails to them just to get them to come out.

2 They finally did, but it took a lot of effort and
3 pushing.

4 Q Okay. Who were you communicating with
5 at Blue Heron?

6 A Oh, jeez. I would have to go back and
7 look. I do not recall.

8 Q And -- and I think --

9 A I know there was, like, a bigwig guy
10 that I dealt with that the buyer's agent knew as
11 well, and I do not remember his name for the life
12 of me.

13 Q Do you remember Henry Regnault?

14 A No.

15 Q All right. We'll go over some of those
16 e-mails in a minute.

17 A There was -- I mean, the guy that came
18 to the house, I think he was, like, a Mexican
19 contractor, and he worked for Blue Heron.

20 Q Okay.

21 A I don't remember his name.

22 Q Okay. So that 11/1 subpart C says,
23 "Mrs. Whitfield texted Dr. Swanson concerning the
24 buyer's close of escrow date" -- excuse me -- "and
25 construction on La Madre."

1 **So what was the content of that text?**

2 A I would need to look back at the
3 paperwork to give you the exact context, if you
4 would like to hand that to me.

5 Q All right. So that packet that you had
6 this morning where there's different --

7 A See item --

8 Q -- see Item B, message exhibit.

9 A Yes. This was informing him that I had
10 spoke to his contractor at La Madre. "The
11 contractor stated there is no way that the home
12 could be completed by the 21st. The carpet
13 install is not even scheduled until the 22nd." I
14 said, "Let me know if the Realtors can get an
15 extension. If not, I'll need to order Pods ASAP."

16 Q Okay.

17 A Because if we could not get an
18 extension -- we couldn't move anything into the
19 house without carpet, so now I'm looking at either
20 Pods or storage or -- it was fun.

21 Q All right. What was being remodeled at
22 La Madre?

23 A The entire home.

24 Q Talk to me about that. Did they take
25 the stucco -- I mean, excuse me, the drywall off

1 the walls? Was there --

2 A No, no drywall was taken down. No walls
3 were removed. They updated the entire property
4 from the kitchen counters, the flooring, the
5 paint. Got rid of, you know, the old and put in
6 the new.

7 Q Okay. Didn't -- didn't remove and
8 replace the cabinets or anything like that?

9 A I'm not sure if they removed the
10 cabinets or not or if they just painted them. I
11 think they were just painted. I'm pretty sure.

12 Q Okay. So then on November 3rd, you were
13 present when Mr. and Mrs. Folino came to see the
14 house again. So it states in Subpart A at the top
15 of page two that you had a conversation with
16 Mrs. Folino about her design ideas. Is that a
17 fair statement?

18 A Yes. She walked me through the home and
19 told me all of the different things she would like
20 to do, the walls she'd like to knock down and new
21 concrete she wanted to put downstairs, all of her
22 new designs that she wanted. And she also asked
23 me for referrals for housekeepers, pool company,
24 pest control, and audio/video. And she did hire
25 some of those people.

1 Q Okay. Did -- did you talk about
2 anything else?

3 A Not that I recall.

4 Q And then those vendors, the housekeeper
5 and the pool company, pest control, that sort of
6 thing, were those vendors that you were currently
7 using at that residence?

8 A Yes. She asked which vendors we were
9 using for the property.

10 Q Okay.

11 A And I gave her the vendors' information
12 that we were using for the property.

13 Q Okay. Who was the pool vendor that you
14 had stated?

15 A I actually did not recommend the pool
16 company, because he was unreliable.

17 Q And who was that?

18 A Oh, gosh, what was his name? I would
19 have to look up to tell you his name and the
20 company name.

21 Q Was it Rex Kim?

22 A Yes, Rex Kim.

23 Q Okay. And the housekeeper, who was
24 that?

25 A Jose and Laura.

1 Q Do you know the last name?

2 A No.

3 Q Do you know if the Folinos ended up
4 retaining them?

5 A I don't know. I don't think they did.

6 Q Okay. And why don't you think they did?

7 A Okay. I'll just -- I don't know.

8 Q Okay. Did Dr. Swanson continue to use
9 them on his -- the La Madre residence?

10 A Yes.

11 Q Okay. So on November 6th, it says that
12 you e-mailed Dr. Swanson to see if the close date
13 had been extended, as you needed to schedule the
14 movers as soon as possible. Is that a fair
15 statement?

16 A Yes.

17 Q So then it appears that on November 7 --
18 tell me what happened and walk me through these
19 entries.

20 A On November 7th, what was the day of the
21 week? I had hired an assistant to assist with
22 helping pack the home.

23 Q Okay.

24 A As the duties I had, I did not have
25 enough time to pack the entire house myself as

1 well.

2 Q All right.

3 A We -- I was showing her -- it was
4 actually right when she got there. I was showing
5 her around the home and the different rooms. I
6 wanted her to work on the master closet to pack
7 all of his clothing and other personal items that
8 were in the closet. We walked into the closet,
9 and the floor was wet.

10 Q All right.

11 A So I immediately stopped everything I
12 was doing --

13 Q So let me stop you there.

14 A Yeah.

15 Q What was the flooring in the master
16 closet?

17 A Carpet.

18 Q Okay. So how did you know it was wet?

19 A I was barefoot.

20 Q Okay. And so you felt the water?

21 A Yeah.

22 Q Okay. Was it the whole closet that was
23 wet? Was it --

24 A No.

25 Q -- just an area of the closet?

1 A The way the closet is, is you have a
2 left side and a right side, and in between -- so
3 there's a door that goes into the left side and
4 then a small walkway that takes you over to the
5 right side. Only the left side, and it was like
6 the -- like the corner of the left side was wet.

7 Q Okay. Just -- and one of those times
8 when I ask you to give me an estimate. How big
9 was this wet spot?

10 MR. GALLIHER: Foundation.

11 Go ahead.

12 THE WITNESS: Not big. The carpet was
13 wet.

14 BY MR. GRAF:

15 Q Okay.

16 A It -- it wasn't flooding. There wasn't
17 water flowing out of the closet into -- because as
18 soon as where the closet is, then you have the
19 master bath and the tile. The tile was not wet.
20 So there was no water protruding over to the tile.
21 There was no water protruding over to the right
22 side of the closet. It was contained in one area.

23 Q Did you pull the carpet up?

24 A I did.

25 Q Okay. And was it -- the pad underneath

1 wet?

2 A Yes.

3 Q Okay. And did you pull the pad up?

4 A Yes.

5 Q Okay. Was the subfloor -- this is on
6 the second floor of the home, or third
7 potentially?

8 A Technically the first level.

9 Q Okay.

10 A Because it's the level that you walk
11 into, so it's technically the first level, and
12 then the basement is below. So it's technically
13 the first level, yes.

14 Q Okay. I thought the master was
15 upstairs.

16 A No. The master is on the first level.

17 Q Okay.

18 A Upstairs was the offices and extra
19 bedroom.

20 Q And the kids' room now?

21 A Well, there was no kids there, so I
22 don't know about kids' room. I don't know where
23 Mrs. Folino keeps her children.

24 Q All right. So the area that was wet,
25 did you have an understanding that there was any

1 prior water losses in that area?

2 A I was aware that there was a prior leak
3 prior to me starting.

4 Q How were you aware of that?

5 A When I started for him, the carpet was
6 still not repaired. So he told me when I started,
7 "Hey, I had a prior leak in the closet. I just
8 have to get the carpet repaired." That's my
9 knowledge of that leak.

10 Q Did the carpet get repaired?

11 A Yeah.

12 Q Okay. When -- did you ever look or try
13 and ascertain as to the source of the water and
14 the leak in November of 2017?

15 A Yes.

16 Q And what did you find?

17 A I did not find the leak.

18 Q Okay. Where -- did you ever look to see
19 where the water was coming from?

20 A Yes, I tried, but I could not find the
21 source of the leak.

22 Q Okay.

23 A I also turned the water off as well from
24 outside. That's the first thing you do as soon as
25 a leak happens, you turn off the water.

1 Q So you turned off the water to the whole
2 house?

3 A Yes.

4 Q Okay. And then what did you do?

5 A Contacted Dr. Swanson immediately. Then
6 I contacted the home warranty company. He advised
7 me to contact Rakeman. I can't -- I think he
8 actually got in contact with Rakeman first before
9 I did.

10 Q When you say "he," you're referring to
11 Dr. --

12 A To Todd Swanson, yes.

13 Q Okay. Thanks.

14 A And then we had Rakeman Plumbing come
15 out, and they took it on from there.

16 Q All right. Who did you know who you
17 talked to at Rakeman Plumbing?

18 A I think her name Allison, was the lady
19 that I dealt with most. Allison and Ms. Rhonda.

20 Q Okay.

21 A I dealt with a lot of people, though.
22 Like, it was always different people would answer
23 and --

24 Q How long did it take for Rakeman to come
25 out?

1 A They came out the same day.

2 Q Okay. And what did they do?

3 MR. GALLIHER: Foundation.

4 BY MR. GRAF:

5 Q Well, that was a good -- good objection.

6 Hold on. Let me ask you a better question.

7 Did you ever watch Rakeman and what they
8 did?

9 A Not really. I mean, they put drier fans
10 out and they cut out the carpet. But, no, I did
11 not watch and supervise. They did show me where
12 they thought the leak was coming in, and it was on
13 the exterior of the house. And it was like a pipe
14 that was in the wall.

15 Q Okay.

16 A Which is why I couldn't find it when I
17 was in the bathroom -- or in the closet. Sorry.
18 Not the bathroom. When I was in the closet.

19 Q How did they show you that pipe?

20 A It was on the outside of the house. It
21 was like -- there was like -- it's not, like, a
22 breaker box. I don't know what -- there was like
23 a thing you could open on the exterior of the
24 home --

25 Q Did it have, like, an access panel?

1 A -- and it was in there. Yeah.

2 Q Okay.

3 A And the pipe was in there.

4 Q And they showed you, what, a hole in the
5 pipe? What was there?

6 A Well, they just said it was leaking from
7 over here --

8 Q Okay. And that's --

9 A -- and pointed.

10 Q That's what I'm trying to ascertain,
11 though.

12 Did they -- did you see an actual
13 penetration or hole in that pipe, or did they show
14 you water flowing down the pipe, the outside of
15 it?

16 A I don't recall seeing the hole. The
17 water was off, so there would be no water coming
18 down, because the water was shut off.

19 Q Okay. And you could see it just from --
20 by standing outside?

21 MR. GALLIHER: Form.

22 BY MR. GRAF:

23 Q How high up on the stucco was this
24 access panel?

25 A I think taller than me, and I'm 4, 11.

1 Q Okay.

2 A It was, like -- I think.

3 Q So you texted Dr. Swanson about the
4 leak?

5 A Correct.

6 Q Did you have any conversations with
7 Dr. Swanson about the leak?

8 A Well, yeah. I mean --

9 Q So that day --

10 A I mean, "Hey, there's a leak. Who
11 should we contact? Home warranty company can't
12 come out. Who do I call?"

13 "Homeowners insurance."

14 "Okay. Let's get Rakeman out."

15 "All right. Rakeman is coming out."

16 "Hey, Rakeman came out. Rakeman is
17 drying the things out. They found the source of
18 the leak. Hey, I shut the water off."

19 "Oh, did you shut it off from the valve
20 in the garage or from the street?"

21 I said, "From the street. I don't know
22 where the shut-off is in the garage." So, yes, of
23 course we discussed it.

24 Q Okay. So let me ask a better question.

25 Did you have those conversations on the

1 phone or were those all text?

2 A Both.

3 Q Okay. So in terms of what happened next
4 then, after they came out the first day -- Rakeman
5 came out that first day, what else did you do, if
6 anything?

7 A Nothing for the leak, except for let the
8 companies in to repair.

9 Q So then it says Item C on 11/7/2017, it
10 says "See Item E for photos of the leak and text
11 message exhibit."

12 A That one? Or no.

13 MR. GALLIHER: This one is Item C. I
14 think he's asking you about this.

15 THE WITNESS: Oh, okay. Yes, I took
16 pictures from underneath the cabinets and text
17 them to him.

18 BY MR. GRAF:

19 Q Okay. Can I see those?

20 A Of course.

21 Q Is it just these three photos?

22 A Yes.

23 Q So there's -- the photos that are below
24 those are from your phone? Those are just other
25 photos that are on your phone?

1 A I believe so.

2 Q Do you still have that phone?

3 A Mind you, this is eight months ago that
4 I prepared this.

5 Q Got it.

6 Do you still have that phone?

7 A No.

8 Q Okay. Where is that phone?

9 A That -- I don't even know which phone
10 that was. AT&T upgrades every year.

11 Q Okay. So did -- did you have an Apple
12 or an iPhone at the time?

13 A Yes, I have an Apple iPhone.

14 Q Okay. Do you still have an Apple
15 iPhone?

16 A Yes, I do.

17 Q Do you maintain -- your records that are
18 on your phone, do you back up them?

19 A Sometimes it backs up; sometimes it
20 doesn't.

21 Q Okay. Prior to moving on from one phone
22 to the next, do you back them up so that you have
23 a --

24 A Sometimes they back up; sometimes they
25 don't.

1 Do you have an Apple iPhone?

2 Q I do.

3 A Okay. You know how sometimes backups
4 don't work? Sometimes you go into AT&T and try to
5 do the backup and they're like, yeah, no, you've
6 got to set it up as a new phone? I've had that
7 happen a few times as well.

8 Q Okay. So the underlying question that I
9 need to know is, do you think you still have those
10 photos?

11 A Probably.

12 MR. GRAF: Okay. We would ask that
13 those photos be produced.

14 MR. GALLIHER: I think those photos have
15 been produced in this -- I remember -- I recall
16 seeing this in -- I want to say in the response to
17 the production of documents.

18 MR. GRAF: Well, let's see. Yeah, they
19 have been produced in that format.

20 MR. GALLIHER: Right.

21 MR. GRAF: I'm saying I want to see the
22 photos. You know, that's obviously a copy of the
23 photos.

24 MR. GALLIHER: Well --

25 MR. GRAF: I want to see if there's

1 actually photos.

2 MR. GALLIHER: I don't think I
3 understand. You want -- you want to see --

4 MR. GRAF: So these are -- what they did
5 here is, if you look at the bottom and you look at
6 the icons, these are photos that they basically
7 forwarded and/or screenshot and sent to --

8 THE WITNESS: They're screenshot and
9 time-stamped.

10 MR. GALLIHER: Okay.

11 MR. GRAF: Okay. So, yeah, where it
12 says November 7 up at the top, and then you'll see
13 that it says 10:03, whatever date that is, that's
14 when these were sent. That's what I'm asking is,
15 I want to see if you have an electric version of
16 these photographs.

17 MR. GALLIHER: Okay. And so -- okay.
18 That -- who did you text them to?

19 THE WITNESS: Dr. Swanson.

20 MR. GALLIHER: Okay. So they
21 potentially exist on her cell phone, I guess, and
22 on his cell phone.

23 MR. GRAF: Okay.

24 MR. GALLIHER: So I'll check to see -- I
25 think you've asked her about hers. I'll check so

1 see if he's got them on his.

2 MR. GRAF: And I know we've asked for
3 photographs, too. So this would definitely fall
4 in line with that. And if there's any other
5 photographs, that's what we're trying to find,
6 especially --

7 MR. GALLIHER: Yeah. I just want to be
8 clear, I think these photographs have been
9 produced. But I think what you're saying is you
10 want to see if we have a -- the electric version.

11 MR. GRAF: So that I can enlarge that
12 photo. It's kind of hard to look at a thumbnail
13 of a photo here. Yeah, I would have rather have
14 the electronic version.

15 BY MR. GRAF:

16 Q All right. So let's see. 11/8,
17 Dr. Swanson informed Ivan Sher and Austin
18 Sherwood -- who is Austin Sherwood?

19 A He's someone who worked at the real
20 estate company.

21 Q In Ivan's office?

22 A I believe so, yeah. I have never met
23 the person, so --

24 Q Okay. "To inform the buyers." Then
25 11/15, "Dr. Swanson e-mailed Mrs. Whitfield that

1 the buyers are requesting a mold test."

2 What was your understanding as to that?

3 MR. GALLIHER: Object to the form.

4 THE WITNESS: To order -- to order a
5 mold test.

6 BY MR. GRAF:

7 Q Okay. So did the Folinos talk to you
8 about having the mold test done, or was that
9 communicated solely through this communication
10 from Dr. Swanson in an e-mail?

11 A I do not recall if Ms. Folino had talked
12 to me about it or not.

13 Q Did you talk to any of the Realtors
14 about that?

15 A Not that I can recall.

16 Q Okay. So then it says you contacted
17 Rakeman to ask a mold test to be conducted.

18 Why did you contact Rakeman for that
19 purpose?

20 A Rakeman was who was handling the
21 repairs.

22 Q Okay. They're a plumber. So I'm just
23 basically asking you why you contacted them as
24 opposed to --

25 A Well, in mold and --

1 Q -- finding someone yourself.

2 A When you do mold and remediation,
3 usually you only deal with the plumber, like the
4 actual plumbing company.

5 Q Okay. So it's my understanding that CPI
6 Restoration was the one that did the mold -- the
7 water remediation at the -- regarding this loss.
8 Is that a fair statement?

9 A Yes, I believe so.

10 Q Okay. Did you have an -- any
11 understanding that there was a business or
12 ownership relationship between Rakeman and CPI?

13 MR. GALLIHER: Speculation. Foundation.

14 THE WITNESS: Say your question again.

15 BY MR. GRAF:

16 Q Did you have an understanding when you
17 ordered these -- strike that.

18 Did you have an understanding while CPI
19 and Rakeman were doing their work regarding this
20 water loss that there was any business
21 relationship between them?

22 A No.

23 Q Okay. Do you have that understanding as
24 you sit here today?

25 A I have no idea what they have in common

1 together, if they have anything in common.

2 Q Okay. Do you know who Rakeman had
3 perform the mold test at the property?

4 A I don't recall the company that came
5 out. I did meet the person who did the mold test,
6 because I was there during the mold test.

7 Q Okay. Did they come out once? Twice?

8 A I believe he came out once.

9 Q Okay. And so let's see. That's 10. So
10 he already wrote the -- my associate already wrote
11 the exhibit numbers on the binder that I've just
12 handed you. If you would, turn to Exhibit 12.

13 MR. GALLIHER: Are you going to use all
14 of these?

15 MR. GRAF: Probably.

16 MR. GALLIHER: So do we want to change
17 the exhibit number on this one that you have
18 already marked as Exhibit 1 so we don't have two
19 of them?

20 MR. GRAF: We'll make the timeline
21 Exhibit 1B, just because we referred to it a bunch
22 of times.

23 MR. GALLIHER: Yeah. This is 1B?

24 MR. GRAF: No, let's do the timeline as
25 1B.

1 BY MR. GRAF:

2 Q So you've been handed what was marked
3 previously as Exhibit 12 in the binder before you,
4 a document that's dated December 7, 2017, from
5 Infinity Environmental Services.

6 Do you see that?

7 A Yes.

8 Q And it references in the first section,
9 it says, "Dear, Ms. Hawley," and that's addressed
10 to Rhonda Hawley at Rakeman.

11 Is that the Rhonda you were referring to
12 previously?

13 A Yes.

14 Q Okay. And it says "In accordance with
15 your request and authorization for services,
16 Infinity Environmental Services of Las Vegas,
17 Nevada, provided the subject services on
18 December 5th, 2017."

19 Do you see that?

20 A Yes.

21 Q Okay. Does that sentence and this
22 document help to refresh your recollection as to
23 when they came out to perform their mold test?

24 A No.

25 Q Why?

1 A Because I thought it was before
2 December 5th. We were already out of the house by
3 then.

4 Q Okay. Do you think that there was
5 another test that was performed?

6 A I only know of one test that was
7 performed. I do not remember the company name. I
8 was at the home. The home -- La Madre was not
9 done yet. We had not moved out of 42 Meadowhawk.
10 The gentleman came. He did a mold test. I never
11 saw a report.

12 Q So when did you move out of the
13 Meadowhawk address?

14 A Thanksgiving weekend. So Thanksgiving
15 weekend, 2017.

16 Q Is it --

17 A Because Todd -- Todd came into town for
18 Thanksgiving weekend, and that was the weekend
19 everything was moved.

20 Q Okay. Let's finish going through your
21 timeline, and then we'll come back to the Infinity
22 report.

23 A May we take a break? I need to use the
24 restroom.

25 MR. GRAF: Sure. Any time you want to

1 take a break, as long as there isn't a question
2 pending, just --

3 THE WITNESS: Perfect.

4 THE VIDEOGRAPHER: Off the video record
5 at 11:17.

6 (Whereupon, a recess was taken.)

7 THE VIDEOGRAPHER: Back on the video
8 record at 11:35.

9 BY MR. GRAF:

10 Q So you're aware you're still under oath,
11 Mrs. Whitfield'?

12 A Yes.

13 Q So we were previously looking at what we
14 marked as Exhibit 12 for purposes of this
15 deposition, the December 7, 2017, Infinity
16 Environmental Services report.

17 And you said that you had not seen this
18 report?

19 A No, this is my first time seeing this
20 report.

21 Q Okay. Did you see any report prepared
22 by Infinity?

23 A No.

24 Q Okay. But you had said that there was
25 another inspection that was prior to December 5th?

1 A Correct.

2 Q Okay. So I'm going to hand you what we
3 will mark as -- well, she has to mark it first.
4 She will give it to you.

5 MR. GRAF: We will mark that as
6 Exhibit 23.

7 (Exhibit No. 23 was marked for
8 identification.)

9 THE WITNESS: There's too much going on
10 here.

11 MR. GALLIHER: Is that in the book?

12 MR. GRAF: Didn't I give it to you? I
13 had three copies.

14 MR. GALLIHER: Okay.

15 MR. GRAF: My bad.

16 MR. GALLIHER: Okay.

17 BY MR. GRAF:

18 Q So you've been handed what's been marked
19 as Exhibit 23 for purposes of this deposition. It
20 purports to be a November 24, 2017,
21 environmental -- or, excuse me, Infinity
22 Environmental Services report. The first sentence
23 of this report is different and says "Provided the
24 subject services on November 17, 2017."

25 Do you see that?

1 A Yes.

2 Q Okay. Do you -- have you ever seen this
3 report?

4 A No.

5 Q Okay. This report has some photographs
6 on the last couple of pages -- the last two pages,
7 it looks like.

8 A Uh-huh.

9 Q Do you recognize those photographs?

10 A I didn't take them. It looks like it's
11 possibly underneath the cabinet in the bathroom.

12 Q Okay.

13 A But I couldn't confirm that.

14 Q All right. So on page two where it says
15 "Results and discussion," it says "During our
16 visual inspection of the master bedroom closet, we
17 found suspect visible fungi on lower wall under
18 the closet cabinet that is adjacent to the master
19 bathroom and the water heater -- and water
20 heater."

21 Do you see that?

22 A Yes, I see that.

23 Q Did Rakeman ever tell you that there was
24 fungi or fungal growth in the master bathroom?

25 A No. But the mold -- the gentleman who

1 came out to conduct the mold test, he said there
2 might be mold when he came. He said might.

3 Q Okay. So the individual, was that
4 Mr. Steven Havens who prepared this report?

5 A I do not recall the gentleman that came
6 out.

7 Q Okay. On -- all right. And then on
8 page three where it says "Results and discussion,"
9 it says "The service swab sampling results of the
10 discolored area previously described are enclosed
11 in the attached forensic report titled 'Nonviable
12 Bulk Fungal Analysis.'"

13 And then it says, "No. 1, Collected from
14 the master bedroom closet on lower damaged wall
15 under the closet cabinet that is adjacent to the
16 master bathroom water heater."

17 It says, "Infinity considers the fungal
18 spores detected in the sample to be indicative of
19 active fungal growth."

20 Do you see that?

21 A Yes.

22 Q Did Rakeman ever tell you that there was
23 active fungal growth in the home?

24 A I don't remember having a conversation
25 with them about any -- that there was mold found.

1 Q Okay. Well, do you remember them ever
2 informing you, either in writing or in a text or
3 on the phone, that there was any type of condition
4 like that?

5 A I don't recall, but I didn't go back
6 through these text messages and see.

7 The mold test was done on what date, did
8 you say? 17th?

9 Q This report says November 17th.
10 November 17th, that's the date that the
11 property closed; correct?

12 A I do not know what day the closing was.

13 Q Okay.

14 A I do not recall having a conversation
15 with Rakeman after that. As I already stated, the
16 gentleman who conducted the mold test did say he
17 believed there was mold. And he said, "Hey, don't
18 do any construction. Don't do anything in the
19 house."

20 I said, "Okay. I'll let the buyer's
21 agent know." And I let the buyer's agent know,
22 "Hey, they shouldn't do any construction until the
23 results come back from this."

24 Q Okay. So if these were the results, did
25 you ever talk to Rakeman about that statement by

1 the person that was doing the mold test?

2 A As I just stated, I do not recall
3 speaking to Rakeman after the test was completed.

4 Q That wasn't my question. But I
5 appreciate the response.

6 My question is, did you ever inform
7 Rakeman of the statement that the person doing the
8 test thought that there was mold in the house?

9 MR. GALLIHER: Object. Misstates her
10 testimony.

11 THE WITNESS: My answer remains the
12 same.

13 BY MR. GRAF:

14 Q Which is what?

15 A I do not recall talking to Rakeman after
16 the test was conducted. The only time I ever
17 talked to Rakeman after the test was conducted,
18 from what I can remember, was when I was getting
19 this stuff together for mediation, as we talked
20 about earlier.

21 Q Okay. So that statement that you just
22 said that the person that was doing the mold test
23 thought that there was mold in the house, did you
24 tell Dr. Swanson of that statement?

25 A I believe so, yes. Yes.

1 Q And how did you inform him of that
2 information?

3 A It would either have been text or phone,
4 because he was not in Vegas.

5 Q Okay. Can you look through your text
6 messages that you have produced here today and
7 tell me whether or not that was in there?

8 A I did not see that in there, so it was
9 most likely a phone call.

10 Q Okay. And as you sit here today, you --
11 you believe you told him what that mold inspector
12 said to you, that there was likely mold in the
13 house?

14 A I did not say that. I said he said
15 there might be mold in the house.

16 Q Well, and then this report dated
17 November 24, 2017, says there's mold in the house;
18 right?

19 MR. GALLIHER: Objection, she --

20 THE WITNESS: I had not read this.

21 MR. GALLIHER: Hold on, hold on, hold
22 on. Objection. Calls for speculation. She
23 already indicated she had never seen that before.
24 The report speaks for itself.

25

1 BY MR. GRAF:

2 Q Okay. Did Rakeman Plumbing ever tell
3 you that the master bathroom should be placed
4 under a negative containment system to include the
5 closet?

6 A I don't know what that is.

7 Q So they didn't say that to you?

8 A I don't know what a negative containment
9 is.

10 Q So did Rakeman Plumbing ever tell you
11 that they needed to, like, plastic Visqueen off
12 the master closet and seal it so that air could
13 not come out of the closet area into the rest of
14 the house?

15 A Rakeman did not.

16 Q Did CPI ever tell you that?

17 A Who is the gentleman that conducted the
18 mold inspection? Does he work for CPI?

19 Q I don't know. I'm assuming that that is
20 Steven Havens, which is the person from Infinity.
21 And I'm just asking you about whether or not -- so
22 Rakeman didn't tell you to do that.

23 CPI Renovations, the people that did the
24 mold -- or the water remediation, they didn't tell
25 you that they did that; right?

1 A No. I remember there being plastic up,
2 and that was when the mold -- the gentleman who
3 did the mold, he put that up.

4 Q Okay. All right. So if the inspection
5 was conducted on November 17, 2017, when do you
6 think you had this telephone conversation with
7 Dr. Swanson?

8 A Likely the same day.

9 Q Okay. So do you recall Rakeman or any
10 of the subcontractors having the cabinets adjacent
11 to the master bathroom and water heater removed?

12 A Are you asking if the cabinets were
13 removed?

14 Q Yes.

15 A Gosh, I don't even remember if they were
16 actually removed. I know the cabinets had to get
17 redone and the cabinet people came out for it, but
18 I couldn't tell you who removed them or when they
19 were removed.

20 Q Okay. Do you know -- so there was also
21 a recommendation on page four of this report,
22 No. 3, it says "Due to the spore level detected of
23 penicillium and aspergillus in the air sample
24 collected from the master bathroom and not
25 detected in the air sample and the swab samples

1 collected in the closet, Infinity recommended that
2 after the bathroom has been placed under the
3 containment system, an inspection of the wall
4 adjacent to the closet and water heater should be
5 performed."

6 Are you aware as to whether or not an
7 inspection of the wall that was adjacent to the
8 closet was ever inspected for mold?

9 A I'm not aware what was inspected.

10 Q Okay. Did you ever see that wall having
11 penetrations made into it or any other type of
12 investigative actions taken?

13 A No.

14 Q Okay. What about the water heater? Do
15 you know if the water heater was ever inspected
16 for mold?

17 A I do not know.

18 Q Okay. You're the one that was living
19 there or --

20 A I was not living there.

21 Q I apologize.

22 You were the one that was working out of
23 the office there; right?

24 A Correct.

25 Q So any work that would have been done at

1 the house, you would have been aware of it?

2 A No.

3 MR. GALLIHER: Foundation.

4 BY MR. GRAF:

5 Q Were there workers and/or vendors that
6 got access to the house without your knowledge?

7 A There were workers and vendors for
8 Dr. Todd Swanson with Rakeman Plumbing, and
9 Mrs. Folino had many contractors at the house when
10 I was there and when I was not there. So would
11 Mrs. Folino's contractors have access to the home
12 without my knowledge? Yes.

13 Q Okay. I'm just particularly asking
14 about the water heater at this point, though.

15 A I have no idea if anybody touched the
16 water heater at all.

17 Q All right.

18 A I did not oversee what any of these
19 contractors and people were doing. That is not my
20 job.

21 Q Okay. Have you ever seen this report,
22 the November 24, 2017, Infinity Environmental
23 Services report?

24 A As I just recently told you, no, I have
25 not seen this report.

1 Q So today, this is the first time that
2 you've ever seen this?

3 A Yes.

4 Q Okay. All right. When, if at all, did
5 you tell Mrs. Folino about the water leak in the
6 master closet?

7 MR. GALLIHER: Foundation.

8 THE WITNESS: We discussed the leak when
9 she was at the home one of many times.

10 BY MR. GRAF:

11 Q So it appears, at least in the timeline
12 which we've marked as Exhibit 1B on 11/16/2017, in
13 Subpart B where it says "Mrs. Whitfield walked
14 Mrs. Folino through the master bath/bedroom closet
15 and showed her exactly where the leak occurred and
16 the damages," do you see that?

17 A Yes.

18 Q Okay. So at that point in time, did you
19 tell Mrs. Folino about any prior water leaks in
20 the master closet?

21 A I don't recall.

22 Q Okay. Did you ever send her any texts
23 or any e-mails saying, "Hey, there was a prior
24 water leak in that closet"?

25 MR. GALLIHER: Foundation.

1 THE WITNESS: I don't believe so.

2 BY MR. GRAF:

3 Q Okay.

4 A I mean --

5 Q Okay. There's discussion here as to a
6 visual pipe inspection.

7 What was your understanding as to what
8 that was?

9 A "Here" is where?

10 Q In -- on November 16, 2017, lower -- or,
11 excuse me, upper case A.

12 A Okay. On the 16th?

13 Q Yes.

14 MR. GALLIHER: A.

15 BY MR. GRAF:

16 Q And then it's mentioned again in C and
17 D, the visual inspection.

18 What was your understanding as to what
19 the visual inspection would entail?

20 A Oh, Mrs. Folino, when I showed her, she
21 asked if there had been inspection on the pressure
22 of the water.

23 Q Okay.

24 A And so she had brought it up.

25 Dr. Swanson asked me to have that ordered. I

1 ordered it. They came out, and as far as I was
2 aware, the visual inspection and the pressure test
3 came back fine.

4 Q Okay. Then on 11/17/2018, what -- can
5 you read to me what that entry is in the title
6 line?

7 A Read you the entry?

8 Q Sure.

9 A "Mold test, visual inspection, and
10 pressure test were completed. Mrs. Whitfield was
11 informed the visual inspection and pressure test
12 both came back with no issues. The mold test
13 results would take a few days."

14 Q Okay. So that kind of confirms that
15 Exhibit 23, where it says that it was conducted on
16 November 17, that -- that coincides with this
17 timeline; right?

18 A Correct.

19 Q Okay. So then on 11/21, there's a
20 notation there that says "Ms. Hawley" -- and is
21 that Rhonda Hawley?

22 A Yes, ma'am. Or yes, sir.

23 Q Okay. -- "e-mailed Mrs. Whitfield that
24 the plumbing visual inspection and pressure tests
25 were completed."

1 Do you see that?

2 A Yes.

3 Q Did you get copied on that e-mail? Is
4 that why we have it here?

5 A Let's see. Item G.

6 Q Or is that a text message? Because you
7 seem to note it as Item G in the text messages.

8 A Let's see. Item G. That must be an
9 error on here, because Item G is text messages
10 between myself and Mrs. Folino.

11 MR. GALLIHER: Can I see it?

12 BY MR. GRAF:

13 Q Okay.

14 A I'm human. That happens.

15 Q All right. So there's nothing in your
16 timeline as to the results of the mold test.

17 Is that a fair statement?

18 A Correct. I was never informed.

19 Q Okay. Did -- were you ever asked by
20 Dr. Swanson to follow up as to the results of the
21 mold test?

22 A No.

23 Q Did Dr. Swanson ever express any concern
24 as to the statement that you made to him about the
25 inspector saying that there might be mold?

1 A He said, "Yeah, tell the buyer's agent
2 that they shouldn't do any construction." And so
3 I did advise Ashley -- I don't remember her last
4 name, but Ashley was the buyer's agent. I did
5 inform her.

6 Q And how did you inform her?

7 A I'm pretty sure it was text or call.

8 Q Okay. Do you want to look through your
9 texts and see if you have that one copied here?

10 A No, it's not.

11 Q Okay. So is that text somewhere on your
12 phone?

13 A Possibly. I could look.

14 MR. GRAF: Okay. All right. We would
15 ask that that be produced if you have it.

16 And I'm making that statement, Jeff, in
17 the sense that she is an employee or an agent of
18 Dr. Swanson, so I'm going to say that as an active
19 employee of one of the defendants, that it is in
20 his possession and control. And if you don't
21 think so, then I'll do a subpoena to Ms.
22 Whitfield -- Mrs. Whitfield, excuse me.

23 MR. GALLIHER: I think you already did.
24 Didn't you --

25 MR. GRAF: I did.

1 MR. GALLIHER: -- issue her a subpoena
2 duces tecum?

3 MR. GRAF: I did.

4 THE WITNESS: I provided everything that
5 I can in the time given, less than two weeks.
6 Just gathering this, the information I brought,
7 was almost an hour alone. I don't have a lot of
8 free time.

9 MR. GALLIHER: That's fine. I'll have
10 her look for it, and if we have it, we'll produce
11 it.

12 MR. GRAF: Okay. Thank you.

13 BY MR. GRAF:

14 Q So the activities that you undertook
15 while in the employ of Dr. Swanson, those were all
16 at the direction of Dr. Swanson; correct?

17 A Can you restate? I'm sorry.

18 Q Any activities that you took as his
19 assistant, you took them at the direction of
20 Dr. Swanson?

21 MR. GALLIHER: Foundation.

22 THE WITNESS: Some are common sense,
23 so -- I mean, things -- yes and no, because
24 there's things that he wouldn't advise me to do
25 that I would do because it's common sense to do.

1 Like, I didn't call him and say, "Hey, the water
2 is leaking. What do I do?"

3 I went and shut the water off. Like,
4 that wasn't at the direction of him to shut the
5 water off in the street. That was common sense.

6 BY MR. GRAF:

7 Q Okay. So did Dr. Swanson ever tell you
8 to follow up on the mold test on November 17,
9 2017?

10 A I do not recall.

11 Q Okay. So -- and that's kind of the
12 thing that I'm trying to make sure I have an
13 understanding as to whether or not you would have
14 followed up on something like that.

15 Is that common sense for you to follow
16 up on if there was a mold test, that you get a
17 copy of the report that was prepared as a result
18 of that mold test?

19 MR. GALLIHER: Foundation.

20 THE WITNESS: No. From my
21 understanding, his real estate agent should have
22 been handling this.

23 BY MR. GRAF:

24 Q Okay. So if we look at Exhibit 23, it
25 says "To whom it may concern," and it's addressed

1 to Rakeman Plumbing.

2 Do you see that?

3 A Yes.

4 Q You were the one that had the
5 communication with Rakeman Plumbing as to the work
6 that was performed at the house regarding the
7 leak; correct?

8 MR. GALLIHER: Foundation.

9 THE WITNESS: I had conversations with
10 scheduling and making sure that somebody was there
11 to open and close a door.

12 BY MR. GRAF:

13 Q You also informed Rhonda Hawley at
14 Rakeman Plumbing to perform the mold test; right?

15 A At the request of Dr. Todd Swanson.

16 Q And that's what I'm trying to get at.
17 You said it was kind of common sense as to what
18 you were going to do or not do. So I get that.

19 But specifically as to this report, it
20 seems like there was no effort made by you or
21 Dr. Todd Swanson to obtain a copy of the report.

22 Is that a fair statement, or should I
23 assume something else?

24 A No.

25 MR. GALLIHER: Hold on. Speculation.

1 Foundation. Go ahead.

2 THE WITNESS: No, I don't think that's a
3 fair statement.

4 BY MR. GRAF:

5 Q Okay. So did Dr. Swanson ever inform
6 you or instruct you to obtain a copy of the report
7 that was prepared as a result of the mold test
8 conducted November 17, 2017?

9 A I do not recall.

10 Q Okay. Is there any document you could
11 look at that would help to refresh your
12 recollection as to whether or not you did recall
13 whether or not Dr. Todd Swanson either told you to
14 obtain it or not to obtain it?

15 MR. GALLIHER: Speculation. Foundation.

16 THE WITNESS: No, I don't know.

17 BY MR. GRAF:

18 Q Okay. Do you still have copies of your
19 text messages between yourself and Dr. Todd
20 Swanson back during November 7th of 2017 through
21 December 5th, 2017?

22 A Yes.

23 MR. GRAF: Okay. I would ask that those
24 be produced, then, if that is --

25

1 BY MR. GRAF:

2 Q Is that a method of communication that
3 you and Dr. Swanson had as to the work that was
4 performed at the house that we're talking about
5 here today for the leak?

6 A Yes.

7 Q Okay.

8 MR. GALLIHER: So what are the dates
9 again?

10 MR. GRAF: I would say we go back to the
11 date of the leak, which was --

12 MR. GALLIHER: The 7th?

13 MR. GRAF: -- the 7th. Yeah, what did I
14 say? I think I said a different date, didn't I?
15 Yeah, because I just want to make sure that we're
16 clear.

17 MR. GALLIHER: So I would agree to
18 produce any text messages from that date
19 through --

20 MR. GRAF: I would say December 5th,
21 which is the next test.

22 MR. GALLIHER: Okay. December --

23 MR. GRAF: Or December 7th, because
24 that's the date of the second report.

25 MR. GALLIHER: For December 7th that

1 relate to the leak, conversations with the
2 Folinos, conversations with Rakeman, conversations
3 with IES or CPI. But I'm not going to agree to
4 produce all of their text conversations during
5 that time, because there will likely be ones that
6 are not relevant. So what I'm saying is stuff
7 that's clearly not relevant to any of this
8 stuff --

9 MR. GRAF: Yeah, just a privilege log,
10 if that's what you think, and then we'll handle it
11 that way.

12 MR. GALLIHER: Okay.

13 THE WITNESS: How long do I have to
14 produce this? I do not have time in the next few
15 weeks. I'm in school right now. My life, my
16 schooling --

17 MR. GALLIHER: I will work with you and
18 we'll figure it out.

19 BY MR. GRAF:

20 Q Okay. But we didn't go over any
21 schooling that you're currently in, so what --
22 what are you in school for now?

23 A Real estate license.

24 Q Oh, so you're going to become a Realtor?

25 A Yes, I would like to.

1 Q All right. Okay. All right. Got it.

2 So this is Exhibit 12.

3 MR. GRAF: Let's go ahead and have this
4 marked as Exhibit 24 for purposes of this
5 deposition. Or do you just want to keep it 12 for
6 Dr. Swanson's depo?

7 MR. GALLIHER: Oh, that's fine. No, it
8 can be -- it's up to you.

9 MR. GRAF: I don't care.

10 MR. GALLIHER: Just call it 24 to this
11 one, otherwise you're going to have two 12s.

12 MR. GRAF: Yeah, let's call it
13 Exhibit 24.

14 (Exhibit No. 24 was marked for
15 identification.)

16 BY MR. GRAF:

17 Q So you've been handed what's been marked
18 as Exhibit 24 for purposes of this deposition. It
19 is a Criterium-McWilliam Engineers report dated
20 May 11, 2015, and it says it's prepared for
21 Dr. Todd Swanson regarding the 42 Meadowhawk Lane,
22 Las Vegas, Nevada 89135 property.

23 Do you see that?

24 A Yes.

25 Q Have you ever seen this document before?

1 A No.

2 Q Okay. Did Dr. Swanson ever talk to you
3 about this document?

4 A No.

5 Q Okay. There's a couple of things I want
6 to go over real quick. On page Roman -- at the
7 bottom, there's Bates stamps. So it will say
8 "Swanson," and then a number.

9 A Uh-huh.

10 Q So look at page 53. So it says "Repair
11 plumbing fixtures."

12 First off, you have never seen this
13 report; correct?

14 A Correct.

15 Q All right. And Dr. Swanson, did he ever
16 talk about a report that he obtained regarding an
17 inspection of the home after it was built in or
18 about May of 2015?

19 A No.

20 Q All right. So on 53 it talks about --
21 under "Repairs plumbing fixtures," it says "There
22 are leaks at both recirculation pumps."

23 Do you see that?

24 A Yes.

25 Q So is it your understanding that the

1 leak in the mater closet was as a result of a leak
2 in the recirculation pumps?

3 A I don't --

4 MR. GALLIHER: Foundation. Speculation.

5 THE WITNESS: No. I don't even know
6 what the recirculating pumps are, sir.

7 BY MR. GRAF:

8 Q Okay. So you didn't hear that during
9 the repairs that were conducted at the house in
10 November of 2017?

11 A No.

12 Q Okay. There's also a plumbing leak
13 above the ceiling of the basement bathroom.

14 Are you familiar with the basement
15 bathroom then?

16 A Yes, there is a basement bathroom.

17 Q I think Dr. Swanson testified that it
18 was adjacent to what he used as his workout room.

19 A Yeah.

20 Q Okay. Were you aware that there was
21 ever a plumbing leak in the ceiling of that
22 bathroom?

23 A No. This is the first time I'm hearing
24 about this.

25 Q Okay. When you were in there, did you

1 ever use that bathroom?

2 A I don't think I ever used that bathroom.

3 Q Okay.

4 A I rarely ever went downstairs.

5 Q Do you recall ever being in that
6 bathroom?

7 A I mean, yes, I've walked in that
8 bathroom before.

9 Q Okay. And then there are -- if we look
10 at -- it's I think Photo 6 and 7. So if you turn
11 to Swanson 82 and 83, and Photo No. 6 and 7,
12 adjacent to, did you ever look at the ceiling in
13 that bathroom?

14 A No.

15 Q Okay. All right.

16 A You're finished with this one?

17 Q I am.

18 So just going back to the timeline and
19 what appears to be November 16, what we were
20 talking about in terms of the visual pipe
21 inspection, did you ever observe Rakeman Plumbing
22 conducting the visual pipe inspection?

23 A No, not for that. I did the pressure
24 test.

25 Q Okay. So the pressure test, what did

1 you see?

2 A A gentleman asked me to show him where
3 the exterior -- like the hose bibs were. So I
4 showed him where those were, and he hooked up
5 something to it and just turned it on, and that
6 was it.

7 Q Okay.

8 A It was very simple.

9 Q All right. So then Subpart C, Paragraph
10 C says that "Ms. Whitfield" -- "Mrs. Whitfield" --
11 sorry -- "contacted Allison Burke with Rakeman
12 Plumbing via text to schedule the mold test,
13 pressure test, and visual inspection."

14 Do you see that?

15 A Yes.

16 Q And so does -- did you do that?

17 A Yes.

18 Q Okay. So are those some of the texts
19 that you produced?

20 A This is the 17th?

21 Q 16th.

22 A Yes.

23 Q Okay. And what did those texts say?

24 A You would like me to read all of them?

25 Q Sure. Read what you sent and what the

1 response was.

2 A Nicky Whitfield says, "Hi, Allison.
3 Nicky with 42 Meadowhawk here. The buyers have
4 requested that we have a mold inspection completed
5 ASAP. Would we go through Rakeman to have this
6 scheduled, or would we need to find a separate
7 contractor? Thanks."

8 Allison responds, "We have a sister
9 company, CPI Restoration, that handles mold. I
10 will have Rhonda contact you."

11 Nicky responds, "Perfect. Thanks.
12 Also, if we can get a schedule when the cabinetry
13 and carpet will be repaired. The buyers are doing
14 the final walk-through tomorrow and we close
15 Monday. We will still occupy the home until the
16 28th."

17 Do you need me to keep going?

18 Q No.

19 A Okay.

20 Q I have a couple of questions on that
21 last entry, though, that you sent.

22 In terms of the cabinet repairs, what
23 was your understanding as to what was being
24 repaired on the cabinets?

25 MR. GALLIHER: Foundation. Speculation.

1 THE WITNESS: That they had to be
2 repaired. They were damaged.

3 BY MR. GRAF:

4 Q And -- and let me ask a more specific
5 question.

6 Was it your understanding that they were
7 being removed and replaced, or was it your
8 understanding that they were being, quote/unquote,
9 repaired?

10 MR. GALLIHER: Same objection.

11 THE WITNESS: I don't know if they were
12 being removed or just repaired.

13 BY MR. GRAF:

14 Q Okay. All right.

15 A I would like to add something.

16 MR. GALLIHER: Don't. Just let him ask
17 his questions.

18 THE WITNESS: Okay.

19 BY MR. GRAF:

20 Q Okay. That is that. All right. Let's
21 go through -- let's go through these exhibits in
22 the binder.

23 So Exhibit 1 appears to be some e-mails
24 between and amongst yourself, Mr. Swanson -- or
25 Dr. Swanson, excuse me, and Austin from Shapiro &

1 Sher, and Aaron Hawley as to the estimate for the
2 repairs.

3 Do you see that?

4 A Yes.

5 Q Did you send and/or receive these
6 e-mails?

7 A Yes, I did.

8 Q Okay. Is it your understanding that
9 the -- the content of the e-mails is accurate, as
10 far as you're aware?

11 A As far as this one page that I'm looking
12 at? Yes. I have not reviewed these documents.

13 Q Take a -- take a look at the second
14 page. And I don't think it's really anything,
15 other than another e-mail from Austin to yourself
16 and Dr. Swanson.

17 A Okay.

18 Q So that e-mail on November 22nd, 2017,
19 says -- amongst other things in the quote it says
20 "Also please let owner know that he needs the
21 master bed closet completely cleared out."

22 Do you see that?

23 A Yes.

24 Q So this is after the close of the
25 property. Is that a fair statement?

1 A What was the close date?

2 Q I think it's November 17, 2017.

3 A So if that was the close date, then
4 November 22nd is accurately after the close date,
5 if the close date was November 17th.

6 Q Okay. So did you -- here is a better
7 question.

8 Did you clear out the closet or did --
9 or were the Folinos in the house at this point?

10 A Dr. Swanson emptied his closet. I
11 packed some of the items and Ms. Amber packed some
12 of the items, but there were remaining items that
13 Todd packed himself when he came back in town.

14 Q Okay. All right. Let's look at
15 Exhibit 2.

16 So this is Addendum 4A, as in alpha.
17 And it was signed by -- or electronically signed
18 by Dr. Swanson on November 15, 2017. It says
19 "Seller is disclosing that there was a water leak
20 in a master closet from a water pipe that broke.
21 The seller is fully remediating the issue to
22 include new baseboards, carpets, et cetera, and
23 all repair items regarding this leak will be
24 handled prior to the close of escrow."

25 Do you see that?

1 A Yes.

2 Q Okay. So were you aware of this
3 addendum?

4 A Not at the time it occurred.

5 Q Let me ask a better question or a
6 follow-up on your question.

7 When you say when it occurred, are you
8 talking about the leak or are you talking about
9 when this addendum was prepared?

10 A When the addendum was prepared, I did
11 not know about it.

12 Q All right. When -- do you know when you
13 became aware of it?

14 A I think the first time that I actually
15 saw the purchase agreement and the other documents
16 for the purchase and sale of the home was closer
17 around mediation time, but I have not reviewed all
18 documentation.

19 Q Okay.

20 A It was not necessary for me to.

21 Q So at the time of the transaction, did
22 you assist Dr. Swanson in preparing any of the
23 documentation for the transaction, either the --
24 the agreement, the property sale agreement, or any
25 of the addendums, anything like that?

1 A I did not assist in any documentation to
2 do with the sale of the home.

3 Q Okay. So including the seller's real
4 property disclosure form, the SRPD, did you assist
5 Dr. Swanson in preparing that document?

6 A No.

7 Q Did Dr. Swanson ask you any questions
8 about that document?

9 A No.

10 Q Have you reviewed that document?

11 A I think I glanced at it prior to
12 mediation, but ...

13 Q Okay. What would have been the reason
14 why you glanced at it prior to the mediation?

15 A Because I was supposed to review
16 documentation prior to mediation.

17 Q Okay. Did Dr. Swanson ask you any
18 questions about that document?

19 A No.

20 Q Okay. So Exhibit 3, for purposes of
21 this deposition, is the affidavit of Aaron Hawley.

22 Have you ever seen this document?

23 A No.

24 Q Did you --

25 A Oh, this one? Yeah, okay.

1 Q Dr. Swanson testified the other day that
2 he contacted Mr. Hawley and asked him to -- I
3 don't know if he said prepare it or if somebody
4 prepared it for him, but there was a -- a
5 communication between them regarding this
6 affidavit.

7 Were you present during that
8 conversation or communication occurring?

9 A I don't even know who Aaron Hawley is,
10 sir.

11 Q So he's the owner of Rakeman Plumbing or
12 one of the owners of the Rakeman Plumbing --

13 A Oh, okay.

14 Q -- as I understand it. I think he's
15 Rhonda's husband.

16 A Okay.

17 Q So did you ever have any conversations
18 with him about this affidavit?

19 A No. As I just stated, I didn't even
20 know who he was.

21 Q Okay. Well, I thought you might have
22 had a conversation with somebody at Rakeman
23 Plumbing in terms of preparing an affidavit.

24 You didn't have any conversations like
25 that?

1 A No.

2 Q Okay.

3 A Sorry I'm laughing. Some of these
4 questions are --

5 Q Got to rule things out.

6 A That's true.

7 Q There you go.

8 So Exhibit 4, take a look at that. It
9 is Bates-stamped 156 through 158.

10 A Okay. Oh, it's the answer to your
11 question earlier.

12 Q Which is?

13 A Of how I communicated to Dr. Swanson
14 about the mold test and that they were not to do
15 any work within the home, it is right here in the
16 e-mail. I stated "They've requested that no work
17 is to be done within the home or anywhere near the
18 exterior of the master closet or master bathroom
19 until the mold tests results are in. I've
20 informed this to Kelly and Austin."

21 Q Okay. Let me stop you there just for a
22 second.

23 So you recognize this document?

24 A Yes.

25 Q And did you prepare that e-mail?

1 A Yes.

2 Q Did you -- and you sent that e-mail to
3 Dr. Swanson?

4 A Yes.

5 Q Okay. So the second to the last
6 sentence of that top e-mail says "Rakeman is
7 working hard to get everything completed in a
8 timely manner. They are wanting this completed as
9 quickly as we do. I feel that they will be very
10 honest when it comes to the mold testing."

11 Do you see that?

12 A Yes.

13 Q Kind of an odd statement.

14 Do you know why you said they will be
15 honest as to the mold testing -- when it comes to
16 the mold testing?

17 A In the prior e-mail to that e-mail --

18 Q Okay.

19 A -- he had mentioned this other lady he
20 wanted me to look up, you know, to see, hey,
21 should we go with, you know, somebody else? And
22 I'm, like, "I think Rakeman is going to be honest.
23 They've been great so far."

24 Q Okay. If you turn to Exhibit 5 -- and
25 it is Bates-stamped 159 to 166 -- do you recognize

1 that e-mail chain?

2 A I recognize the first. I'm still
3 reading --

4 Q Okay.

5 A -- because I'm actually not on these
6 other e-mails. Okay.

7 Q So do you recognize this e-mail chain?

8 A I do now.

9 Q Okay. And it references -- or the --
10 excuse me. There's an e-mail in here dated
11 November 8 from Dr. Swanson to Austin Sherwood and
12 Shapiro & Sher about the water leak in the closet;
13 right?

14 A There is an e-mail here -- this one? I
15 have one on November 8th -- oh, this --

16 Q Yeah, bottom of 160, top of 161.

17 A Okay. I see the e-mail.

18 Q So -- and you were copied on that
19 e-mail; correct?

20 A I think so.

21 Q Okay. Did -- what, if anything, did
22 Austin with Ivan Sher's office do as to the leak?

23 MR. GALLIHER: Speculation. Foundation.

24 BY MR. GRAF:

25 Q So we have an understanding, we looked

1 at an addendum as to the leak itself.

2 Is it your understanding that Austin
3 prepared that document?

4 A I have no idea who prepared the
5 document.

6 Q Okay. So other than preparing that
7 addendum by Shapiro & Sher or Mr. Sher's office,
8 are you aware as to anything else that Austin
9 would have done in regards to the leak?

10 MR. GALLIHER: Same objection.

11 THE WITNESS: I have no idea what Austin
12 did for his job.

13 BY MR. GRAF:

14 Q Okay. All right. So on the
15 November 9th e-mail, it says "By chance, has Blue
16 Heron been in touch regarding those items?" This
17 is the e-mail from Austin to Dr. Swanson and
18 yourself and Ivan.

19 A Okay.

20 Q Do you -- what was the status of the
21 Blue Heron repairs as of that date?

22 A I do not recall as of that date what the
23 status of repair is, but I did put that I -- "if
24 we do not hear back on the schedule date," so I'm
25 assuming that this is in regards to the stucco.

1 And as I said earlier, we were having a
2 really big problem getting in touch with Blue
3 Heron and having Blue Heron send out somebody
4 qualified to go over the stucco issues.

5 Q Okay.

6 A So as of the date of November 10th, I
7 cannot tell you what the actual status was, but it
8 looks like, "If we do not hear back from them on a
9 schedule date," so that kind of looks like I was
10 still calling them off the hook to try to get a
11 date scheduled with them.

12 Q Okay. So let's move to Exhibit 6.

13 So one of the things that's being used
14 in this e-mail, other than the addendum, is these
15 other two issues and the pictures that are
16 depicted on 170 and 171.

17 A Uh-huh.

18 Q 171, is that a picture depicting the
19 stucco that was falling off or --

20 A Yes.

21 Q -- flaking or whatever it was doing?

22 A Yes.

23 Q So then 170, what -- what is being
24 depicted there?

25 A From my recollection, we had a

1 structural engineer come out as -- I think the
2 buyers were worried about that there was something
3 wrong with, like, the slope of the tile at the
4 pool.

5 Q Okay. Was it the offset or maybe it
6 looked like there was an offset?

7 A I think that's what it was. Like, there
8 was an offset of tile. From my recollection,
9 there was -- nothing came back wrong with it.
10 That it was just, "Hey, the house settled." You
11 know, things move.

12 Q Okay.

13 A But structurally, there was nothing
14 wrong, because we did not have to do -- I don't
15 remember having any repairs on that. Just we had
16 a structural engineer come out to look at it.

17 Q Okay. So then on Swanson 179, which is
18 Exhibit 7 -- sorry. The next exhibit.

19 A Oh, thank you.

20 Q This is an e-mail dated November 15 from
21 Dr. Swanson to you.

22 Do you recognize this document?

23 A Yes.

24 Q And, actually, if you -- just take a
25 look at the next two pages. It's just the -- I

1 think it's the other e-mails in the session.

2 A Okay.

3 Q So it says "Nicky, the buyers are going
4 to want a statement by mold remediation expert
5 that there is no mold in the master closet after
6 the water leak." It says "Can you find someone
7 ASAP to come out and test the air so that it
8 doesn't hold up closing that?"

9 That was when you had the contact with
10 the other person. Not Rhonda, her name was --

11 A Allison.

12 Q At Rakeman?

13 A Yes.

14 Q Okay. And so then in the next e-mail
15 dated November 16, 2017, at 1:35 p.m., he asks --
16 or, excuse me, Dr. Swanson asks you to contact
17 Rakeman.

18 And is that why you contacted Allison
19 with the text? Let me ask it this way.

20 Can you look at the text and then this
21 e-mail and see what time in relation to those two?

22 A I text Allison November 16 at
23 8:04 a.m. --

24 Q Okay.

25 A -- to ask about the mold inspection.

1 Q Okay. So this is an e-mail from

2 Dr. Swanson to you at 1:35 p.m. on the 16th?

3 A And it looks like November 16. Sorry,
4 it's a couple over. It says on November 16 I said
5 "So I have more now. The buyers are here, and
6 they have requested that we have the plumbing in
7 the home checked. A pressure test?? And they
8 would like all piping checked in the entire home
9 with a full report."

10 Q So that's what I'm asking.

11 Why did Dr. Swanson send you the e-mail
12 about contacting Rakeman to do a mold test when
13 you had already contacted them at 8:00 in the
14 morning?

15 A No.

16 MR. GALLIHER: Well, hold on. Hold on.

17 BY MR. GRAF:

18 Q Or am I just mishearing?

19 A Yes, you misheard.

20 So the first original one that I read,
21 that was at 8:00 in the morning. That was on
22 November 16 at 8:00 a.m. regarding the mold test.
23 The second text message that I read to you was
24 November 16 at 11:27 a.m.

25 Q Okay.

1 A And then at 12:42 she responded that she
2 could do it, so ...

3 Q Okay. So the first e-mail on 179 of
4 Exhibit 7 is November 15 at 7:35 p.m.

5 So the next morning, you contacted
6 Allison to do the mold test?

7 A Correct.

8 Q And then Dr. Swanson asked you about
9 doing the pressure test. And what -- did you have
10 a conversation with him about this phrase that's
11 in this e-mail on 180? And the phrase that I'm
12 referring to is "A test they can do with the
13 plumbing to ensure there are no other weak spots
14 in the water lines that may result in another
15 leak."

16 Do you know what that meant?

17 A That's what Mrs. Folino was requesting.
18 Mrs. Folino requested that this be done.

19 Q Okay. So what was your -- and I'm just
20 referencing that phrase "with no other weak spots
21 in the water lines."

22 It was my understanding that this --
23 this leak ultimately was the result of a
24 penetration by a nail.

25 Is that not correct?

1 MR. GALLIHER: Speculation. Foundation.

2 THE WITNESS: I'm not sure. I never saw
3 the report on what actually caused the leak.

4 BY MR. GRAF:

5 Q All right. And we're going to depose
6 Rakeman, so they'll tell us.

7 A Okay.

8 Q All right. We can skip Exhibit 8, your
9 text messages.

10 MR. GALLIHER: Are you looking at 8 or
11 9?

12 MR. GRAF: I'm looking at 9. But we've
13 gone over most of these.

14 MR. GALLIHER: Yeah.

15 BY MR. GRAF:

16 Q So just to make sure that we're clear on
17 the record, the copy of -- or with the packet of
18 text messages that you've been referencing that
19 you brought with you here today, are they the same
20 as what's been produced as Swanson 189 to 194,
21 which is Exhibit 9 for purposes of this
22 deposition?

23 A I would need to examine page by page.

24 Q Go ahead and do that, just so that we're
25 clear and make sure that I have the same thing

1 that you have.

2 Like, first off, the packet you brought
3 with you today, how many much pages is it?

4 A One, two, three, four -- five.

5 MR. GRAF: So this is 6, right?

6 MR. GALLIHER: Yeah, I think that
7 there's a page --

8 THE WITNESS: Is one missing?

9 MR. GALLIHER: That might not be on
10 there. Okay.

11 THE WITNESS: Number six, page two is
12 the same.

13 BY MR. GRAF:

14 Q Okay.

15 A Page three is the same. This page, 192,
16 is the same. I lost track of which pages I'm on.

17 This is not the same. Text message 6 I
18 do not have printed out.

19 Q Okay.

20 MR. GALLIHER: Give him this number.

21 THE WITNESS: Swanson 193.

22 BY MR. GRAF:

23 Q Okay. But you do have 194?

24 A 194, yes, I do.

25 Q Okay.

1 A And that may be something I -- human
2 error -- did not print out when I was printing out
3 all of these documents last week.

4 Q So let's look at page 193 and those text
5 messages in Exhibit -- what are exhibit are we on?

6 MR. GALLIHER: 9.

7 BY MR. GRAF:

8 Q 9.

9 And it's text message No. 6, and it's
10 "Nicole Folino requested the mold test results
11 from Nicky Whitfield. Nicky gave Nicole the
12 contact information for the plumbing company and
13 the mold company."

14 Do you see that?

15 A Yes.

16 Q Okay. And this is -- so the -- I guess
17 the third screen of the top on the right, the
18 blue, is that your text?

19 A Yes, blue would be from me.

20 Q Okay. And you instructed Mrs. Folino to
21 contact CPI Restoration regarding the mold test?

22 A Let me read these text messages, please,
23 and then I'll answer the question.

24 Q Okay.

25 A Okay. Could you ask me your question

1 again? Oh, I think my thing came off.

2 Q So I think the original question that I
3 asked was, you informed, it looks like,
4 Mrs. Folino on November 21st at 2 -- I can't read
5 that, 2:00 something p.m. about CPI Restoration;
6 right?

7 A What is your actual question? You said
8 do you see? Yes, I see.

9 Q So that's when you informed Mrs. Folino
10 about who did the mold remediation; correct?

11 A I don't know if that was the original
12 first time that I informed her or anything.

13 Q Okay. Do you -- can you direct me to
14 any other document or text or an e-mail?

15 A There are texts between Mrs. Folino and
16 I throughout the entire transaction and after.

17 Q Okay. So that begs the question, is
18 what's been produced here as Exhibit 9, the text
19 messages, is that the extent of the text messages
20 between yourself and Mrs. Folino?

21 A These six or seven text messages? No.

22 MR. GRAF: Okay. We would ask that the
23 rest of them be produced then.

24 MR. GALLIHER: Okay. Presumably they're
25 between her and your client. Presumably your

1 client has these.

2 Why are they not available from her?

3 MR. GRAF: Well, that's a good point.

4 Yeah, I'll ask her about them.

5 BY MR. GRAF:

6 Q Okay. What is the text -- what is your
7 cell number back then?

8 A (702) 816-1405. And also my work phone
9 number, (702) 378-2729. Let me check that phone
10 number actually, sorry. It's just forwarded to my
11 phone, so ...

12 Q So you can send text messages from that
13 phone number also?

14 A Not really. It's like an iPhone 4 --

15 Q That's all I'm worried about.

16 A -- so it doesn't really work. That's
17 why I have it forwarded.

18 Q Okay.

19 A I said (702) 378-2729?

20 Q Yes.

21 A Okay.

22 Q Okay. Perfect. All right.

23 So then Exhibit 10 is your affidavit.

24 Yeah, take a second and take a look at it.

25 Do you know who prepared that document?

1 A I don't even remember doing this
2 document.

3 Q Well, no, that's -- that's what I'm
4 asking.

5 Do you know who prepared this document?
6 Did you? Dr. Swanson? Counsel?

7 A Could we go back to where you were
8 giving me a minute to review the document?

9 Q Sure. Sure.

10 A Thank you.

11 MR. GALLIHER: I've got to take a break.

12 MR. GRAF: Okay. Go off the record.

13 THE VIDEOGRAPHER: Off the video record
14 at 12:40.

15 (Whereupon, a recess was taken.)

16 THE VIDEOGRAPHER: Back on the video
17 record at 12:51.

18 BY MR. GRAF:

19 Q Okay. You're aware you're still under
20 oath, Mrs. Whitfield?

21 A Yes.

22 Q Okay. So we left off, we were -- we
23 were looking at Exhibit 10, which is a document
24 that purports to be your affidavit.

25 Do you see that?

1 A Yes.

2 Q So my original question was, did you
3 prepare this?

4 A No. I did not write all of this.

5 Q Who prepared it?

6 A I don't remember who wrote it. I did
7 review it and sign it.

8 Q Okay. So as you sit here today, though,
9 you don't know if Dr. Swanson prepared it?

10 A No.

11 Q Let me ask a better question.

12 Did Dr. Swanson prepare the affidavit?

13 A Not to my knowledge.

14 Q Okay. Did counsel prepare it?

15 A I'm not -- so back to your original
16 question, I'm not sure who prepared it.

17 Q Okay. Where did you sign it?

18 A I don't remember.

19 Q Do you know Beth Stanley, the notary?

20 A I don't know who Beth Stanley is. I
21 don't really remember people from one meet. So
22 I'm sure it was, "Hi, I'm a notary. Stamping this
23 for you."

24 Q Okay. Do you know why this affidavit
25 was prepared?

1 MR. GALLIHER: Speculation.

2 THE WITNESS: No.

3 BY MR. GRAF:

4 Q And --

5 A Not really.

6 Q Okay.

7 A Because he's being sued.

8 Q All right. Did you have an
9 understanding that the information contained in
10 the affidavit was accurate?

11 A I'm sorry. Say that one more time.

12 Q Is it your testimony here today that the
13 information contained in the affidavit is
14 accurate?

15 A Correct, yes.

16 Q Okay. So on Swanson 187, it says "I
17 later spoke with mold company representatives who
18 informed me that the mold tests were positive with
19 a low spore count."

20 Do you see that?

21 A Yes.

22 Q When I asked you earlier about the mold
23 test, you said that you didn't or had not seen
24 that report before; correct?

25 A Correct.

1 Q So do you recall who you talked to at
2 the mold company regarding the low spore count?

3 A No.

4 Q Okay. So the Exhibit 12 that was
5 produced by Dr. Swanson in this case, which is
6 the -- in this binder, the Infinity Environmental
7 Services report dated December 7, 2017 --

8 A What page are you on?

9 Q I'm on Exhibit 12.

10 A Okay. Yes, this report that I had not
11 seen before that I told you.

12 Q Okay.

13 A Correct.

14 Q So the -- this report does not have any
15 indication of a positive mold test. And feel free
16 to look through the results.

17 A I'm not comfortable reviewing the
18 results, as I am not a mold specialist and hardly
19 understand half of the lingo they're putting in
20 here. So I cannot confirm or deny what this says.

21 Q Okay.

22 A But, again, I did not see the report.

23 Q Okay. And when you -- you state on the
24 bottom of page 187, "Based on my personal
25 interactions with the Folinos, they were aware of

1 the leak prior to the close of escrow."

2 That's the leak that occurred in
3 November of 2017; correct?

4 A Correct.

5 Q Okay. Are you aware of at least four
6 prior leaks in the house?

7 A I knew of one.

8 Q Okay. And the one that you're talking
9 about is the prior leak in the master bath?

10 A All I knew is there was a leak that was
11 in the master closet. And, again, when I started
12 for him, they were just finishing the repairs of
13 the carpet.

14 Q Okay.

15 A But I never asked any details about it.

16 Q Okay. Did Dr. Swanson ever tell you
17 about the leak under the master bathroom sink?

18 A For the second time, no.

19 Q I don't think I ever asked that, but
20 that's fine.

21 Did Dr. Swanson ever tell you about the
22 other leak near the circulation pumps in the
23 single car garage in 2015?

24 A He did tell me that he had another leak
25 in the garage.

1 Q Okay. And were you aware of any leaks
2 that occurred in the home in May of -- or February
3 of 2017?

4 A If that's the one where they were still
5 repairing the carpet in the master closet. I
6 don't know any details about that leak, though.

7 Q Okay.

8 A Like, at all. I've never seen a report.
9 I know nothing about it.

10 Q Okay. But you are aware that there was
11 a prior -- at least one prior leak in the master
12 closet; correct?

13 A Yes. We've established that.

14 Q Okay. Were you aware of another leak
15 that occurred as -- next to the recirculating pump
16 in the master closet in 2015?

17 A I don't know what a recirculating pump
18 is or where it's located.

19 Q Okay. So you weren't aware of a -- two
20 leaks that occurred within a day of each other in
21 August of 2015?

22 A No. The leaks that I'm -- so we can
23 stop asking the same questions, I'm aware of the
24 leak that happened during escrow --

25 Q Ma'am, I'm not going to stop asking the

1 same questions. These are all specific leaks that
2 Dr. Swanson testified to and/or that he provided
3 us information with in his interrogatory
4 responses. So I appreciate that it's -- you know,
5 you're the assistant, and I've got to ask all of
6 these questions.

7 But I'm going to ask them all so that I
8 get a response as to whether or not you were aware
9 of those. Okay? I don't want you to think I'm
10 going to stop asking if you try to do some sum-up
11 response. I want to make sure that we ask all of
12 these questions. Okay?

13 A Okay.

14 MR. GRAF: All right. So what was the
15 question that was pending?

16 (Whereupon, the record was read.)

17 THE WITNESS: Correct.

18 BY MR. GRAF:

19 Q And Dr. Swanson never told you about
20 those leaks?

21 A I don't know if that is the leak that he
22 told me about that was in the garage. I don't
23 know if those are the two -- the same thing. I
24 don't know.

25 Q So one of them may be?

1 A I don't know.

2 Q All right.

3 A I'm -- I told you the leak -- there was
4 a leak in the garage that I heard about, a leak in
5 the master closet, a leak in the master closet
6 during escrow. That's all I know about.

7 Q Okay. So the last page of your
8 affidavit talks about the -- that you personally
9 informed Mrs. Folino of the renovations at the
10 La Madre Ridge property; correct?

11 A Yes.

12 Q Okay. And then you informed the Folinos
13 that those renovations wouldn't be completed until
14 November 17?

15 MR. GALLIHER: This says by November 17.

16 MR. GRAF: By November 17th.

17 THE WITNESS: Correct.

18 BY MR. GRAF:

19 Q Who -- what company was doing the
20 renovations and La Madre property?

21 A I don't know the company name. The
22 gentleman I dealt with is James Franco. I'm not
23 positive on his spelling, either, of his last
24 name.

25 Q Okay. So just real quick, on

1 Exhibit 11, that's the affidavit of Dr. Swanson.

2 He has already testified to that.

3 Have you seen that document before?

4 A No, I have not.

5 Q 12 is the Infinity report that you have
6 already gone over.

7 So go to Exhibit 14. 13 we've already
8 gone over.

9 A What page are you on?

10 Q 212. No, I skipped the --

11 MR. GALLIHER: Oh, 14?

12 MR. GRAF: Yeah.

13 MR. GALLIHER: Sorry. No, shoot --

14 THE WITNESS: That's 15.

15 MR. GALLIHER: There you go. That's it.

16 THE WITNESS: Okay.

17 MR. GALLIHER: No, there should be --

18 THE WITNESS: It says Exhibit 14.

19 MR. GRAF: That's it. It's only one
20 page.

21 MR. GALLIHER: It is.

22 BY MR. GRAF:

23 Q So have you ever seen that e-mail
24 before? It's an e-mail that purports to be dated
25 August 9, 2015, from Dr. Swanson to Henry

1 Regnault.

2 A No.

3 Q Okay. Does this document help to
4 refresh your recollection as to who you were
5 communicating with at Blue Heron, those two names
6 at the top, either Henry Regnault or Chris Myers?

7 A No, I really don't recall.

8 Q Okay. So Exhibit 15 is a receipt from
9 Shaun Whitfield.

10 Is that your husband?

11 A Yes, it is.

12 Q Okay. So what is this receipt about?

13 A Repair backyard gate to be
14 self-latching: All gates were repaired to be
15 self-latching. Fitness exterior door deadbolt:
16 Deadbolt was adjusted. Bathtub drain was draining
17 slowly. It was plunged, bathroom drain, and the
18 drain is operational.

19 Q Okay. So did your husband do work like
20 this at the home, other than this invoice?

21 A No.

22 Q This was the only invoice?

23 A Correct.

24 Q Okay. And this is the only work that he
25 ever did at the house?

1 A I believe so. At 42 Meadowhawk, yes.

2 Q Okay. So Exhibit 16 is -- purports to
3 be a Nova Geotechnical Engineering report dated
4 November 16, 2017. Go ahead and take a second to
5 take a look at that.

6 Okay. And this is sent to your
7 attention at 10120 West Flamingo Road.

8 What is that, 10120 West Flamingo Road?

9 A That is his P.O. Box.

10 Q Okay. And when you say "his," it's
11 Dr. Swanson?

12 A Yes, Dr. Swanson's P.O. Box.

13 Q All right. And did you ever receive
14 this report?

15 A I believe so. I've not looked at this
16 or thought about this report since, you know,
17 almost three, three and a half years ago.

18 Q Okay. What did you do with this report?

19 A I can guess, but I shouldn't guess. I
20 do not remember.

21 Q Did you send it to anybody at Ivan
22 Sher's office or anybody at -- or, excuse me,
23 Ashley's office?

24 A I do not recall offhand.

25 Q I'm just trying to find out.

1 Did you send this to the Folinos --

2 A I don't recall offhand.

3 Q -- or their agents? Okay.

4 Okay. So we can take those. So let's
5 take a look at Exhibit 19, 297.

6 A 297?

7 Q Yeah. It's -- it's Exhibit 19.

8 So this e-mail, at least at the end of
9 this chain on November 1st, 2017, from Dr. Swanson
10 to you, "Maybe this will buy us an extension."

11 Do you know what he's referring to
12 there?

13 A Yes. The La Madre was not going to be
14 ready by their initial close date.

15 Q Okay. So this appears to -- well, below
16 it, it looks like Austin is copied on an e-mail
17 and sending it to Dr. Swanson. And it says,
18 "Hello. While the contractors were given bids
19 today, they discovered an issue with the roofing
20 off the office balcony. It's coming off and it
21 looks like it needs further evaluation. We have a
22 call into the inspector to come back ASAP."

23 Do you see that?

24 A Yes.

25 Q So is this that same condition that we

1 looked at the picture of previously where the
2 stucco was flaking or something like that?

3 A Yes, I believe that's what they're
4 discussing here.

5 Q Okay. So did you ever have any
6 conversation with Dr. Swanson as to what he was
7 talking about there in terms of "maybe this will
8 buy us an extension"?

9 A Again, like I just stated, I already
10 knew what he was discussing, because the La Madre
11 house was not going to be ready. Just as I told
12 Mrs. Folino when she said, "Oh, yeah, we're
13 closing next week." And I'm, like, "Well, what?"
14 I'm like, "I didn't know that."

15 Q Okay. So there's a certain connotation
16 to that phrase, "maybe this will buy us an
17 extension." It sounds like Dr. Swanson needed an
18 extension for the La Madre residence.

19 Was he saying that he was going to try
20 and leverage the situation with the repairs as to
21 the roof into an extension so that he could
22 have -- stay in the house until he was in the
23 La Madre Way?

24 MR. GALLIHER: Speculation. Foundation.

25 THE WITNESS: I cannot tell you what

1 Dr. Swanson was thinking.

2 BY MR. GRAF:

3 Q And that's why I'm asking you, did you
4 talk to him about this or have an understanding
5 about that?

6 A It's right here, "maybe this will buy us
7 an extension." We needed an extension or I needed
8 to get Pods. It was one or the other. "Hey, if
9 we don't get an extension, then I need to get
10 storage pods," one or the other. This type of
11 situation came up, "Hey, we need further
12 inspections. Cool. Maybe this will get us an
13 extension."

14 Q Yeah.

15 A Like, "Yeah, that would be great. Then
16 we don't have to do Pods. We don't have to try
17 and move things twice." It makes my job a little
18 easier.

19 Q Okay. So Exhibit 20 -- so, actually,
20 we've looked at these already, these e-mails.
21 We've looked at that. 21. Nope, we've looked at
22 that one, too. And then if you go to Exhibit 22,
23 no, that's the same one. Okay. All right.

24 So did you know Kelly Contenta prior to
25 this property?

1 A Yes. Or --

2 Q How did you know her?

3 A Not prior to the property, because I
4 knew the property when I met Dr. Swanson. So I
5 didn't know -- sorry. The way you phrased the
6 question. So, no, I did not know her prior to
7 knowing Dr. Swanson and 42 Meadowhawk.

8 Q Okay. Did you have an understanding as
9 to whether or not Kelly Contenta had a personal
10 relationship with Dr. Swanson?

11 A Was I aware that they had one?

12 Q Yes.

13 A Yes.

14 Q Okay. She was his girlfriend at some
15 point in time?

16 A Unfortunately.

17 Q Did she live in the home at any point in
18 time?

19 MR. GALLIHER: Speculation.

20 BY MR. GRAF:

21 Q The 42 Meadowhawk home?

22 A Not while I worked for him, no. She
23 stayed a night here or there, but I don't know
24 when she ever lived with him, but she didn't when
25 I was there.

1 Q Okay. They were still dating during the
2 pendency of this transaction?

3 MR. GALLIHER: Speculation. Foundation.

4 THE WITNESS: No, not that I'm aware of.

5 BY MR. GRAF:

6 Q Okay. All right. So they broke up
7 prior to this transaction?

8 MR. GALLIHER: Same objection.

9 THE WITNESS: As far as I'm aware.

10 BY MR. GRAF:

11 Q All right. Did you get any direction
12 from Kelly Contenta on what to do regarding the
13 sale of this property on anything that we talked
14 about here today?

15 A What to do? That's extremely vague.
16 Could you --

17 Q So on any of the activities that you
18 undertook in getting the repairs for the leak, did
19 Kelly tell you what to do?

20 A No.

21 Q Did Kelly talk to you about any --
22 actually, that's a better question.

23 How did you come to know about the prior
24 water leak, other than seeing the carpet? Did you
25 talk to Dr. Swanson about it?

1 A When I started for him, the carpet still
2 had to be repaired. That's how I knew about it.

3 Q Okay.

4 A We had conversations, "Hey, there's
5 going to be people here to fix the carpet." Okay.
6 That was already prearranged.

7 Q Did you talk to Kelly about that?

8 A No, not that I recall.

9 Q Okay. Was there any point in time since
10 November of 2017 that you stopped working for
11 Dr. Swanson and then came back or anything like
12 that?

13 A No.

14 Q Okay. Are you aware of any other water
15 leaks than what we've talked about here today at
16 the 42 Meadowhawk property?

17 A No. You actually told me about more
18 than I knew.

19 Q I'm a giver.

20 So are you aware of any problems with
21 water or moisture that was caused by the water
22 feature in the basement wall?

23 A No.

24 Well, what water feature in the basement
25 wall?

1 Q The fountain that comes down the wall at
2 the -- in the basement.

3 A The outside water feature?

4 Q Yeah.

5 A There's one that's outside.

6 Q Sure.

7 A Not inside.

8 No, not of any problems with that.

9 Q All right. Did you ever have or were
10 you aware of any repairs to the stucco that's
11 adjacent to that water feature?

12 A No.

13 Q All right.

14 A Not that I recall, anyways.

15 Q Okay. Well, I mean, either you did or
16 you didn't.

17 Were there repairs or weren't there?

18 A Not that I recall.

19 Q Okay. So in terms of the damage in the
20 master closet, do you recall as to what items, if
21 any, were removed and replaced?

22 MR. GALLIHER: Speculation. Foundation.

23 THE WITNESS: If any items were removed?

24 BY MR. GRAF:

25 Q Sure.

1 A Well, I mean, I took his clothes out,
2 so ...

3 Q Okay. What about the carpeting? Was
4 that removed and replaced or --

5 MR. GALLIHER: Same objection.

6 THE WITNESS: We cut out the carpet and
7 removed the carpet.

8 BY MR. GRAF:

9 Q Okay. When you say "we," who is we?

10 A Myself and Amber McCoy, when the leak
11 occurred.

12 Q Okay.

13 A As we already discussed today.

14 Q What did you do with that carpet?

15 A I don't remember. Put it in the garage,
16 put it outside, I -- I don't remember.

17 Q Was it reinstalled into the -- into the
18 closet?

19 A I don't know.

20 Q Would Dr. Swanson know?

21 MR. GALLIHER: Speculation.

22 THE WITNESS: I don't think so, because
23 those repairs were completed after everything was
24 moved out.

25

1 BY MR. GRAF:

2 Q Okay.

3 A I don't -- I don't even recall if the
4 carpet -- the new carpet was put in prior to move
5 out or not.

6 Q All right. And we went over the
7 cabinets.

8 As you sit here today, you don't know
9 whether or not those were removed and replaced?

10 A Yeah, I don't recall if they removed
11 them or what.

12 Q Okay. Did you -- do you have an
13 understanding that they were removed, the
14 cabinets, at some point in time?

15 MR. GALLIHER: Speculation.

16 THE WITNESS: I'm not sure if they were
17 ever removed or not or just repaired.

18 BY MR. GRAF:

19 Q All right. So one more question on
20 that.

21 When you looked -- when they were doing
22 the repairs in the closet, did you ever look in
23 there and see drywall where the cabinets had been
24 removed?

25 A I do not recall.

1 Q Okay. I guess I'll ask a better
2 question.

3 Did you ever look in there when they
4 were doing the repairs?

5 A I mean, yeah. They started repairs the
6 first day. They put the lowers in, I mean, so
7 yeah.

8 Q Okay.

9 A I saw it when I was there for the mold
10 test. But I do not recall if the cabinets were in
11 place or not. Like, I really do not remember
12 whether or not they were there, if they were
13 removed. I was also overseeing the entire
14 renovation of the other house, like -- I'm not
15 sure.

16 Q Okay. What role, if any, did you have
17 in overseeing the repairs of the leak?

18 A Not much. Just opening and closing
19 doors and, you know, the things we already went
20 over.

21 Q Do you recall how long it took Rakeman
22 to complete the repairs?

23 A No.

24 Q This is where I'm going to ask you to
25 give me some type of estimate.

1 Was it ten days? Was it three weeks?

2 A I don't even believe repairs were
3 completed by the time we moved out, so ...

4 Q Okay. You I think you already testified
5 to this, but I'm going to ask anyways.

6 Did you talk to Rakeman as to the source
7 of the leak in November of 2017?

8 MR. GALLIHER: Foundation. Asked and
9 answered.

10 THE WITNESS: Can you repeat your --
11 when he said that, then I lose track.

12 MR. GALLIHER: Yeah, don't listen to me
13 unless I tell you don't answer.

14 BY MR. GRAF:

15 Q Just don't listen to him.

16 A It's ADHD. You're, like, "What? Huh?
17 Squirrel. Chicken," you know.

18 MR. GRAF: So can you read it back?

19 (Whereupon, the record was read.)

20 THE WITNESS: Yes, they showed me the
21 area of the panel on the exterior of where about
22 the leaks came from.

23 BY MR. GRAF:

24 Q Okay. Did -- at any point in time in
25 your conversations with Rakeman, did they say that

1 a plumbing fitting had failed?

2 A Not to my knowledge.

3 Q Are you aware, as you sit here today, as
4 to whether or not the -- the joints of the plastic
5 pipe had failed in that area?

6 A No, I don't even know -- I thought it
7 was a copper pipe. This is how little I know
8 about it.

9 Q Okay. Did Dr. Swanson ever ask you as
10 to what was the reason for the leak?

11 MR. GALLIHER: I'm sorry. Can I have
12 that back?

13 (Whereupon, the record was read.)

14 MR. GALLIHER: Foundation.

15 Go ahead.

16 THE WITNESS: I cannot recall the
17 conversation, but I did talk to him many times the
18 day of the leak. I am sure we probably had a
19 conversation and I repeated whatever Rakeman said
20 to me, but I do not recall the exact conversation.

21 BY MR. GRAF:

22 Q Okay. It's my understanding that
23 Rakeman submitted the repairs that were completed
24 in November of 2017 as a warranty repair.

25 Did you assist in the preparation of any

1 form -- claim form or anything like that to be
2 submitted for the warranty repair?

3 MR. GALLIHER: Foundation. Speculation.

4 THE WITNESS: No.

5 BY MR. GRAF:

6 Q Did any -- did you have any
7 conversations with anybody at Rakeman about a
8 warranty claim?

9 A No.

10 Q Other than the conversation that you
11 talked -- that you have already testified to as to
12 your conversation with the Infinity Environmental
13 person who did the inspection on the 17th, and
14 then we went through your timeline, did you have
15 any other conversations with Infinity
16 Environmental Services?

17 A Not that I recall. I remember
18 scheduling the appointment. I don't even remember
19 if I scheduled it directly with them. I don't
20 think I did, no.

21 Q Okay.

22 A Sorry. Thinking out loud.

23 Q That's all right.

24 Did you ever make any comments about the
25 house or anything about the house to the Folinos?

1 A That's extremely vague. I mean, me and
2 Mrs. Folino talked all about what she wanted to do
3 to the house. So, yes, we had conversations about
4 the house.

5 Q Did you ever tell Mrs. Folino about any
6 problems that you had with the house, other than
7 the leak and what we've already testified to here
8 today?

9 MR. GALLIHER: Foundation.

10 THE WITNESS: Not that I recall. Except
11 for, like, the repair requests, because me and
12 Mrs. Folino both met with the guy from Blue Heron
13 at the same time.

14 BY MR. GRAF:

15 Q And when you say "the repair requests,"
16 that's one of the addendums where there was a list
17 of, like, five or six things that they requested
18 be repaired prior to the close of escrow?

19 A Correct.

20 Q Okay. So I'm going to show you what we
21 marked as Exhibit 3 to Dr. Swanson's depo, which
22 is the SRPD. And I had asked you some questions
23 earlier about it, but the first two pages are the
24 content of this document.

25 Have you ever seen this before?

1 A Have I seen an SRPD before?

2 Q No.

3 Have you ever seen this document that
4 was marked as Exhibit 3 to Dr. Swanson's
5 deposition?

6 A Have I --

7 Q I'm sorry.

8 A His SRPD? Have I seen it before? Yes.
9 I did not see it until after close of escrow.

10 Q Okay. Dr. Swanson has previously
11 testified that he filled this out, electronically
12 signed it on October 24, 2017.

13 Did he ever ask you any questions about
14 how to fill this document out?

15 A No. You asked me that before.

16 Q Okay. Just asking you now in
17 conjunction with looking at the exhibit.

18 So specifically Dr. Swanson never asked
19 you about the question at the top of page two
20 where it says "Structure: Previous or current
21 moisture conditions and/or water damage"?

22 A Dr. Swanson did not ask me any questions
23 regarding this document.

24 Q Okay. Now, did Dr. Swanson know that
25 you worked as a real estate --

1 A -- transaction coordinator.

2 Q Thank you.

3 A Yes.

4 Q And did he ever ask you for any
5 information or assistance regarding any of these
6 real estate transactions?

7 A No.

8 Q Okay. Now, you previously said that you
9 work as a real estate transaction coordinator for
10 both buyers and sellers.

11 A Correct.

12 Q Had you previously assisted sellers in
13 filling out an SRPD?

14 A No. I'm not legally allowed to.

15 Q Okay. So I understand the response.
16 So you have never assisted any seller in
17 filling out an SRPD?

18 A My husband, actually. Yes, I'm sorry.
19 I have helped and assisted one person filling out
20 an SRPD, which was when my husband sold his home.

21 Q Okay. Did Dr. Swanson ever tell you
22 that he was seeking advice from a Realtor to
23 assist him in filling out the SRPD?

24 MR. GALLIHER: Foundation.

25 THE WITNESS: No. We had no discussions

1 about the SRPD.

2 BY MR. GRAF:

3 Q Never?

4 A Never.

5 Q Okay.

6 A Not until after close of escrow, after
7 the lawsuit was filed, and the first time I saw
8 the SRPD.

9 Q Okay. Were you aware that Dr. Swanson
10 was involved or a plaintiff in a mold litigation?

11 A No.

12 Q He never talked to you about that?

13 A Are you talking about this case?

14 Q No, not this case.

15 A Okay. Because the way you said it, it
16 sounded like you were talking about something
17 else. So, no I'm not aware of anything else.

18 Q Were you aware that Dr. Swanson was a
19 plaintiff in a mold case?

20 A No.

21 Q Are you aware of any other problems,
22 other than the plumbing that we've talked about
23 here today, regarding the house?

24 MR. GALLIHER: Foundation.

25 THE WITNESS: I'm aware that after close

1 of escrow, the back door wasn't working. And I
2 assisted Mrs. Folino in getting in contact with
3 the repair company for that.

4 BY MR. GRAF:

5 Q So the back door, was that the same back
6 door latch that your husband had repaired?

7 A No. This is the big slider on the main
8 floor.

9 Q Okay.

10 A My husband repaired the workout room
11 door -- exterior door to the workout room.

12 Q Got it. All right.

13 Were you aware of any issues as to the
14 roof of the home, other than the stucco flaking
15 that we've been talking about today?

16 A No.

17 Q Okay. Were you aware that there were
18 any leaks in the roof?

19 A No.

20 Q Do you have an understanding as to any
21 repairs in the ceiling above the shower in the
22 upstairs bathroom --

23 A No.

24 Q -- in the one where the office is?

25 A I'm not aware of any repairs in any

1 ceiling in the entire home, period.

2 Q Okay. Do you recall having a
3 conversation with Mrs. Folino about a construction
4 defect attorney?

5 A I'm sorry. Say that one more time.

6 Q Do you recall having a conversation with
7 Mrs. Folino in November of 2017 regarding a
8 construction defect attorney?

9 A Somewhat. I don't remember the entire
10 conversation, but I do remember us both being mad
11 at Blue Heron about the stucco issue. And I was
12 like, "Hey" -- I mean, we both agreed, stucco
13 shouldn't be falling off a house in two years.
14 So, "Hey, go get somebody involved." Like, that
15 had nothing to do with anybody except for Blue
16 Heron.

17 Q Okay. Who did you refer her to?

18 A I don't know if I actually referred
19 anybody to her. I don't know if I actually
20 referred a certain attorney. I think we just
21 discussed like, "Hey, maybe this is something you
22 should go after."

23 Q You didn't give her a name of an
24 attorney?

25 A Not that I recall, but that doesn't mean

1 that I didn't. I would have Ms. Folino provide
2 her text messages, and it would be in there.

3 Q Okay. Going back to your work as an HOA
4 community manager, what communities did you work
5 for?

6 A Oh, gosh. Really?

7 Q Yeah.

8 A I -- my nightmare, Alondra HOA.

9 Q Can you spell that?

10 A A-L-O-N-D-R-A.

11 Q Okay.

12 A Oh, my gosh. There's a -- a small 19
13 home community. I don't remember the name of it.
14 There was one in Summerlin that I did. It was
15 age-restricted. I don't -- I know Summerlin was
16 the -- the master on that one, but I don't
17 remember the name of the HOA.

18 Alondra only stands out, because it was
19 my nightmare. It was literally what led me to
20 quit. It was horrible.

21 Q Why was it horrible?

22 A When I took it over from another
23 manager, the board had decided they did not want
24 to get the roof cleanings done, to get the -- what
25 do they call them? Sorry. I'm drawing a blank.

1 Q **The gutters?**

2 A The gutters. They did not clean the
3 gutters. They had denied that. And when I took
4 it over, like within the same month of me taking
5 it over, eight roofs collapsed and it damaged 16
6 units. And my boss pretty much said, "Figure it
7 out." It was a nightmare. It was horrible.

8 I assisted on a bunch of other
9 properties. I mean, you can definitely contact
10 Level Property Management to see which properties
11 there were there. But The Ridges, 42 Meadowhawk,
12 none of that was anything to do with what I did
13 there.

14 Q **Did you manage any HOAs that had**
15 **construction defect cases?**

16 A Yes. Alondra construction defect cases.
17 I want to say -- I think Las Verdes had
18 construction defects. I assisted on that one. I
19 was not the manager on that one. There was a
20 bunch that had construction defects. They're so
21 common.

22 Q **Did any --**

23 A I want to say one of them even had
24 Kitec.

25 Q **That's what I was going to ask next.**

1 A Yeah. I dealt --

2 Q Did any of those have Kitec involved?

3 A I do not remember which properties, but
4 there was a couple that Level managed that had
5 Kitec. I did not -- like, when I came on, Kitec
6 was already kind of -- that was already taken care
7 of. So it was just, hey, we had to provide those
8 documents with the resale package kind of thing.
9 And if they had questions about it, they needed to
10 contact the attorneys.

11 Q What about generically any other type of
12 yellow brass type of allegations?

13 A Not that I recall anything to do with
14 yellow brass.

15 Q Okay. And what about Uponor?

16 A I'm not sure what Uponor is.

17 Q It's another manufacturer --

18 A Okay.

19 Q -- of the IPEX type of piping.

20 A Yeah, the only one I remember is Kitec.
21 And I didn't work on any cases or didn't work on
22 anything to do with that. It was just, hey, this
23 is in the history. You have to disclose this with
24 your resale package.

25 Q Okay.

1 A And I did have to gain the -- I had to
2 provide information for the resale package to the
3 processor for the processor to send out.

4 Q Did you ever have any conversations with
5 Dr. Swanson about your experiences with the Kitec
6 litigation or any of that type of construction
7 defect type --

8 A No.

9 MR. GALLIHER: Foundation.

10 MR. GRAF: I think that's it.

11 MR. GALLIHER: No questions.

12 THE VIDEOGRAPHER: Off the video record
13 at 1:33.

14 (Whereupon, the deposition
15 concluded at 1:33 p.m.)

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1 CERTIFICATE OF COURT REPORTER

2 STATE OF NEVADA)
3) ss:
4 COUNTY OF CLARK)

5 I, Heidi K. Konsten, Certified Court Reporter
6 licensed by the State of Nevada, do hereby certify
7 that I reported the deposition of NICOLE
8 WHITFIELD, on January 29th, 2020, at 10:01 a.m.

9 Prior to being deposed, the witness was duly
10 sworn by me to testify to the truth. I thereafter
11 transcribed my said stenographic notes via
12 computer-aided transcription into written form,
13 and that the transcript is a complete, true and
14 accurate transcription and that a request was not
15 made for a review of the transcript.

16 I further certify that I am not a relative,
17 employee or independent contractor of counsel or
18 any party involved in the proceeding, nor a person
19 financially interested in the proceeding, nor do I
20 have any other relationship that may reasonably
21 cause my impartiality to be questioned.

22 IN WITNESS WHEREOF, I have set my hand in my
23 office in the County of Clark, State of Nevada,
24 this February 4, 2020.

25 Heidi K. Konsten, RPR, CCR No. 845

1 DECLARATION OF DEPONENT

2 I, NICOLE WHITFIELD, deponent herein,
3 do hereby declare under penalty of perjury that I
4 have read the within and foregoing transcription of
5 my testimony taken on January 29th, 2020, at Las
6 Vegas, Nevada, and that the same is a true record
7 of the testimony given by me at the time and place
8 hereinabove set forth, with the following
9 exceptions:

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11 ERRATA SHEET

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24		NICOLE WHITFIELD
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2 Litigation Services is committed to compliance with applicable federal

3 and state laws and regulations ("Privacy Laws") governing the

4 protection and security of patient health information. Notice is

5 hereby given to all parties that transcripts of depositions and legal

6 proceedings, and transcript exhibits, may contain patient health

7 information that is protected from unauthorized access, use and

8 disclosure by Privacy Laws. Litigation Services requires that access,

9 maintenance, use, and disclosure (including but not limited to

10 electronic database maintenance and access, storage, distribution/

11 dissemination and communication) of transcripts/exhibits containing

12 patient information be performed in compliance with Privacy Laws.

13 No transcript or exhibit containing protected patient health

14 information may be further disclosed except as permitted by Privacy

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16 attorneys, and their HIPAA Business Associates and Subcontractors will

17 make every reasonable effort to protect and secure patient health

18 information, and to comply with applicable Privacy Law mandates,

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20 disclosure (sharing) of transcripts and transcript exhibits, and

21 applying "minimum necessary" standards where appropriate. It is

22 recommended that your office review its policies regarding sharing of

23 transcripts and exhibits - including access, storage, use, and

24 disclosure - for compliance with Privacy Laws.

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