

IN THE SUPREME COURT STATE OF NEVADA

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Elizabeth A. Brown
Clerk of Supreme Court

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

Appellant,

v.

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

Respondent.

Case No. 81252

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

Appellant,

v.

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

Respondent.

Case No. 81831

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

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

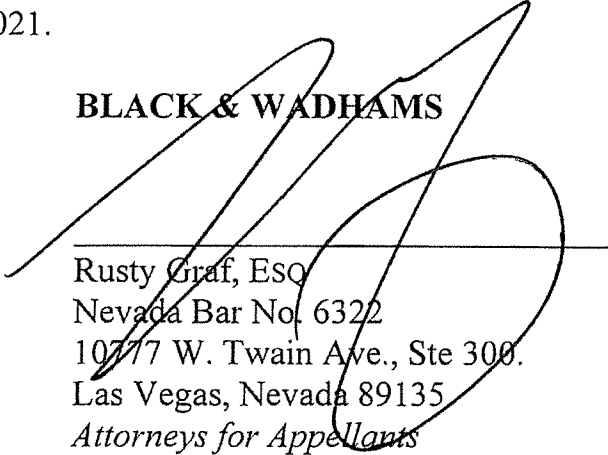
When All Case Participants are Registered for the Appellate CM/ECF System

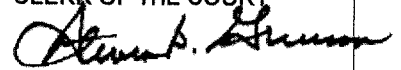
I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on March 9th, 2021.

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

DATED this 9th day of March 2021.

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff(s),

v.

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

Defendant(s).

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

**DEFENDANTS TODD SWANSON; TODD SWANSON AS, TRUSTEE OF THE SHIRAZ
TRUST; SHIRAZ TRUST; AND LYON DEVELOPMENT, LLC'S SUPPLEMENTAL
REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

I.

INTRODUCTION

This case is - and has always been - about the Plaintiffs' claim the Defendants concealed a February 2017 water leak. Throughout these proceedings, the Defendants have asserted, together with undisputed proof, that the February 2017 water leak was completely repaired by a licensed plumbing contractor, Rakeman Plumbing. Defendants have always asserted that under *Nelson v. Heer*¹ and NRS Chapter 113, the repair negated Defendants' duty to disclose.

In responding to Defendants' motion on the Plaintiffs' Second Amended Complaint, the Plaintiffs did not refute the Defendants' proof that the leak had been repaired. However, rather than dismiss the action at that time, the Court granted the Plaintiffs' request for limited discovery to establish facts showing the February leak *was not repaired* and that the Defendants *knew* the leak had not been repaired - two facts required by *Nelson*.

The Defendants cooperated fully with the discovery undertaken by Plaintiffs including producing nearly 1000 pages of documents. The Plaintiffs' discovery involved numerous subpoenas for documents, written discovery and 6 depositions.² While the discovery revealed additional facts, none of those facts are material to the claims made in the Plaintiffs' complaint. Rather, the end-result of Plaintiffs' discovery efforts is that, despite the testimony and all the documents produced and despite the Plaintiffs' best efforts to cast the evidence in their Supplement as creating "genuine issues of material fact," the Plaintiffs' case still fails as a matter of law.

Specifically, through the discovery undertaken and the resulting arguments in Plaintiffs' Supplemental Brief, Plaintiffs attempt to create a question of fact by asserting that there were "at

¹ *Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (2007).

² The Plaintiffs deposed Rakeman principal Aaron Hawley and employee William "Rocky" Gerber, Dr. Swanson (two separate depositions), Dr. Swanson's assistant Nicky Whitfield, and Defendants'/Sellers' real estate agents, Ivan Sher and Kelly Contadina.

1 least six (6) water losses in a little over two years (April 2015 to November 2017) that Dr. Swanson
2 owned the home.” (See Plaintiffs’ Supplemental Brief at 3:18-21). However, the evidence shows
3 that the *only* relevant “water losses” relate to two failures in the Uponor plumbing system which
4 occurred in February and November of 2017. Plaintiffs have failed to establish the one fact that
5 could possibly make claims viable: that the February 2017 leak was not repaired. Contrarily, the
6 undisputed facts clearly establish that the February 2017 leak *was repaired*, thus abrogating any
7 requirement that it be disclosed, as fully explained in *Nelson*. Any other purported “water losses”
8 complained of now are simply red herrings, none of which materially affect the value of this
9 \$3,000,000.00 luxury property.
10

11 II.

12 SUMMARY OF THE UNDISPUTED FACTS

13 The following summary shows the Plaintiffs’ action fails because there are no genuine
14 issues of material fact precluding summary judgment:
15

- 16 • There was a leak in the Uponor system on February 16, 2017. (Exhibit A, Uponor docs);
- 17 • Plaintiffs action is premised on the Defendants’ failure to disclose the February 16, 2017
18 leak. (See Plaintiffs’ Second Amended Complaint);
- 19 • A licensed plumber, Rakeman Plumbing, completely repaired the February 16, 2017 leak.
20 (Exhibits B & C, Rakeman Invoice and “work completed slip”);³
- 21 • Because Rakeman repaired the February 16, 2017 leak, Defendants did not disclose it on
22 the Sellers’ Real Property Disclosure form. (Exhibit F, Deposition testimony of Dr.
23 Swanson);
24

25
26
27 ³ As discussed below, the Rakeman invoice has a May 23, 2017 date. However, the invoice was created after the fact
28 when Rakeman submitted its warranty claim to Uponor. (Exhibit D & E, Deposition Testimony of Rakeman
employees Hawley and Gerber).

- 1 • There was another leak in the Uponor system on November 7, 2017 during the escrow
2 period of the sale. (Exhibit G, Uponor Documents);
- 3 • On November 15, 2017, prior to the November 17, 2017 closing date, Defendants
4 disclosed the leak in Addendum 4-A. (Exhibit H);
- 5 • Defendants' agent emailed the disclosure to Plaintiffs' agent on November 16, 2017.
6 (Exhibit I, November 16, 2017 email (8:31 a.m.) and texts (1:48 p.m) acknowledging
7 Plaintiffs' knowledge of the leak);
- 8 • Defendants did a walk-through before closing and knew about the November 7, 2017
9 leak (*See* Plaintiffs' Second Amended Complaint at ¶¶ 24-28);
- 10 • With knowledge of the November 7, 2017 leak, the Plaintiffs' agent emailed Defendants'
11 agent with proposed options, including an acknowledgement that Plaintiffs could "walk
12 away." (Exhibit J, Nov 16, 2017 email (9:00 p.m.));
- 13 • With knowledge of the leak, the Plaintiffs elected to close on the property on November
14 17, 2017;
- 15 • In May 2015, when the Defendants were resolving final post-construction warranty
16 issues, an inspection revealed that two recirculating pumps were leaking. (Exhibit K,
17 Criterium Inspection Report);
- 18 • Rakeman repaired both leaks. (Exhibit L, Defendants' notes on Criterium Inspection
19 Report);
- 20 • The same inspection showed "a plumbing leak above the ceiling of the basement
21 bathroom." (Exhibit K, Criterium Inspection Report). (This leak was also described in
22 the Criterium Report as a "drip." (*See* Exhibit M, Photos);
- 23
24
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- 1 • Neither Rakeman nor the Defendants could identify a source of the drip, which appears to
2 be on an exhaust vent cover. (Exhibit L, Defendants' notes on Criterium Inspection
3 Report).
- 4 • No one, including the Plaintiffs and the home inspector they retained during escrow, has
5 seen any water issues in that area since the date of the report, May 11, 2015;
- 6 • In August 2015, two recirculating pumps failed. Rakeman replaced the recirculating
7 pumps. (Exhibit N, Rakeman Invoice).⁴
- 8 • On November 17, 2017, Infinity Environmental Services conducted mold tests at the
9 property. (See Exhibit W, Infinity Environmental Services Report dated November 24,
10 2017);
- 11 • Infinity tested for "possible fungal levels in the master bathroom and master closet,"
12 which is the area where the February 2017 and November 7, 2017 leaks occurred. *Id.*;
- 13 • Infinity provided results of their mold testing on November 24, 2017, 7 days after the
14 closing; *Id.*
- 15 • Plaintiffs knew Infinity was conducting the tests on November 17, 2017.
- 16 • Plaintiffs closed on the property on November 17, 2017 before the Infinity results were
17 reported;
- 18 • After closing, the mold was fully remediated and a subsequent mold test conducted on
19 December 5, 2017 showed the area to be mold-free, as documented in a December 7,
20 2017 Infinity Report. (See Exhibit X, December 7, 2017 Infinity Report);
- 21 • There is no evidence showing that the Defendants knew of the results of the mold test
22 before the Infinity results were produced on November 24, 2017, seven days after the
23
24
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26

27 ⁴ Additional exhibits are cited in the discussion section below.
28

1 closing. In fact, because the results of the mold test were not provided by Infinity until
2 November 24, 2017, it is impossible for the Defendants to know of those results on or
3 before November 17, 2017. (See Exhibit W, Infinity Environmental Services Report
4 dated November 24, 2017).

5 III.

6 SUMMARY JUDGMENT STANDARD

7
8 Since *Wood v. Safeway*,⁵ the Nevada Supreme Court has followed a gradual trend toward
9 favoring summary judgment as a “valuable tool to weed out meritless cases, and is no longer a
10 ‘disfavored procedural shortcut.’” *Boesiger v. Desert Appraisals, LLC*, 444 P.3d 436, 438-439,
11 2019 Nev. LEXIS 39, *4-5 (July 3, 2019) (“[s]ummary judgment is an important procedural tool
12 by which factually insufficient claims or defenses [may] be isolated and prevented from going to
13 trial with the attendant unwarranted consumption of public and private resources”) and *Wood*, 121
14 Nev. at 730, 121 P.3d at 1030 (“instead [summary judgment] is an integral part of the [rules of
15 civil procedure] as a whole, which are designed to secure the just, speedy and inexpensive
16 determination of every action.”)

17
18 “Summary judgment is appropriate if the pleadings and other evidence on file, viewed in
19 the light most favorable to the nonmoving party, demonstrate that no genuine issue of material fact
20 remains in dispute and that the moving party is entitled to judgment as a matter of law.” *Bank of*
21 *Am., N.A. v. SFR Invs. Pool 1, LLC*, 427 P.3d 113, 117, 134 Nev. Adv. Rep. 72 (September 13,
22 2018). “A genuine issue of material fact exists if, based on the evidence presented, a reasonable
23 jury could return a verdict for the nonmoving party.” *Id.*

24
25 Here, the Plaintiffs cite to a myriad of facts, none of them material to the claims at issue,
26

27
28 ⁵ *Wood v. Safeway*, 121 Nev. 724, 727, 121 P.3d 1026, 1028 (2005).

1 and argue that “water losses” - other than the leaks in February and November of 2017 - create
2 genuine issues of material fact. However, those facts and arguments are insufficient to defeat
3 summary judgment.

4 IV.

5 ARGUMENT

6 **A. The Undisputed Evidence Shows Defendants’ Did Not Conceal the February 16, 2017 Plumbing Defect**

7 Although the Plaintiffs assert there were at least six undisclosed leaks, the Plaintiffs lawsuit
8 is predicated on their allegations that the Defendants failed to disclose a February 16, 2017 water
9 leak in the Uponor plumbing system. (See Plaintiffs’ Second Amended Complaint, ¶¶ 30, 32, 34-
10 38); The Plaintiffs allege the leak indicated a “systemic” defect “known to the defendants prior to
11 the closing of the transaction.” (See Plaintiffs’ Second Amended Complaint, ¶¶ 37 & 38). The
12 Plaintiffs allege that:
13

14
15 Shortly after the closing occurred, the Plaintiffs were made aware of [a] water loss
16 that had occurred at the Subject Property in approximately February of 2017 by the
17 plumbing system manufacturer, Uponor.

18 (See Plaintiffs’ Second Amended Complaint, ¶¶ 32). The Defendants have always maintained that
19 the February 2017 leak was repaired, and the undisputed evidence shows that indeed it was
20 repaired.
21

22 There is some confusion regarding the date of the first leak. This is because the Rakeman
23 invoice has a May 23, 2017 date. But when the documents and testimony are considered in
24 conjunction with one another, there is no confusion - it is clear the leak occurred on February 16,
25 2017, not May 23, 2017, which is the date on the Rakeman invoice.⁶ In any event, it is undisputed
26

27 ⁶ The Hawley affidavit which accompanied the Defendants’ motion for judgment on the Plaintiffs’ Second Amended
28 Complaint references work done on May 23, 2017. (See Exhibit V, Hawley affidavit). The affidavit was prepared
with reference to the May 23, 2017 invoice. The May 23, 2017 document has confused everyone - because there is no

1 that only one leak occurred in the first half of 2017.

2 ***Dr. Swanson's Testimony***

3 Early in the case, just prior to the August 2018 mediation, Dr. Swanson recalled a "small
4 pinhole leak" which, to his recollection, occurred in January, 2017. (See Exhibit N, Affidavit of
5 Dr. Swanson). During his deposition, Dr. Swanson testified that the leak actually occurred in
6 February:
7

8 Q: So there was another leak in January, 2017?

9 A: No. I think there was a lot of trouble pinning down the date of the February leak,
10 but the date was February 17th or 18th or something like that, I think. Or 7th or 8th.
11 (See Exhibit F, Deposition transcript of Dr. Swanson at 234:5-17). In response to Plaintiffs'
12 interrogatories, Dr. Swanson confirmed the February 16, 2017 date. (See Exhibit O, Defendants'
13 Responses to Plaintiffs' Interrogatories at 5:14-19).
14

15 When questioned about the May 23, 2017 date on the Rakeman invoice, Dr. Swanson
16 cleared up the confusion:

17 Q: [The May 23, 2017 date is] not accurate, is it, Doctor?

18 A: I don't believe so, unless my dates are off. Because I keep seeing this date, but
19 I think that was the date of the [Rakeman] invoice.

20 Q: Okay. And the actual leak occurred sometime in February of 2017, didn't it
21 Doctor?

21 A: Yeah, to the best of my knowledge.

22 (See Exhibit F, Deposition transcript of Dr. Swanson (I) at 241:3-16). Dr. Swanson was adamant
23 that there was only *one* leak in early 2017:

24 Q: Doctor, were there two leaks in early part of '17? Did it occur in January or
25 February of 2017 and then there was a subsequent leak in May of 2017.

26
27

evidence of a May 23, 2017 leak. However, as discussed herein, the May 23, 2017 date reflects Rakeman's
28 documentation for seeking payment under the Uponor warranty. As discussed herein, when the documents and
testimony are reviewed together, the leak occurred in February 16, 2017, not May 23, 2017.

1 A: No. . . . There was only one leak.

2 (See Exhibit F, Deposition transcript of Dr. Swanson at 241:17-24).

3 Plaintiffs' counsel cleared up the confusion by his own questions:

4 Q: Okay. I — and that's what we don't want to be, is confused about the dates of
5 any of these leaks occurring. So it's your understanding that the leak occurred
6 somewhere in the time period of January or February of 2017, correct?

7 A: Yes, I — I saw those dates and I found some documents that were pretty
8 persuasive that the date was in February, whatever the date was, February 8th or
9 whatever.

10 ***

11 A: All I know is that I kept seeing [the May 23, 2017] date and it didn't make sense,
12 so I tried to find the correct date. . . . And that's what I came up with.

13 (See Exhibit F, Deposition transcript of Dr. Swanson at 242:3-25, 243:1-3).

14 ***Rakeman Testimony***

15 Aaron Hawley testified that Rakeman does not always prepare invoices for Rakeman
16 warranty work. According to Mr. Hawley,

17 if there's warranty work done behind our new construction, there may not be any
18 papers behind it. It's not like its an invoicable call to where somebody calls up. . . .

19 If this was done under warranty, which I don't know if it was or wasn't, there may
20 not be any papers involved.

21 (See Exhibit D, Hawley Deposition at 63:18-25).

22 Mr. Hawley testified that he was very familiar with the 42 Meadowhawk property and that
23 he and Rocky Gerber discussed the property on many occasions. (CITE). Mr. Hawley recalled
24 that there were only two leaks in 2017. He recalled one leak during closing (November) and
25 testified that the other leak occurred in *either* February of May, but not both. (See Exhibit D,
26 Hawley Deposition at 88, 89:1-6).

27 Rocky Gerber testified that for warranty work covered by the manufacturer, as opposed to
28

1 work covered under Rakeman's own warranty, a summary is always prepared "after the fact." (See
2 Exhibit E, Gerber Deposition at 85:14-21). According to Mr. Gerber, a summary to the
3 manufacturer "has to be done after the fact. *Id.*⁷

4 *Uponor Documents*

5 The Uponor documents are perhaps the most revealing. Uponor records show the "initial
6 claim [was] submitted [by Rakeman Plumbing] to Uponor in February, 2017 and is referenced as
7 RMA 746512. (See Exhibit A, Uponor Documents, PLT 001049). Uponor RMA 74652, references
8 a failure date of February 16, 2017. *Id.* at PLT 001050. Uponor sent a check to Rakeman for \$2,496
9 on June 9, 2017 in satisfaction of RMA 746512. *Id.* at PLT001058-1059). The check and letter
10 reference the \$2,456 amount, which corresponds with the May 23, 2017 Rakeman invoice which
11 was also for \$2,496. (See Exhibit B).

12 These documents clearly establish a nexus between the February 16, 2017 "failure date"
13 documented by Uponor and the Rakeman repair invoice dated May 23, 2017, thereby cementing
14 the fact that there was only one leak in the first half of 2017, on February 16th.

15 *Nicky Whitfield's Testimony*

16 At the time Dr. Swanson's assistant, Nicky Whitfield began working for Dr. Swanson in
17 March, 2017, Rakeman was in the process of finalizing repairs on the February 16, 2017 leak.
18 According to Ms. Whitfield's sworn testimony, "when I started [working for Dr. Swanson] they
19 were just finishing repairs of the carpet." (See Exhibit R, Whitfield Deposition at 123:11-12).
20 Clearly, the repairs could not have been underway in March if the leak did not occur until May.
21

22 Looking at all the evidence, it cannot be reasonably disputed that the first leak in 2017 was
23

24
25
26
27 ⁷ Consistent with the testimony from Hawley and Gerber, the May 23, 2017 invoice had to be prepared after the fact.
28 Indeed, the attached Rakeman document (Exhibit C) references April 5, 2017 as "Wanted" and "Promised" which
predates the May 23, 2017 invoice date. So, it is impossible that the leak occurred in May.

1 in February. Nevertheless, there is no evidence that more than more than one leak occurred in the
2 first half of 2017. Furthermore, it cannot be reasonably disputed that the leak occurring in the first
3 half of 2017, regardless of whether it happened in February or May, was fully repaired, thus
4 abrogating its disclosure under *Nelson*.

5
6 **B. The Undisputed Evidence Shows the February 16, 2017 Leak was Repaired**

7 Plaintiffs know the early 2017 leak occurred in February. Their Second Amended
8 Complaint alleges February 16, 2017 as the failure date. However, for the sake of argument, it
9 does not matter if the leak was in February or May. The undisputed evidence is that there were
10 only two leaks in 2017: the first leak, which occurred on February 16, 2017 and the second leak,
11 which occurred on November 7, 2017. (See Gerber testimony, *supra*).

12 Plaintiffs cannot credibly claim that either leak was not repaired. The Rakeman invoice
13 details the repairs of the early 2017 leak. (See Exhibit B). While the May 23, 2017 date reflects
14 the date Uponsor was invoiced, for reimbursement of the repairs, the evidence establishes that the
15 leak occurred on February 16, 2017 and that repairs were initiated immediately.

16
17 **C. The Undisputed Evidence Shows that the Plaintiffs Knew About the November 7, 2017 Leak, But Nonetheless Elected to Close**

18 For the first time, the Plaintiffs claim in their Supplement that they did not know about the
19 November 7, 2017 leak until *after* the closing. Referencing “Affidavit of Joe Folino and Affidavit
20 of Nicole Folino,” the Plaintiffs’ Supplement asserts they executed the closing documents on
21 November 16, 2017 and “were not notified of any plumbing problems with the Subject Property
22 prior to November 17, 2017.” (See Plaintiffs’ Supplemental Brief at 3:11-14). Plaintiffs’ filed
23 Supplement, however, did not include either affidavit.⁸
24
25

26 ⁸ The “affidavits” further allege that Defendants requested a lease-back of the property “for the purpose of concealing
27 repairs taking place on a leak that had occurred on or about the first week of 2017.” (See Exhibits S & T). This
28 disingenuous accusation completely ignores the fact that the lease-back agreement is dated November 6, 2017, which
was the day before the November 7, 2017 leak. (See Exhibit U).

1 On February 25, 2020, 12 days after filing their Supplement and 5 days after Defendants'
2 counsel requested that Plaintiffs provide the affidavits, Plaintiffs' counsel emailed two un-signed
3 "affidavits," purportedly made by Joe Folino and Nicole Folino. (See Exhibits S & T). But, the un-
4 signed Folino "affidavits" do not support Plaintiffs' claim that they were unaware of the November
5 7, 2017 leak prior to closing, and even if they did, under NRCP 56, the "affidavits" are not
6 admissible "facts" for purposes of challenging summary judgment.
7

8 The *admissible facts*, however, refute the Plaintiffs' claim they did not know about the
9 November 7, 2017 leak before they closed. First, this new allegation *directly* contradicts the
10 allegations in the Plaintiffs' own pleadings. Plaintiffs asserted the following allegations:

11 24. Prior to the closing of this transaction, the Plaintiffs requested and were
12 given the opportunity to perform their own site inspection of the Subject
Property;

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

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

16 ***

17 28. The Plaintiffs' real estate agent, Ashley Lazosky . . . had specific conversations
with the Defendants and the subcontractor hired to make the repairs.

18 (See Plaintiffs' Second Amended Complaint, ¶¶24, 25, 26 & 28). These allegations directly
19 contradict the unsupported argument in the Plaintiffs' Supplemental Brief.
20

21 Second, Plaintiffs' assertion is also contradicted by evidence showing the Defendants
22 specifically disclosed the leak via Addendum 4-A, emailed to Plaintiffs' agent early in the day, at
23 8:31 a.m., on November 16, 2017. (See Exhibit I, Emails to and from real estate agents,
24 PLT001871-001872).⁹ Addendum 4-A, stated:
25

26 ⁹ It is black-letter law that an agent's knowledge is imputed to the principal. *ARCPE I, LLC v. Paradise Harbor Place*
27 *Trust*, 2019 Nev. Unpub. LEXIS 1017, *2, 448 P.3d 553 (2019); *Strohecker v. Mut. Bldg. & Loan Ass'n of Las Vegas*,
28 55 Nev. 350, 355, 34 P.2d 1076, 1077 (1934). Under this maxim, the Plaintiffs had at least constructive knowledge of
the November 7, 2017 leak. See e.g. *Kahn v. Dodds (In re AMERCO Derivative Litig.)*, 127 Nev. 196, 214, 252 P.3d
681, 695 (2011).

1 Seller is disclosing that there was a water leak in the master closet from a water
2 pipe that broke. The Seller is fully remediating the issue to include new baseboards,
3 carpet, etc. and all repair items regarding this leak will be handled prior to closing.
4 (See Exhibit H, Addendum 4-A).

5 The same day, at 1:48 p.m., the parties' agents exchanged texts discussing a \$20,000 hold
6 back because the buyers "don't want to rely on the plumber and their warranty." (See Exhibit I,
7 Emails to and from real estate agents, PLT000948, 001002-001003). This shows that on November
8 16, the day prior to closing, the parties' agents were discussing potential remedies for dealing with
9 the disclosed leak.
10

11 Again, later that same day, but prior to closing, at 9:00 p.m. on November 16, 2017, the
12 Plaintiffs' agent, Ashley Oakes-Lazosky, sent a detailed email to Defendants' agent wherein she
13 acknowledges that "at this point due to the change in circumstances with the last minute issue with
14 the leak, the buyer's recourse is to walk at this point if they are not comfortable with the
15 repairs/credits." (See Exhibit J).
16

17 Finally, Plaintiffs' knowledge of the November 7, 2017 leak is further confirmed by the
18 testimony of Nicky Whitfield. Ms. Whitfield testified by affidavit that "[o]n November 16, Mr. &
19 Mrs. Folino conducted a walk-through of the entire house" and Ms. Whitfield "showed [Ms.
20 Folino] exactly where the leak had occurred. (See Exhibit Q). Ms. Whitfield's testimony is
21 consistent with the Plaintiffs' own allegations and the other evidence.
22

23 Plaintiffs cannot dispute they knew about the November 7, 2017 leak.¹⁰
24
25

26 ¹⁰ The Plaintiffs' election to close escrow, indeed, bars the Plaintiffs' claims under the doctrine of waiver. *See e.g.*
27 *Udevco, Inc. v. Wagner*, 100 Nev. 185, 189, 678 P.2d 679, 682 (1984) (discussing elements of waiver as: (1) voluntary
28 and intentional relinquishment of a known right; and (2) made with knowledge of all material facts.) The Plaintiffs' waiver of their known right is implied by the conduct. *Id.*

1 **D. The 2015 “Water Losses” are Red Herrings, Unrelated to the Failure of the Uponor**
2 **Plumbing System**

3 Plaintiffs assert that Defendants wrongfully failed to disclose “water losses” that occurred
4 in 2015. First, Plaintiffs assert Defendants concealed problems with two recirculating pumps just
5 after construction was completed. However, the undisputed evidence shows the recirculating
6 pumps were not only repaired - they were ultimately *replaced*, and therefore not required to be
7 disclosed under *Nelson*.

8 Next, in what can only be described as a desperate attempt to save their case, the Plaintiffs
9 assert the Defendants failed to disclose a ceiling leak/drip in the basement bathroom of which no
10 trace has existed for nearly five years. The undisputed evidence shows that the “phantom” leak/drip
11 could not even be located by the plumber hired to investigate it in May of 2015, and has since
12 never been seen again - by *anyone*.

13 Preliminarily, these “water losses” are not related to the Plaintiffs’ claim that the
14 Defendants failed to disclose “systemic plumbing defects,” as alleged in their Second Amended
15 Complaint. The reality is these issues, identified in May 2015, have nothing to do with the Uponor
16 system.¹¹ However, even viewing these “water loss” occurrences in the light most favorable to the
17 Plaintiffs, summary judgment is warranted for the following reasons.

18 ***Dr. Swanson’s Contemporaneous Notes Document the Repairs Made in 2015***

19 The parties do not dispute that construction of the 42 Meadowhawk property was
20 completed in April 2015. Shortly thereafter, on May 11, 2015, Defendants contracted for a post-
21 construction Home Inspection Report. (*See* Exhibit K). The reason the Defendants ordered the
22 inspection report was to make sure the construction was completed properly. According to Dr.
23 Swanson:
24 Swanson:
25 Swanson:
26 Swanson:

27 ¹¹ Indeed, Rocky Gerber testified that the recirculating pumps and the Uponor piping system are two different systems.
28 (*See* Exhibit E, Gerber deposition at 71-72).

1 Q. What was the reason why you had this report prepared?

2 A. Because the house was essentially finished being built. I had moved in
3 already, and I wanted to make sure that there were no issues or problems
4 that Blue Heron hadn't finished or there were no problems with their
5 construction.

6 ***

7 Q. Yeah. So was there a specific incident or some sort of problem with the
8 house that caused you to have this report prepared?

9 A. Not a specific problem. It was just at times, as I recall, a bit difficult to deal
10 with the superintendent on the job, so I thought I would just do this to cover
11 -- just to make sure that things had been done properly.

12 (See Exhibit F, Deposition testimony of Dr. Swanson at 118:20-5, 119:1-13).

13 The May 11, 2015 Report identified "leaks at both recirculating pumps" and a "plumbing
14 leak above the ceiling of the basement bathroom." (See Exhibit K at SWANSON000053).
15 Plaintiffs assert that "Dr. Swanson, in a sort of obsessive-compulsive act, kept not one, but four
16 versions of the report where he wrote ongoing notes on the *progress of the repairs* of the
17 conditions." (See Plaintiffs' Supplemental Brief at 11:1-3). Dr. Swanson made notations on the
18 Criterium report to "keep track of what had been fixed and what hadn't." (See Exhibit F,
19 Deposition testimony of Dr. Swanson at 149:6-8). Indeed, Dr. Swanson's diligence in
20 documenting the progress of the repairs seems to indicate someone trying fix a problem, rather
21 than someone trying to conceal a defect.

22 In the first progress note, made by Dr. Swanson on May 16, 2015, Dr. Swanson
23 documented that "[t]here are 3 water leaks inside the house that need to be fixed." (See Exhibit L
24 at DEF000143-144). The three "water leaks" were the two recirculation pumps and a "leak above
25 the ceiling of the bathroom." *Id.* Criterium also described the ceiling leak in the downstairs
26 bathroom as a "drip." (See Exhibit M, PLT003952, showing "the water on the floor under the drip"
27 from "the ceiling of the basement bathroom.")
28

1 Dr. Swanson made the second notation May 20, 2020 and documented "Need plumber to
2 address." (See Exhibit L at DEF000168-169).

3 The third notation was made on May 29, 2015 and documented that the recirculating pump
4 leaks were "Fixed by plumber." (See Exhibit L at DEF000191-192). He also noted that the plumber
5 "couldn't find" the leak above the ceiling of the basement bathroom. *Id.* Dr. Swanson noted that
6 he would "monitor." *Id.*

7
8 The fourth notation was made on June 8, 2015 but added no new information regarding
9 these issues. (See Exhibit L at DEF000211-212).

10 The notes are admissible as "present sense impressions" and thus are not hearsay under
11 NRS 51.085. NRS 51.085 provides that a "present sense impression" is "[a] statement describing
12 or explaining an event or condition made while the declarant was perceiving the event or condition,
13 or immediately thereafter, is not inadmissible under the hearsay rule.

14
15 ***The Recirculating Pumps Were Repaired in May 2015***

16 The third note was made in June 2015. (See Exhibit F, Deposition testimony of Dr.
17 Swanson at 152:1-2). That note documented that the recirculation pump leaks were "Fixed by
18 plumber." (See Exhibit L at DEF000191-192).

19 Plaintiffs argue in their Supplement the logical fallacy that if there is no documentation
20 from a plumber, then no repair was done. However, Mr. Hawley testified that invoices are not
21 always prepared when Rakeman does warranty work. (See Exhibit D, Hawley Deposition at 63:18-
22 25). Repair of the recirculating pumps was done under warranty, as was the effort to identify the
23 phantom leak in the basement bathroom. This explains why there is no documentation of these
24 repairs.

25
26 All of the evidence supports the only reasonable conclusion: that the recirculation pump
27 leaks were repaired. At the time of the May 2015 leak, Dr. Swanson had moved into the residence.
28

1 (See Exhibit F, Swanson Deposition at 118:22-25). Dr. Swanson testified as follows regarding his
2 knowledge that the recirculating pump was repaired:

3 Q. Can you testify under oath that was repaired in May 2015?

4 A. To the best of my knowledge, yes.

5 Q. And what's your knowledge based on, Doctor?

6 A. It's based on the fact that I wouldn't have let them not fix these items unless there was
7 some reason and there would be no reason to not fix a water leak.
8

9 (See Exhibit F, Swanson Deposition at 130:5-13).

10 ***The Leak/drip From the Ceiling in the Downstairs Bathroom Mentioned in the***
11 ***Criterion Report Could Never Be Located***

12 Dr. Swanson's May 29, 2015 progress note indicates the plumber "couldn't find" the drip
13 from the ceiling of the basement bathroom. Dr. Swanson noted "I'll monitor." (See Exhibit L,
14 PLT003967). From this dearth of information, Plaintiffs make the same quantum leap that, because
15 there is no other documentation showing the basement bathroom ceiling drip was repaired, this
16 fact, by itself, creates a disputed issue of material fact. According to the Plaintiffs:

17 "[t]he fact of this one water loss is not disputed, and it is clearly irrefutably
18 documented as an unrepaired water loss or known incident of a condition of
19 moisture or water" and therefore, "under the Summary Judgement standard this
20 evidence must be viewed in the light most favorable to the Plaintiff."
21

22 (See Plaintiffs' Supplemental Brief at 6:9). Plaintiffs conclude, based on this argument alone, that
23 their claim for "fraudulent misrepresentations and violation of NRS 113 claims survive Summary
24 Judgment." *Id.* at 6:9-11. (See also Plaintiffs' Supplemental Brief at 7:9-10, wherein Plaintiffs'
25 argue that "the one identified incident not repaired bars the granting of this motion.")
26

27 Plaintiffs' arguments ignore reality. Plaintiffs assert Dr. Swanson *admitted* the basement
28 bathroom drip was never repaired. (See Plaintiffs' Supplemental Brief at 10:17-21). Plaintiffs'

1 assertion completely mis-characterizes the facts and Dr. Swanson's testimony. The evidence
2 shows that it was "never repaired" because the leak/drip *could not be found* and was *never seen*
3 *again after it was identified in the May 11, 2015 report*. Dr. Swanson testified that he did not
4 disclose the May 2015 ceiling leak in the basement bathroom "[b]ecause, to be honest, I did not
5 recall that there was a leak." (See Exhibit F, Swanson Deposition at 133:21-22). According to Dr.
6 Swanson, "I would not have closed on the house with leaks in the house. . . ." (See Exhibit F,
7 Swanson Deposition at 134:7-9).

8
9 Plaintiffs' Counsel asked Dr. Swanson:

10 Q. And do you have any documentation to show that it was fixed?

11 A. Well, I know there was no water in that bathroom because I used it all the
12 time.

13 (See Exhibit F, Deposition testimony of Dr. Swanson at 146:12-15). Plaintiffs' counsel persisted:

14 Q. The leak in the ceiling of the bathroom basement hasn't been fixed?

15 A. They couldn't find it. . . . So the bathroom is right next to what I use as my
16 exercise room, so I use that bathroom all the time and I never saw any leaks
in there.

17 (See Exhibit F, Deposition testimony of Dr. Swanson at 153:25, 154:1-11).

18 In a nutshell, the undisputed evidence shows the following:

- 19 • The leak/drip was identified in the Criterium report, without any indication of the source
20 or cause;
- 21 • Dr. Swanson had Rakeman come out and look at it, but they couldn't find a leak;
- 22 • Dr. Swanson monitored the leak/drip and was in the area "all the time" but *never* saw any
23 leaks in there;
- 24 • There is no evidence that a drip or leak in the basement bathroom was *ever* detected or
25 documented in the 5 years since it was mentioned in the Criterium report, including in an
26
27
28

1 inspection done by the Plaintiffs' home inspector during escrow, nor by the Plaintiffs
2 themselves in the more than 2 years they have occupied the property;

- 3 • There is no evidence that *anybody else* observed *any* leak in that area.

4 What do the Plaintiffs assert is a reasonable conclusion from this evidence? That
5 Defendants are liable because, according to the Plaintiffs, *one phantom leak* 5 years ago shows the
6 Defendants had knowledge of "systemic plumbing defects" and failed to disclose that leak/drip
7 which was somehow indicative of the "systemic plumbing defect." Under the *Nelson* standards,
8 how could Defendants be aware of a "defect or condition" when there is no evidence that this
9 "phantom leak" was ever seen again, beyond the *one time presence* of a few drops of water on a
10 vent cover and without any evidence of its source or cause? Plaintiffs' argument is not reasonable.
11 Under summary judgment standards, a reasonable jury could *not* return a verdict for the Plaintiffs.
12

13 ***The Recirculating Pumps Were Ultimately Replaced in August 2015***

14 On August 2nd and 3rd of 2017, the recirculating pumps, which had been repaired in May,
15 failed. (Exhibit N, Rakeman invoice). The problem were immediately detected, reported to
16 Rakeman and both pumps were *replaced* with "better pumps." (See e.g. Exhibit F, Deposition
17 testimony of Dr. Swanson 100:1-6, 107:1-9).

18
19 Equally important, as discussed above, the recirculating pumps have *nothing to do with* the
20 Uponor plumbing system and have *nothing to do with* Plaintiffs' claim the Defendants knew of
21 "systemic plumbing defects." Moreover, under the *Nelson* standard, the fact that they were
22 identified and replaced makes any disclosure of their failure and subsequent replacement
23 unnecessary, as a matter of law. This issue is simply another red herring raise in a futile attempt to
24 create a genuine issue of material fact in this case to avoid inevitable summary judgment.
25

26 **E. Plaintiffs' Arguments Completely Disregard the Controlling Law of *Nelson***

27 Without citing a single case in their Supplement (other than *Nelson*) Plaintiffs essentially
28

1 argue *Nelson* does not apply. Mirroring the same arguments presented in previous briefs, the
2 Plaintiffs make two assertions which ignore the holdings in *Nelson*:

3 “[[I]t does not matter whether the Defendants believe that any repair removed their
4 awareness of the issue”; and.

5 “A repair does not remove one’s awareness of previous occurrences.”

6 (See Plaintiffs’ Supplemental Brief at 7:11-13, 18-19). Under *Nelson*, if a defect or condition is
7 repaired, the seller *cannot* have the awareness necessary to trigger a disclosure duty. Indeed, the
8 Defendants’ “awareness” never becomes a question of fact because a completed repair - an
9 established fact in both *Nelson* and this case - negates the duty to disclose. The facts in *Nelson* are
10 remarkably similar to this case, although the damage to the property in the *Nelson* case was much
11 more extensive. In *Nelson*, a water pipe on the third floor of the owner’s cabin “burst, flooding the
12 cabin.” As in this case, the property owner hired a general contractor who repaired the broken
13 water pipe. Much worse than this case, the leak in *Nelson* caused extensive water damage and the
14 owner had to replace the “flooring, ceiling tiles, several sections of wallboard, insulation, kitchen
15 cabinets, bathroom vanities, kitchen appliances, and certain furniture.” At that time, the owner did
16 not conduct any mold remediation.
17

18 Four years later, the owner listed the cabin for sale and completed a Seller's Real Property
19 Disclosure Form (SRPD). The owner did not disclose the previous water damage. Without being
20 informed of *any* water leaks, the buyer closed on the property. The buyer later learned the damage
21 would cost \$81,000.00 to repair.
22

23 The jury found in favor of the plaintiff. On appeal, following the district court’s denial of
24 the defendants’ motion for judgment notwithstanding the verdict, the court considered whether the
25 seller had a duty to disclose the earlier damages which had been repaired. The Nevada Supreme
26 Court found that the seller did not violate the disclosure rules because the earlier water flood and
27 damages *were repaired*, and the seller *could not have knowledge* of a defect. Using the terms in
28

1 the statute and the disclosure form, the court noted the seller was not aware of a “defect or
2 condition” that “materially lessened the value or use of the cabin” because the water damage was
3 repaired. *Id.*

4 Here, the Plaintiffs allege the Defendants failed to disclose a water leak in their October
5 24, 2017 disclosures. As in *Nelson*, the Defendants in this case could not have any “realization,
6 perception or knowledge” of a defective condition because the prior water leak was fixed. This
7 negates the Plaintiffs’ allegations the Defendants had the “knowledge or belief” that answering
8 “no” on the SRPD form was a false statement.
9

10 Plaintiffs cannot reasonably argue that Defendants had any knowledge, prior to selling the
11 house, that the Uponor pipe system had a manufacturing defect or that such defect would require
12 the property to be re-piped. By all accounts, the first time Uponor advised anyone that the house
13 at 42 Meadowhawk should be re-piped was after the sale between the parties had closed escrow.
14

15 ***Plaintiffs’ Mold Arguments Are, at Best, Speculative***

16 The Plaintiffs argue that “evidence indicates these incidents of water loss *potentially* went
17 months without being addressed, with no mold or fungus tests conducted except incident to the
18 final incident of water loss on or about November 7, 2017.” (*See* Plaintiffs’ Supplemental Brief at
19 4:5-8). But there is no evidence to support Plaintiffs’ contention. The cited testimony merely
20 establishes that no earlier mold testing was completed. It in no way establishes that any incident
21 of water loss went months without being addressed. Any claim to the contrary is pure speculation.
22

23 Plaintiffs also argue that “for at least one of the 2015 leaks, it is *likely* that the water sat
24 their (sic) unaddressed for months!” (*See* Plaintiffs’ Supplemental Brief at 12:9-10). Again, there
25 is no evidence to support this supposed *likelihood*. Plaintiffs, seemingly, argue that mold tests are
26 always done, anytime there is a leak, spill or a drip. But Aaron Hawley, whose company conducts
27 mold remediation, testified that mold tests are not done unless there is visual observation of
28

1 “extreme water or spores.” (See Exhibit D, Hawley deposition at 10:17-18 & 73:15). This
2 testimony is in the Plaintiffs’ own brief, yet Plaintiffs offer it in a misguided attempt to create a
3 genuine issue of material fact. Plaintiffs apparently believe that Defendants made a bad “choice”
4 by not “conduct[ing] any mold or airborne fungal post-remediation verification tests after the
5 August 2015 or February 2017 water loss incidents.” (See Plaintiffs’ Supplemental Brief at 12:1-
6 3). This argument presupposes the circumstances warranted testing or remediation when all of the
7 available evidence is to the contrary. As discussed above and as shown by the evidence, all leaks
8 were quickly detected, reported and repaired by licensed professionals. At no time prior to
9 November of 2017 was there ever a recommendation, suggestion or justification for conducting
10 mold testing at 42 Meadowhawk.
11

12 The Plaintiffs’ arguments in this case are the *exact* arguments the Nevada Supreme Court
13 rejected in *Nelson*. The plaintiff in *Nelson*, like the Plaintiffs in this case, claimed the seller failed
14 to comply with NRS Chapter 113 “because she failed to disclose prior water damage that *may have*
15 caused elevated amounts of mold within the cabin.” *Nelson*, 123 Nev. at 219, 163 P.3d at 422
16 (emphasis added). According to the court, “[b]ecause Nelson had the prior water damage repaired
17 *and* she was *not aware* of the presence of any elevated amounts of mold, we conclude that Nelson
18 did not have a duty under NRS Chapter 113 to disclose the prior water damage or the *possible*
19 presence of mold.” *Id.* (Emphasis added). That clear standard, when applied to the facts of this
20 case, dictates that the Plaintiffs’ claims must fail and summary judgment is warranted.
21

22 Plaintiffs make another, rather interesting argument: that “Dr. Swanson was aware of the
23 presence of mold on or after November 17, 2017” because he was “still leasing back the Subject
24 Property and residing at the Subject Property” when Infinity submitted its report on *November 24,*
25 *2017, seven days after the closing.* (See Plaintiffs’ Supplemental Brief at 14:24-25, 15:1).
26 According to the Plaintiffs, because the Infinity report documented the presence of mold in a report
27
28

1 dated seven days after the closing, “[t]his fact alone creates an issue of material fact. This argument
2 fails for the following reason. The November 24, 2017 report was addressed to Rakeman and not
3 to Defendants and Dr. Swanson did not receive a copy of that report. In fact, Dr. Swanson testified
4 that he had never even seen the November 24, 2017 report before his February 2020 deposition.
5 (See Exhibit F, Swanson deposition at 303:6-18). Even if Dr. Swanson had received the report the
6 day it was issued, disclosure at that earliest possible time would have been inconsequential because
7 the sale had closed a week earlier. Here, as in *Nelson*, Plaintiffs’ claim that “prior water damage
8 may have” caused mold is insufficient to defeat summary judgment. *Nelson*, 123 Nev. at 219, 163
9 P.3d at 422.
10

11 V.

12 CONCLUSION

13
14 At the last hearing, the court gave Plaintiffs an opportunity to develop information that the
15 repairs to the plumbing system at 42 Meadowhawk were not completed. Since then, Plaintiffs have
16 undertaken extensive discovery in an unsuccessful attempt to find such information. Instead, the
17 story as set forth by Defendants in the pending motion for summary judgment has held true.

18 There is no evidence that at any time prior to the closing of the sale on November 17, 2017
19 Defendants were aware of a “systemic” problem with the Uponor pipe system installed in the home
20 when it was built. The unrelated problems with the recirculating pumps in 2015 were fully
21 repaired, thus relieving Defendants of any duty of disclosure under NRS Chapter 113. Likewise,
22 the one-time presence of a few water drops in the basement bathroom five years ago cannot rise to
23 the level of a disclosable defect which materially affected the value of this \$3,000,000.00 property.
24

25 The lone leak occurring on early 2017 was fully repaired by a licensed, professional
26 plumbing contractor. None of the information adduced during Plaintiffs’ comprehensive discovery
27 indicates otherwise.
28

1 Plaintiffs are left with suspicion and inuendo as the final arrows in their quiver to combat
2 the fatal sanction of summary judgment. In Nevada, as in most jurisdictions, suspicion and inuendo
3 are nothing more than “gossamer threads of whimsy” and are insufficient to avoid summary
4 dismissal.

5 DATED this 27th day of February 2020.

6 Respectfully Submitted,

7 /s/ *Jeffrey L. Galliher, Esq.*

8 CHRISTOPHER M. YOUNG, ESQ.
9 Nevada Bar No. 7961
10 JAY T. HOPKINS, ESQ.
11 Nevada Bar No. 3223
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22 Attorneys for Todd Swanson, et al.

1 **CERTIFICATE OF E-SERVICE**

2 Pursuant to Nevada Rules of Civil Procedure 5(b), Administrative Order 14-2, and
3 N.E.F.C.R. 9, I hereby certify that on the 27th day of February 2020 I caused the foregoing
4 **DEFENDANTS TODD SWANSON, TODD SWANSON, TRUSTEE OF THE SHIRAZ**
5 **TRUST; SHIRAZ TRUST, LYON DEVELOPMENT, LLCs' SUPPLEMENTAL REPLY**
6 **IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

7 to be electronically e-served on counsel as follows:

8 Rusty Graf, Esq.
9 Shannon M. Wilson, Esq.
10 10777 West Twain Avenue, 3rd Floor
11 Las Vegas, Nevada 89135
12 rgraf@blacklobello.law
13 swilson@blacklobello.law

14 **.s. Kimalee Goldstein**
15 An Employee of
16 GALLIHER LEGAL, PC
17
18
19
20

21 H:\Open Case Files\0300.003\PLEADING\16.1
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Defendants' Exhibit List

- Exhibit A, Uponor Documents regarding February 16, 2017 leak
- Exhibit B, Rakeman Invoice dated May 23, 2017
- Exhibit C, Rakeman "Work completed this visit"
- Exhibit D, Hawley deposition testimony
- Exhibit E, Gerber deposition testimony
- Exhibit F, Swanson deposition testimony
- Exhibit G, Uponor documents regarding November 7, 2017 leak
- Exhibit H, Addendum 4-A disclosing November 7, 2017 leak
- Exhibit I, November 16, 2017 emails (8.31 a.m.) and texts (148 p.m.) from Defendants' agent to Plaintiffs' agent regarding November 7, 2017 leak
- Exhibit J, November 16, 2017 (9:00 p.m.) Email from Plaintiffs' agent to Defendants' agent regarding leak and options
- Exhibit K, May 11, 2015 post-construction Home Inspection Report from Criterium
- Exhibit L, Defendants' Notes regarding repair status of items in May 11, 2015 Criterium report (Updated Criterium report dated 5/16/15 [DEF000142-144], Updated Criterium report dated 5/20/15 [DEF000168-169], Updated Criterium report dated 5/29/15 [DEF000191-192], and Updated Criterium report dated 6/8/15 [DEF000211-212])
- Exhibit M, Photos of drip in basement bathroom ceiling
- Exhibit N, Rakeman August 2, 2015 invoice documenting recirculating pump failure and repair
- Exhibit O, Affidavit of Todd Swanson
- Exhibit P, Defendants' answers to Plaintiffs' interrogatories
- Exhibit Q, Affidavit of Nicky Whitfield
- Exhibit R, Whitfield deposition testimony
- Exhibit S, Unsigned affidavit of Joseph Folino

Exhibit T, Unsigned affidavit of Nicole Folino

Exhibit U, Agreement to Occupy After Close of Escrow, dated November 6, 2017

Exhibit V, Hawley affidavit

Exhibit W, Infinity mold report dated 11/24/17

Exhibit X, Infinity mold report dated 12/7/17

Exhibit A

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	Jobsite Information
Builder/Contractor rakeman plumbing aaron hawley 4075 josee rd NORTH LAS VEGAS, NV 89030 US aaron@rakeman.com Ph 702 642 8553 Fax 702 399 1410	Residential aaron hawley 42 meadow hawk ln. LAS VEGAS, NV 89135 US aaron@rakeman.com Ph 702 642 8553
Estimated Claim Amount	Past Occurrences
Amount \$5000 to \$10000	Past Occurrences No
Preferred Reimbursement Cash	
Repairs Complete No	

Installation Information

Application

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

Temperature/Pressure

Temperature Hot
System Temp Hot 120 F
System Pressure 65 PSI

Water Source

Water Source Municipal

Dates

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

Contractor Information

rakeman plumbing
 aaron hawley
 4975 losee rd
 NORTH LAS VEGAS, NV 89030
 US
 aaron@rakeman.com
 Ph 702 642 8553
 Installing? Yes

Other Information

Present for destructive testing No
Phase of Construction Unknown
Builder Unknown

Customer Comment(s)

tubing split at fitting. Custom home, designer cabinets in closet

Product Information

Item Number	Description	Return Qty	Date Code	Foot Marker
Q4751775	ProPEX EP Reducing Tee, 1" PEX x 3/4" PEX x 3/4" PEX	1	2/13	na
Problem: tubing split at fitting				
Review Result: No Failure				
F2060750	3/4" Uponor AquaPEX Red, 300-ft. coil	1	Not Provided	Not Provided
Problem: tubing split at fitting				
Review Result: Manufacturing				
F3060750	3/4" Uponor AquaPEX Blue, 300-ft. coil	1	Not Provided	Not Provided
Problem: tubing split at fitting				
Review Result: Manufacturing				
F1041000	1" Uponor AquaPEX White, 100-ft. coil	1	Not Provided	Not Provided
Problem: tubing split at fitting				
Review Result: No Failure				
Q4690756	ProPEX Ring with Stop, 3/4"	2	Not on Ring	na
Problem: tubing split at fitting				
Review Result: No Failure				
Q4691000	ProPEX Ring with Stop, 1"	1	L2113	na
Problem: tubing split at fitting				
Review Result: No Failure				

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 +19529970954
M +16512531956

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

Uponor, Inc.
5825 148th St W
Apple Valley, MN, 55124

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PLT001051

JA001665

Uponor

June 9, 2017

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

Re: Uponor Reference No.: RMA 746512

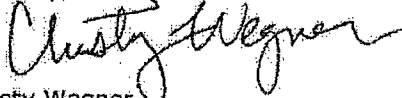
Dear Mr. Hawley:

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

PLT001058

JA001666

014805

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

Y09098 RAKEMAN PLUMBING Jun 7, 2017 14805

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

THIS FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER. AVOID FOLDING, GRIPPING AND MACHINERY DAMAGE.

uponor 5925 148TH STREET WEST
APPLE VALLEY, MN 55124

PKC Bank
10000 148TH STREET
MINNETONKA, MN 55345
612-722-4433

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

TO THE ORDER OF RAKEMAN PLUMBING
4075 LOSEE ROAD
NORTH LAS VEGAS, NV 89030
United States

[Signature]

014805

PLT001059

JA001667

Exhibit B

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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		45000		P.O. #	
CITY				PHONE	
STATE		ZIP		VISA/MC AUTHORIZATION #	
MAKE		MODEL		SERIAL NUMBER	
DESCRIPTION OF WORK					
TO TRY OUT CLOSET AFTER EVERYTHING IS DRY ROSEMAN REPAIRED ALL DRYWALL TO MATCH EXISTING TEXTURE & COLOR AND REPAIRED ALL DAMAGED BUILT IN CLOSETS THEN RESET ALL CARPET. CALLED OUT FOR LEAK IN MASTER BEDROOM CLOSET AT 42 MEADOWHAWK FOUND 3/4 UPONOR TEE LEAKING ON THE HOT SIDE OF THE PLUMBING SYSTEM. CUT OUT LEAKING FITTING AND PERAGE WITH NEW FITTING AND RESTORE WATER NO. 1000 LEAKS. POSTED LABORERS CHARGES HRS @ TECHNICIAN CHARGES HRS @ TOTAL OTHER CHARGES TECHNICIAN SIGNATURE <i>Laty</i> 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, guarantee 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.					
TOTAL PARTS		SUBCONTRACTOR		TOTAL AMOUNT DUE	
TOTAL OTHER CHARGES		TERMS DUE UPON COMPLETION		2,400.00	
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. 3-1/2% PER MONTH (18% PER ANNUM) FINANCE CHARGE WILL BE ASSESSED ON ALL BALANCES OVER 30 DAYS.					
AUTHORIZED SIGNATURE		X			
PL7000063/		X			

Exhibit C

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

(702) 249-9219

Work completed this visit

Site Notes

TOTAL:

PLT000064
JA001671

Exhibit D

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DISTRICT COURT
CLARK COUNTY, NEVADA

JOSEPH FOLINO, an)
individual; et al.,)
Plaintiffs,)
vs.)
TODD SWANSON, an)
individual; et al.,)
Defendants.)

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

VIDEO DEPOSITION OF AARON HAWLEY
LAS VEGAS, NEVADA
FRIDAY, JANUARY 31, 2019

REPORTED BY: JACKIE JENNELLE, RPR, CCR #809
JOB NO.: 598971B

1 Are you the qualified employee for Rakeman
2 Plumbing?

3 A. Yes.

4 Q. How long have you been the qualified
5 employee?

6 A. I'm thinking about 2005.

7 Q. Prior to 2005, who was the qualified
8 employee?

9 A. My dad.

10 Q. What's his name?

11 A. S-T-E-P-H-E-N, Stephen.

12 Q. Okay. Any other contracting licenses that
13 you hold -- or actually better question: Any other
14 contracting licenses where you're the qualified
15 employee?

16 A. No.

17 Q. Okay. It's my understanding you own and
18 operate CPI Restoration also?

19 A. Yes.

20 Q. What type of license does that have?

21 A. I think then or maybe now it's B2.

22 Q. Okay. Who is the qualified employee for
23 that?

24 A. Then or now? I'm not sure. Right now,
25 it's Cody -- sorry. Don't have it on there. Cody

1 I'm pretty sure that's the case.

2 Is that what you're asking?

3 We don't -- I would say I probably pulled
4 that -- maybe I pulled that off the invoice.

5 Q. Okay. So the statement that says, My
6 company received a call on May 23, 2017, isn't
7 accurate?

8 A. I mean, when I read it, I probably took
9 that out there and said -- that, Yeah, you're right.
10 It could not -- it may not be accurate, but I don't
11 think it's a month off. That seems irregular to me,
12 but --

13 Q. Okay. We'll go over that stuff.

14 A. Yeah. I probably just got it off the
15 invoice.

16 Q. Okay.

17 A. And there was no meaning for deception as I
18 read because I didn't write it, but there was no
19 meaning of deception.

20 Q. Got it.

21 Do paragraph seven says, Rakeman Plumbing
22 was familiar with the Uponor plumbing system
23 installed at the residence because Rakeman Plumbing
24 had installed it during construction of the house.

25 That's an accurate statement; right?

1 Rakeman did the original construction?

2 A. Yes.

3 Q. Okay. I recall that the leak was in the
4 sidewall in the master closet.

5 Do you see that?

6 A. Yes.

7 Q. And that's information that you received
8 from Rocky Gerber?

9 A. Rocky Gerber or on the invoice.

10 Q. Paragraph eight says, Rakeman Plumbing
11 technician William Rocky Gerber went to 42
12 Meadowhawk Lane to repair the reported leak.

13 He testified that he didn't repair
14 anything, that all he would have done was supervise
15 other employees.

16 Is that your understanding as to what
17 actually occurred?

18 A. I don't know what actually occurred. But
19 like I just told you a second ago, he has a crew and
20 that's -- I probably should have had him adjust it
21 and say one of Rocky's crew.

22 Q. It says, Mr. Gerber met a person at the
23 residence who informed Mr. Gerber that she was Dr.
24 Todd Swanson's assistant.

25 That's just information that was related to

1 releasing the contractor. And then it says, Repair
2 plumbing fixtures.

3 And remember this report was prepared am
4 May of 2015.

5 On that page it says, There are leaks at
6 both recirculation pumps.

7 In 2015 was Rakeman called back out to 42
8 Meadowhawk Lane to perform repairs at the
9 recirculation pumps?

10 A. I don't know.

11 Q. Okay. And so this subpoena that we had
12 sent to Rakeman, it's the testimony of Dr. Swanson
13 that somebody did come out.

14 A. Okay.

15 Q. Okay. So is it possible that you may have
16 a paper file that may have some of this information
17 in it?

18 A. I would say there's -- you know, if there's
19 warranty work done behind our new construction,
20 there may not be any papers behind it. It's not
21 like it's an invoiceable call to where somebody
22 calls up.

23 If this was done under warranty, which I
24 don't know if it was or wasn't, there may not be any
25 papers involved.

1 leak. And to make the whole process, you know, the
2 homeowner, who was Swanson at the time, to make him
3 right, you know, you have to go through and make
4 sure that this is done and all the repairs are made.
5 BY MR. GRAF:

6 Q. So I guess my question is this: It's kind
7 of a follow-up on that question in the sense that
8 would Rakeman or CPI always do a mold test for every
9 water leak?

10 A. No.

11 Q. So what would differentiate one water leak
12 from another as to why you would get this type of
13 testing done as opposed to not getting this type of
14 testing done?

15 A. It's going to either be extreme water or
16 spores were found. Usually, it's going to be spores
17 were found or something was seen or we think it's an
18 old leak, an extensive period of time.

19 In this case it might have been spores
20 found. I don't know.

21 Q. That begs the question, okay, the spores
22 are kind of a chicken or the egg type thing. You
23 don't know that they're spores until you have the
24 testing done; right?

25 Or what you're saying is that there was a

1 retrieve those documents; right?

2 A. E-mails are different than my -- I can't
3 TMS or whatever the name of our warranty stuff was.

4 Q. Okay. Well, what about the invoices? Did
5 you lose those invoices -- let me ask you this:
6 When your server crashed, what kind of information
7 did Rakeman lose?

8 A. I can't pull up anything.

9 Q. What does that mean?

10 A. Bills, any invoices. I mean, we still have
11 the paper stuff.

12 Q. Okay.

13 A. But anything that was inputted -- you know,
14 we would scan stuff. You got that -- I mean, I'm
15 sure some of the stuff you're looking for, we scan
16 in the invoice, we scan in all these other papers
17 right here. And once I can't pull up that warranty
18 service system, I can't pull up any of that stuff.
19 Because we scanned a lot of stuff in attached to
20 that address.

21 Q. How about letters and stuff, can you still
22 get those?

23 A. Letters as far as what?

24 Q. Like letters that you've written on your
25 computer.

1 So you said you knew of two leaks: One
2 that occurred during closing, correct, and another
3 that occurred sometime earlier that year?

4 A. That's what I recall. Yeah, yeah.

5 Q. Okay. We know we've discussed this little
6 bit.

7 So that other leak occurred either in
8 February or in May?

9 A. Right.

10 Q. But not both; correct?

11 MR. GRAF: No. Objection, misstates prior
12 testimony.

13 MR. GALLIHER: No, it doesn't.

14 BY MR. GALLIHER:

15 Q. Go ahead.

16 Do you think there were three leaks?

17 A. I know of two leaks.

18 BY MR. GALLIHER:

19 Q. So you don't know of three leaks?

20 A. I don't know of three weeks.

21 Q. So if one of them is during closing, that's
22 in November of 2017?

23 A. If I remember it, yeah.

24 Q. So you're aware of one other leak that
25 year?

1 A. That's what I'm aware of.

2 Q. Okay. So just common sense tells us you're
3 not aware of one on May 23rd and one on
4 February 16th because that would be two?

5 A. Yeah. I'm only aware -- I only remember
6 two leaks.

7 Q. Now, Exhibit 9, which is the one we're
8 looking at with the -- where you got the check from
9 this one.

10 On there it lists multiple RMAs; correct?

11 A. Yes.

12 Q. And all of those RMAs, they all have
13 different dates; correct?

14 A. Yes.

15 Q. But they're all related to the same leak,
16 aren't they?

17 A. I would say no.

18 Q. Okay. Let's take a look at it.

19 So the first one is RMA 744566?

20 A. Um-hmm.

21 Q. And it's dated January 5th, and that's for
22 \$10,375?

23 A. February 5th.

24 Q. Okay. What leak date, for lack of a better
25 term, is that RMA related to?

Exhibit E

1
2 DISTRICT COURT
3 CLARK COUNTY, NEVADA
4
5 JOSEPH FOLINO, an)
6 individual; et al.,)
7 Plaintiffs,)
8 vs.) CASE NO.: A-18-782494-C
9 TODD SWANSON, an) DEPT. NO.: XXIV
10 individual; et al.,)
11 Defendants.)
12
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16
17 VIDEO DEPOSITION OF WILLIAM GERBER
18 LAS VEGAS, NEVADA
19 FRIDAY, JANUARY 31, 2020
20
21
22
23
24 REPORTED BY: JACKIE JENNELLE, RPR, CCR #809
25 JOB NO.: 598971A

1 A. Yes, I did.

2 Q. Again, I'll direct your attention to the
3 second column. It says, All dry out equipment was
4 in place for six days.

5 A. Correct.

6 Q. All right. So if you wrote this on
7 January 5, 2018, and you indicate that the equipment
8 was in place for six days, that makes it impossible
9 that this leak actually occurred on January 5th,
10 2018, doesn't it?

11 A. That's what I would think.

12 Q. I'm sorry.

13 A. That's what it looks likes.

14 Q. So doesn't that -- well, let me just ask
15 you, do you sometimes fill these invoices out?

16 A. As for sending to the manufacturer as a
17 summary of what happened, yes.

18 Q. Do you sometimes do that after the fact?

19 A. Yes, it has to be done after the fact.

20 Q. Sometimes weeks after the fact?

21 A. Yes.

22 MR. GALLIHER: That's all I have.

23 FURTHER EXAMINATION

24 BY MR. GRAF:

25 Q. So in regards to the failure occurring

Exhibit F

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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

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

Plaintiffs,

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

vs.

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

Defendants.

VIDEOTAPED DEPOSITION OF

TODD SWANSON, M.D.

Taken on January 24, 2020

at 8:58 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. 597894

1 A -- I saw some water, and that apparently
2 is what was leaking, because Rakeman replaced both
3 of those recirculating pumps.

4 Q There's two in the single garage?

5 A No. I'm sorry. The one -- the previous
6 day they replaced --

7 Q Okay.

8 A -- on --- near the master bathroom --

9 Q Yep.

10 A -- and the one in the single garage.

11 Q So do you have an understanding as to
12 whether or not there was any leak in that garage
13 prior to August 3rd, 2015?

14 A I saw no evidence of a leak prior to
15 that time, no.

16 Q Okay. So when -- what time of day did
17 you first notice the leak on August 3rd, 2015?

18 A Early in the morning.

19 Q Okay.

20 A My assistant actually came in through
21 that door and said, "Did you know there's water
22 there -- out there?"

23 Q And who is that?

24 A Her name is Alexa Warren.

25 Q Okay. And when you say she came in

1 A My understanding was it was the
2 recirculating pump in both instances.

3 Q Okay.

4 A Because their remedy was to replace them
5 with what they called better pumps, as I recall.

6 Q Okay.

7 A So I don't know if they had -- if they
8 were plastic and they put -- replaced them with
9 metal pumps or what exactly.

10 Q Okay.

11 A I'm just going by what they told me.

12 Q And who did you talk to at Rakeman
13 Plumbing?

14 A Oh, that's a good question. I don't
15 recall. You know, someone answered that night,
16 the first night. Someone answered the next day.
17 I didn't know who I was talking to.

18 Q So as you sit here today, you don't
19 know -- we're deposing Aaron Hawley. He's the
20 owner of Rakeman -- or it's my understanding he's
21 the owner of Rakeman Plumbing.

22 Do you have an understanding as to
23 whether or not he was the one you talked to on
24 either of those occasions?

25 A I'm guessing probably he had someone

1 Q I haven't asked you why yet. I'm just
2 asking you if you recognize the document.

3 Do you recognize the document?

4 A No, I don't recognize it as I sit here.

5 Q So it purports to be a home inspection
6 report that was prepared for you by
7 Criterium-McWilliams Engineers.

8 Do you see that?

9 A Yes.

10 Q And you would agree with me that the
11 date of this document is May 11, 2015?

12 A Yes.

13 Q That's three months prior to the first
14 instance of what we have been calling the A leak
15 that's in -- in response to Interrogatory No. 5;
16 correct?

17 A Yes.

18 Q Okay. And what -- and you said it a
19 second ago, so I'll ask the question.

20 What was the reason why you had this
21 report prepared?

22 A Because the house was essentially
23 finished being built. I had moved in already, and
24 I wanted to make sure that there were no issues or
25 problems that Blue Heron hadn't finished or there

1 Q I haven't asked you why yet. I'm just
2 asking you if you recognize the document.

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6 report that was prepared for you by
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11 date of this document is May 11, 2015?

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14 instance of what we have been calling the A leak
15 that's in -- in response to Interrogatory No. 5;
16 correct?

17 A Yes.

18 Q Okay. And what -- and you said it a
19 second ago, so I'll ask the question.

20 What was the reason why you had this
21 report prepared?

22 A Because the house was essentially
23 finished being built. I had moved in already, and
24 I wanted to make sure that there were no issues or
25 problems that Blue Heron hadn't finished or there

1 were no problems with their construction.

2 Q Okay.

3 A I believe that's the reason I did it.

4 It's been a couple of years. It's been five

5 years, actually.

6 Q Yeah. So was there a specific incident
7 or some sort of problem with the house that caused
8 you to have this report prepared?

9 A Not a specific problem. It was just at
10 times, as I recall, a bit difficult to deal with
11 the superintendent on the job, so I thought I
12 would just do this to cover -- just to make sure
13 that things had been done properly.

14 Q Okay. So did you retain Criterium to
15 prepare this report?

16 A Presumably.

17 Q Did you receive it on or about May 11,
18 2015?

19 A I don't recall. I probably have it
20 somewhere on my computer. I didn't specifically
21 look for anything like this, so ...

22 Q This is a document that was produced by
23 you in that document production Bates-stamped, and
24 if you notice, it's Swanson 51 through Swanson
25 118.

1 Q It's your testimony here today that you
2 put Blue Heron on notice of this -- of these
3 issues; right?

4 A Yes.

5 Q Can you testify under oath that this
6 condition was repaired in May of 2015?

7 A To the best of my knowledge, yes.

8 Q And what's that knowledge based on,
9 Doctor?

10 A It's based on the fact that I wouldn't
11 have let them not fix these items unless there was
12 some reason and there would be no reason not to
13 fix a water leak.

14 Q What proof do you have that the leak at
15 the -- at the recirculation pumps was fixed?

16 MR. GALLIHER: Other than what he just
17 testified to?

18 MR. GRAF: Yeah.

19 THE WITNESS: I'm just telling you --

20 BY MR. GRAF:

21 Q Do you have a document from Blue Heron
22 saying that they fixed this condition?

23 A I have thousands of documents from Blue
24 Heron, so maybe.

25 Q None of those thousands of documents

1 MR. GALLIHER: Speculation.

2 THE WITNESS: Yes.

3 BY MR. GRAF:

4 Q Your answer was?

5 A Yes.

6 Q So let's talk about a couple of more of
7 these as we go, Doctor.

8 There is a plumbing leak above the
9 ceiling of the basement bathroom.

10 Do you see that, Doctor?

11 A Yes.

12 Q And this document put you on notice of
13 that plumbing leak?

14 A This document informed me of that
15 plumbing leak, yes.

16 Q Did you ever -- you did not add that as
17 another instance of a water leak in the house in
18 response to Interrogatory No. 5; correct, Doctor?

19 A No, I did not.

20 Q Why not?

21 A Because, to be honest, I did not recall
22 that there was a leak.

23 Q Okay. Is it your understanding that
24 that leak was repaired?

25 A I would have had them repair that leak,

1 yes.

2 Q So same question. What -- do you have
3 an e-mail? Do you have a text? Do you have any
4 type of documentation to show that you requested
5 the repair?

6 A I may. I would have to look for it.
7 But I do know that I would not have closed on the
8 house with leaks in the house, with really any of
9 these problems with the house.

10 Q Okay. So did you -- and then the second
11 half of that question is, do you have any
12 documents, an e-mail, a text, a document that
13 shows that Blue Heron came and did these repairs?
14 This specific repair, the leak above the ceiling
15 in the basement bathroom.

16 A I would have to go back and look
17 specifically for it.

18 Q So you -- you haven't produced such a
19 document in this case yet?

20 A I don't recall.

21 Q You don't recall what, Doctor?

22 A Well, I produced a lot of documents, and
23 I don't recall whether that was one of them or
24 not. I didn't recall this was one of them. I
25 tried to produce everything in your broad request.

1 under the drip."

2 So it's my understanding that six is
3 indicating or showing that there's a drip from the
4 ceiling in the basement bathroom.

5 Do you see that, Doctor?

6 A Yes.

7 Q And, again, that -- that drip or that
8 condition, that water leak, that was never
9 indicated in your response to Interrogatory No. 5;
10 correct?

11 A No, because I think it was fixed.

12 Q And do you have any documentation to
13 show that it was fixed?

14 A Well, I know there was no water in that
15 bathroom because I used it all the time.

16 Q Okay. Do you -- do you recall or do you
17 have any documents showing that somebody came in
18 and fixed whatever the source of the water was in
19 the ceiling of that basement bathroom?

20 A I don't know.

21 Q You haven't produced one to date, have
22 you, Doctor?

23 A No.

24 Q Okay. And do you know what the source
25 of the water was that was coming from the ceiling

1 Q Kind of my question. So is there any
2 way that you can look at that --

3 A So this was -- this was -- yeah, I can
4 show you when the document was created. It
5 wasn't -- well, I can maybe find when it was sent
6 to them. But these notations are made by me so I
7 could keep track of what had been fixed and what
8 hadn't.

9 Q Okay. So --

10 A So they go in sequence from, you know,
11 this is the first one, I guess, where these things
12 need to be fixed and here's what's been done and
13 explained a few things.

14 MR. GALLIHER: For the record, you're
15 referring to Exhibit 13 right now?

16 THE WITNESS: Exhibit 13, to the final
17 one that I have, which kind of addresses
18 everything what has been done or is to be done.

19 MR. GRAF: Okay. And so the
20 difference --

21 MR. GALLIHER: Hold on. And that's
22 Exhibit 14?

23 THE WITNESS: That's Exhibit 14, yes.

24 BY MR. GRAF:

25 Q So Exhibit 12 is the original report,

1 this. And then this one is in June -- the first
2 part of June, I think.

3 MR. GALLIHER: But --

4 BY MR. GRAF:

5 Q So when you say "this," you're talking
6 about Exhibit 14?

7 A Exhibit 14, yes. So they kind of go in
8 sequence like a week apart or so, I think.

9 Q Okay. Are you able to tell by looking
10 at the specific documents when the repairs were
11 made specifically?

12 A Only based on if I -- if it's -- if
13 something isn't noted on one and then it is noted
14 on the next one, it would have been made
15 somewhere -- somewhere between those two.

16 Q In these documents -- so the difference
17 between 13 and 14 as to the leaks at the -- both
18 recirculation pumps --

19 A Yes.

20 Q -- it says there are three leaks inside
21 the house that need to be fixed on Exhibit 13, and
22 I'm assuming that's --

23 A Yes.

24 Q -- both recirculation pumps and then the
25 ceiling of the bathroom.

1 A Yes.

2 Q And then on 14 it says "fixed by
3 plumber," and I'm assuming that's as to the
4 recirculation pump?

5 A Yes.

6 Q And then there's also a reference that
7 says "need plumber to address" on 14 that's been
8 crossed out?

9 A Right.

10 Q And then as to the bathroom ceiling
11 leak, it says, "they couldn't find it. I'll
12 monitor. Need plumber to address."

13 A Yes.

14 Q So can we --

15 A So I'm guessing --

16 Q Go ahead.

17 A -- what I would normally do with
18 something like this or try to explain my system,
19 is I would have put these red notes first as to
20 what needs to be done, and then if they come back
21 and tell me what was done or what is being done,
22 put it in blue. Once it's all done, then I
23 crossed it off the list.

24 Q Okay. So at least as of this version,
25 Exhibit 14, the leak in the ceiling of the

1 bathroom basement hasn't been fixed?

2 A They couldn't find it.

3 Q Okay.

4 A And so I said I would -- well, I'm just
5 going by my notes. I said I would monitor it. I
6 use that -- that bathroom is right to the -- have
7 you been in the house?

8 Q I have.

9 A So the bathroom is right next to what I
10 use as my exercise room, so I use that bathroom
11 all the time and I never saw any leaks in there.

12 Q Okay.

13 A I meant to call you Mr. Graf. I
14 apologize.

15 Q So in terms of those leaks and those
16 issues again, though, these are your notes. We
17 don't -- this isn't another document that shows
18 that Rakeman Plumbing came out and made a repair
19 at those two places; right?

20 A No. This is my way of keeping track of
21 what was done, and I don't know that they ever
22 sent me anything saying here's what we did,
23 because as you probably know if you've bought a
24 house, there's a punch list, and then they take
25 care of things and they just check them off and

1 to the 2015 leaks because I go on to talk about
2 the 2017 leaks -- or leak.

3 Q And then I have another question on
4 that.

5 So the next paragraph says, "In
6 January 2017, I discovered a small pinhole leak in
7 one of the plastic water pipes in the wall."

8 Do you see that?

9 A Yes.

10 Q So that's not the date that we have in
11 response to Interrogatory No. 5.

12 So was there another leak in January of
13 2017?

14 A No. I think there was a lot of trouble
15 pinning down the date of that February leak, but
16 the date was February 17th or 18th or something
17 like that, I think. Or 7th or 8th.

18 Q So C in response to Interrogatory No. 5
19 says February 16, 2017.

20 A That sounds correct.

21 Q Okay. And then -- so in this affidavit,
22 you say, "When I prepared the disclosures, I knew
23 there had been two previous water leaks."

24 Do you see that?

25 A Yes.

1 in 2015; correct?

2 A Correct.

3 Q And so then if we look at Exhibit A,
4 which is the affidavit of Aaron Hawley, the
5 affidavit of Aaron Hawley in paragraph six reads,
6 "On May 23rd, 2017, my company received a call
7 regarding a plumbing leak in the master bedroom."

8 Do you see that, Doctor?

9 A Yes.

10 Q That's not accurate, is it, Doctor?

11 A I don't believe so, unless my dates are
12 off. Because I keep seeing this date, but I think
13 that was the date of the invoice.

14 Q Okay. And the actual leak occurred
15 sometime in February of 2017, didn't it, Doctor?

16 A Yeah, to the best of my knowledge.

17 Q Okay. Well, and I guess that begs the
18 question, Doctor, were there two leaks in early
19 part of '17? Did one occur in January or February
20 of 2017 and then there was a subsequent leak in
21 May of 2017?

22 A No.

23 Q Okay.

24 A There was one leak.

25 Q You would agree, though, that there's

1 documentation that states those three time
2 periods; correct?

3 A There's a lot of confusion about the
4 date of the leak; yes.

5 Q Okay. I -- and that's what we don't
6 want to be, is confused about the dates of any of
7 these leaks occurring.

8 So it's your understanding that the leak
9 occurred somewhere in the time period of January
10 or February of 2017; correct?

11 A Yes. I -- I saw these dates and I found
12 some documents that were pretty persuasive that
13 the date was in February, whatever that date was,
14 February 8th or whatever.

15 Q What documents are you referring to that
16 were fairly persuasive -- you said fairly
17 persuasive?

18 A Yeah.

19 Q Okay.

20 A Well, I can't remember, just in the
21 process of preparing for this.

22 Q So what types of documents? Invoices?
23 E-mails? What were they?

24 A I can't remember. All I know is that I
25 kept seeing this date and it didn't make sense,

1 and so I -- I tried to find the correct date.

2 Q Okay.

3 A And that's what I came up with.

4 Q So this -- this affidavit goes further
5 to state in paragraph nine that Mr. Gerber found
6 the following and took the corrective action. "A
7 tech found a three-quarter-inch Uponor tee leaking
8 on the hot side of the plumbing system. He cut
9 out the leaking fitting and replaced with a new
10 fitting to restore water with no further leaks."

11 Do you see that?

12 A Yes.

13 Q Do you know where that was?

14 MR. GALLIHER: Hold on. Let me make
15 sure -- I want to make sure I understand the
16 question.

17 You're saying where in the house the
18 leak was or where this is written down?

19 MR. GRAF: No, where in the house this
20 was. I appreciate the qualification, because
21 you're right, it was a little murky.

22 THE WITNESS: So this refers to the
23 February leak that they're calling a March leak,
24 and that was in --

25

1 Q And it goes through 1831. And then in
2 that same e-mail is 1832 through 1837, which will
3 be Exhibit 36, which is the report you've already
4 seen, the December 7th report.

5 A Okay.

6 Q So Exhibit 35 is the November 24, 2017,
7 Infinity Environmental Services report. And it
8 says "To whom it may concern. Rakeman Plumbing,"
9 and it's "Fungal Indoor Air Quality Assessment
10 Report: Visual, Airborne and Surface Fungal
11 Assessment. Water-damaged master bedroom closet
12 set, 42 Meadowhawk Lane, Las Vegas, Nevada 89135."

13 And that's the address of this home;
14 correct, Doctor?

15 A Yes.

16 Q Have you ever seen this report before,
17 Doctor?

18 A I have not.

19 Q Were you ever told by Rakeman Plumbing
20 that the home had tested positive for mold?

21 A Not that I recall.

22 Q Okay. Would you have done anything
23 differently with the seller's real property
24 disclosure form if you were made aware of this
25 report?

Exhibit G

RMA Claims (ibeCCipScIdSpRle.jsp?section=11300&beginIndex=&siteX=10020:22372:US)

To create a new claim, please click on the Create Claim button

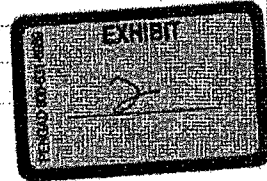
Search for Claims

Create Claim

Claim Creation Date Between

And

Go



Search By

Jobsite Name

contains

folino

Go

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
748395	SOUTHWEST SALES [sws6@cox.net] Less				

Update Claim

Claimant And Jobsite Information

Claimant Information

Builder/Contractor
Absolute Closets & Cabinetry, LLC
Cami Ward
6754 Spencer Street
LAS VEGAS, NV 89119
US
cami_absolute@cox.net
Ph 702 896 5450

Estimated Claim Amount

Preferred Cash
Reimbursement

Jobsite Information

Single Family
Nicole and Joe Folino
42 Meadowhawk Ave.
LAS VEGAS, NV 89135
US
nfolino@sanderpartners.com
Ph 702 812 3834

Past Occurrences

Past Occurrences Yes
Past Occurrences 746512
Reference

Installation Information

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Application		Contractor Information		
	Application	Recirculation	rakeman plumbing		
	Location Detail		alison brooks		
	No	Plumbing	4075 losee rd		
		master bath closet	NORTH LAS VEGAS, NV 89030		
		below water heater	US		
	Temperature/Pressure		alison@rakeman.com		
			Ph 702 642 8553		
			Installing? Yes		
	Temperature	Cold	Other Information		
	System Temp	70 F	Permission to		
	System Pressure	65 PSI	conduct destructive		
			testing? Yes		
	Water Source		Phase of		
			Construction		
	Water Source	Municipal	Builder		
			Unknown		
	Dates		Customer Comment(s)		
	Est. Installed Date	15-JUL-2014	Blue pipe split at fitting		
	Failure Date	07-NOV-2017			

2/1/17

Product Information

Item Number: Description: ProPEX LF Brass Sweat Adapter, 3/4" PEX x 3/4" Copper
LF4517575

Return Qty: 0 Date Code:

Foot
Marker:

Customer Perspective: blue tubing split at fitting

Failure Detail:

Failure
Mechanism:

Primary Point
of Occurrence:

Item Number: Description: 3/4" Uponor AquaPEX Blue, 100-ft coil
F3040750

Return Qty: 1 Date Code: UB22131110

Foot
Marker: NA

Customer Perspective: 42 Meadowhawk Ln, Las Vegas, NV is a single family home that contains 6,633 sq ft and was built in 2015. It contains 5 bedrooms and 7 bathrooms

Failure Detail: Lacquer Pipe - Brittle OD Fracture at Connection

PLT001015

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Failure Mechanism:	Creep Rupture / Slow Crack Growth			
	Primary Point of Occurrence:	Uponor Fabrication			
Comments/Attachments					
Final Decision Letter 03/15/2018 03:18pm Christy.Wegner@uponor.com 748395 - payout_closet_costs_.pdf 748395 - payout_closet_costs_.pdf (QA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=55780431)					
Comment 03/13/2018 11:26am Christy.Wegner@uponor.com W-9 received and check requested to Absolute Closets					
Comment 03/12/2018 03:06pm Christy.Wegner@uponor.com From: Nicole Folino [mailto:nfolino@sandlerpartners.com] Sent: Monday, March 12, 2018 3:01 PM To: Wegner, Christy Cc: Joe Folino ; Moni Ward Subject: RE: 42 Meadowhawk Thank you Christy.. If you can pay Absolute Closets and Cabinetry directly that would be great. Moni – can you provide a copy of your W-9 so Uponor can get you guys paid? SANDLER PARTNERS Nicole Folino Regional Vice President Direct: 702.441.1114 Mobile: 702.812.3834 nfolino@sandlerpartners.com www.sandlerpartners.com Connectivity Cloud Voice Security SD-WAN					

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Comment 03/12/2018 02:13pm Christy.Wagner@uponor.com From: Wegner, Christy Sent: Monday, March 12, 2018 2:13 PM To: 'Nicole Folino' Cc: Joe Folino ; Moni Ward Subject: RE: 42 Meadowhawk Nicole, Your invoice is received. Should Uponor make payment to you and Joe or to Absolute Closets & Cabinetry directly? If we are making payment to you, nothing further is needed. If we are paying Absolute Closets & Cabinetry we will just need a copy of their company's W-9 in order to process payment. Please advise how you would like to proceed. Kind regards, Christy Christy Wegner Claims Coordinator Uponor North America T +19529975383 F +18663518402 www.uponorpro.com Uponor, Inc. 5925 148th St W Apple Valley, MN, 55124 CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of intended recipient(s) and may contain confidential or proprietary information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, immediately contact the sender by reply email and destroy all copies of the original message. From: Nicole Folino [mailto:nfolino@sandlerpartners.com] Sent: Monday, March 12, 2018 12:10 PM To: Wegner, Christy Cc: Joe Folino ; Moni Ward Subject: RE: 42 Meadowhawk Hi Christy, I finally did just get the invoice for our cabinets. Attached is the invoice for them to remove the cabinets and put them back in after completing our repipe. Do you need anything else from me to get this invoice paid? SANDLER PARTNERS Nicole Folino Regional Vice President Direct: 702.441.1114 Mobile: 702.812.3834 nfolino@sandlerpartners.com www.sandlerpartners.com Connectivity Cloud Voice Security SD-WAN Colo				

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
Document					03/12/2018 02:09pm Christy.Wegner@uponor.com
Absolute_Cabinetry_Invoice_-42_Meadowhawk_Lane.pdf Absolute_Cabinetry_Invoice_-42_Meadowhawk_Lane.pdf (/OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=55720027)					
Comment					02/23/2018 10:57am stacey.beissel@uponor.com
I spoke to the attorney that sent the preservation letter. Homeowner is possibly going to pursue prior owner for not disclosing issues with the home. They do not intend on pursuing Uponor.					
Final Decision Letter					02/08/2018 10:40am John.sommers@Uponor.com
RMA-748578_748395_748068_744566-Payout.pdf RMA-748578_748395_748068_744566-Payout.pdf (/OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=54981666)					
Comment with Email					02/01/2018 08:49am John.sommers@Uponor.com
Check requested for Rakeman Final Invoice					
Document					02/01/2018 08:31am John.sommers@Uponor.com
RMA-748395-Rakeman-final_invoice.pdf RMA-748395-Rakeman-final_invoice.pdf (/OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=54877040)					
Final Decision Letter					01/25/2018 02:27pm Christy.Wegner@uponor.com
748395_-_repipe_payout.pdf 748395_-_repipe_payout.pdf (/OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=54762377)					
Comment					01/24/2018 01:07pm Christy.Wegner@uponor.com
From: Wegner, Christy Sent: Wednesday, January 24, 2018 1:07 PM To: 'Nicole Folino' Cc: Joe Folino Subject: RE: 42 Meadowhawk					
Nicole,					
Glad to hear that everything is wrapping up. Please send me the invoice for your cabinets. Technically, additional cleaning is outside the scope of our warranty, but please send us an estimate for your duct cleaning and I will present it to Stacey to see if there's anything we can do, given your circumstances.					
Kind regards,					

PLT001018

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Christy				
	Christy Wegner Claims Coordinator Uponor North America				
	T +19529975383 F +18663518402				
	www.uponorpro.com				
	Uponor, Inc. 5925 148th St W Apple Valley, MN, 55124				
	CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of intended recipient(s) and may contain confidential or proprietary information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, immediately contact the sender by reply email and destroy all copies of the original message.				
	From: Nicole Folino [mailto:nfolino@sandlerpartners.com] Sent: Wednesday, January 24, 2018 12:55 PM To: Wegner, Christy Cc: Joe Folino Subject: RE: 42 Meadowhawk				
	Hi Christy,				
	I hope you are doing well. We are all done with our Repipe. Should I just send the invoice to you for the Cabinets removal and replacement? Also, my children are still highly sensitive and allergic to the dust. We paid 400.00 to have our house cleaned but we will still need our ducts cleaned now. Can I get a quote and send you the invoice? We did pay for the cleaning ourselves but we will still need to get the ducts cleaned. Please advise. Thank you!				
	SANDLER PARTNERS Nicole Folino Regional Vice President Direct: 702.441.1114 Mobile: 702.812.3834 nfolino@sandlerpartners.com www.sandlerpartners.com Connectivity Cloud Voice Security SD-WAN Colo				
	Document 01/19/2018 08:41am Christy.Wegner@uponor.com Repipe Invoice (check requested) 302464-Uponor_Folino_Certificate_of_Completion.pdf 302464-Uponor_Folino_Certificate_of_Completion.pdf (/OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=54660923)				
	Document 01/19/2018 08:41am Christy.Wegner@uponor.com Repipe Invoice (check requested) 302464-RMA_748395 - Uponor_Invoice.pdf 302464-RMA_748395 - Uponor_Invoice.pdf (/OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=54660922)				

12/9/2018

Uponor Online Service Center - USA

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Comment 01/17/2018 09:25am sws6@cox.net I would suggest a call to Aaron Hawley, O: 702-642-8553, C: 702-813-2756, to discuss the additional information needed on their invoice. Internal Comment 01/12/2018 03:29pm John.sommers@Uponor.com -----Original Message----- From: Sommers, John Sent: Friday, January 12, 2018 3:28 PM To: 'Keith hubbard' Cc: Wegner, Christy Subject: 748395 Keith I was able to upload the invoice. I have reviewed the invoice and we will need a more accurate breakdown of the work that was done with an itemized list of the work. Please reach out to Rakeman and to see if they can provide a detailed summary. Thanks, John -----Original Message----- From: Keith hubbard [mailto:sws6@cox.net] Sent: Friday, January 12, 2018 2:08 PM To: Sommers, John Subject: FW: Emailing: CCF01122018 Hi John, attached in an invoice from Rakeman Plumbing for the Swansen residence, 42 Mead LV. RMA 748395 doesn't show in the system, that was the number attached when we filed the Thx. Keith Southwest Sales Group, Inc. Keith Hubbard, CPMR, CSP 702-371-7894 C 702-646-8800 O 702-646-6734 F -----Original Message----- From: Alison Brooks [mailto:abrooks@rakeman.com] Sent: Friday, January 12, 2018 2:53 PM To: Keith hubbard Subject: Emailing: CCF01122018 Good Afternoon, I have attached invoice for your review, Thank you,				

1/17/17
395

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Alison Brooks Accounts Payable/ Customer Service Rakeman Plumbing, Inc. 4075 Losee Road North Las Vegas, NV 89030 P: 702-642-8553 Fax: 702-399-1410 *** Rakeman Plumbing is now Rakeman Plumbing and Air Conditioning, we can now help you with all your Air Conditioning needs*** http://www.rakeman.com				
	Document 01/12/2018 02:50pm John.sommers@Uponor.com RMA-748395_invoice_rakeman.pdf RMA-748395_invoice_rakeman.pdf (/OA_HTML/xx_lbeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=54564706)				
	Comment 01/10/2018 11:21am Christy.Wegner@uponor.com From: Nicole Folino [mailto:nfolino@sandlerpartners.com] Sent: Wednesday, January 10, 2018 11:19 AM To: Wegner, Christy Cc: Joe Folino Subject: RE: 42 Meadowhawk Ok thank you. My children have allergies really bad and they are getting quite sick and congested so that is why I asked. I just want to make sure this is healthy for my children after all is done. SANDLER PARTNERS Nicole Folino Regional Vice President Direct: 702.441.1114 Mobile: 702.812.3834 nfolino@sandlerpartners.com www.sandlerpartners.com Connectivity Cloud Voice Security SD-WAN Colo				

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Comment 01/10/2018 08:47am Christy.Wegner@uponor.com From: Wegner, Christy Sent: Wednesday, January 10, 2018 8:47 AM To: 'Nicole Folino' Cc: Joe Folino Subject: RE: 42 Meadowhawk Nicole, Additional cleaning expenses (including duct cleaning) are outside the scope of the warranty's coverage. However, I believe Repipe Specialists takes great precautions in covering things (including possibly duct/vent openings) while they are working, as well as cleaning up once everything is complete. We have heard from other homeowners who have used Repipe Specialists that they have been impressed with the state their home was left in once the work was complete. With that said, let's wait to see how everything looks once all the work is complete and if needed we can reach out to Stacey to go over any remaining concerns you may have. Kind regards, Christy Christy Wegner Claims Coordinator Uponor North America T +19529975383 F +18663518402 www.uponorpro.com Uponor, Inc. 5925 148th St W Apple Valley, MN, 55124 CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of intended recipient(s) and may contain confidential or proprietary information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, immediately contact the sender by reply email and destroy all copies of the original message. From: Nicole Folino [mailto:nfolino@sandlerpartners.com] Sent: Tuesday, January 09, 2018 10:36 PM To: Wegner, Christy Cc: Joe Folino Subject: Re: 42 Meadowhawk Hi Christy We have decided to use the repipe specialist for the drywall and painting. Our house is really dusty and I would imagine will get worse with the drywall and then sanding down the walls. We need to have our ducks cleaned and also a derp cleaning once all is completed. Can I get some quotes for these two additional items and send that to you for approval? Let me know. Thank you. Sent from my iPhone				

12/9/2019

Uponor Online Service Center - USA

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Comment 01/04/2018 03:32pm Christy.Wegner@uponor.com From: Wegner, Christy Sent: Thursday, January 04, 2018 3:32 PM To: 'Nicole Folino' Cc: Joe Folino Subject: RE: 42 Meadowhawk Nicole & Joe, Thank you for taking some time to talk with us about your claim #748396 and clear up our confusion relating to the closet material estimate. Uponor approves Absolute Closets & Cabinetry's estimate below. Please move forward with scheduling this work and send the invoice to either me or Repipe Specialists when all is complete. In response to your questions about the February leak (our claim #746512), please contact our rep agency using the contact information below: Southwest Sales Group, Inc. 702-646-8800 Rep Agent: Keith Hubbard Email: sws6@cox.net Please let me know if there is anything further I can assist with at this time. Kind regards, Christy Christy Wegner Claims Coordinator Uponor North America				

PLT001023

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Comment 01/03/2018 03:11pm Christy.Wegner@uponor.com From: Nicole Folino [mailto:mfolino@sandlerpartners.com] Sent: Wednesday, January 03, 2018 9:17 AM To: Wegner, Christy Cc: Joe Folino Subject: Fwd: 42 Meadowhawk Hi Christy See below. It's about 1200 in total cost to have them do this for us. Do you need the formal quote or is this email good for now? Sent from my iPhone Begin forwarded message: From: Moni Ward Date: January 1, 2018 at 9:16:44 AM PST To: Nicole Folino Cc: Joe Folino Subject: Re: 42 Meadowhawk Hi Nicole, Sorry for delay.....I was out all last week. I am back in the office tomorrow and I will see if I can slide something around to clear a crew up on Friday. We will need to leave the closet material at your house until it is time to re-install. As far as a quote goes.....it will be \$100 per hour. For the two closets you mentioned I would estimate about 4 hours to remove and 8 hours to re-install so probably about \$1200 for a total cost. I will get back to you tomorrow on my schedule. Thank you, Moni Ward Absolute Closets & Cabinetry 702-503-5553				

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Comment 01/03/2018 09:02am Christy.Wagner@uponor.com From: Wegner, Christy Sent: Wednesday, January 03, 2018 8:52 AM To: 'Nicole Folino' Cc: Joe Folino ; Beissel, Stacey Subject: RE: 42 Meadowhawk Lane, Las Vegas, NV Hi Nicole, Please send the cabinet quote to me directly for review. Repipe Specialists, Inc. is a general contractor, which means they have crews for both drywall and paint already. Feel free to reach out to them to get answers to any questions you may have about their reconstruction process and/or crews. I will also let them know that you have inquired about this. Kind regards, Christy Christy Wegner Claims Coordinator Uponor North America T +19529975383 F +18663518402 www.uponorpro.com Uponor, Inc. 5925 148th St W Apple Valley, MN, 55124 CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of intended recipient(s) and may contain confidential or proprietary information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, immediately contact the sender by reply email and destroy all copies of the original message. From: Nicole Folino [mailto:nfolino@sandlerpartners.com] Sent: Tuesday, January 02, 2018 6:04 PM To: Wegner, Christy Cc: Joe Folino ; Beissel, Stacey Subject: Re: 42 Meadowhawk Lane, Las Vegas, NV Hi Christy and Stacey Thank you. I believe they are going to start the work on Thursday. I got a quote for the cabinet people to come and take our closet cabinets out and install them since the last plumbing company broke our entire custom closet in the master. Also I wanted to know if we can choose the company that will be painting and drywall after they are done? Do I submit the proposals for this to you or do I give to repipe specialist? Do you have a good email for the guy you referred so I can send all of this info to them as well? Let me know when you can. Thank you. Sent from my iPhone				

PLT001025

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Comment 12/27/2017 03:50pm Christy.Wagner@uponor.com From: Jeff Butler (mailto:jeff@1-800-repiping.com) Sent: Wednesday, December 27, 2017 3:45 PM To: Wegner, Christy Subject: Re: RMA 748395 - LV home They did not see one and our guy did not hear it either. The customer said to not worry about it and we will just repipe everything next week. Just as an fyi, apparently there is a cabinet guy that is removing a part of a cabinet and reinstalling once we're done. We were not involved with him, but I heard about it and just wanted to give you a heads up so you're not caught off guard. Best regards, Jeff Butler President PO Box 910 Burbank, CA 91503 P: 800-737-4746 M: 818-314-7736 LOCATIONS: Los Angeles-Orange County-San Francisco-San Diego-Sacramento Portland-Seattle-Vancouver-Las Vegas-Salt Lake City-Chicago-Houston-San Antonio				

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Comment 12/27/2017 03:32pm Christy.Wegner@uponor.com From: Wegner, Christy Sent: Wednesday, December 27, 2017 3:26 PM To: 'Jeff Butler' Subject: RE: RMA 748395 - LV home Jeff, Thanks for pulling this together so quickly. This estimate is approved - please move forward. Did they find/repair a new leak today? Thanks, Christy Christy Wegner Claims Coordinator Uponor North America T +19529975383 F +18663518402 www.uponorpro.com Uponor, Inc. 5925 148th St W Apple Valley, MN, 55124 CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of intended recipient(s) and may contain confidential or proprietary information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, immediately contact the sender by reply email and destroy all copies of the original message. From: Jeff Butler [mailto:jeff@1-800-replping.com] Sent: Wednesday, December 27, 2017 2:48 PM To: Wegner, Christy Subject: Re: RMA 748395 - LV home Christy, We went out and reviewed the home and attached is the bid. If you approve the customer would like us to start at the beginning of the week which we have arranged our schedule to be able to accomplish. Breakdown is as follows: Repipe - 32,300 Patch - 10,200 Paint - 6,400 Total - 48,900 Please let me know if there are any questions. Best regards, Jeff Butler President				

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Comment 12/27/2017 03:30pm Christy.Wegner@uponor.com From: Wegner, Christy Sent: Wednesday, December 27, 2017 12:34 PM To: 'Nicole Folino' Cc: Joe Folino ; Beissel, Stacey Subject: RE: 42 Meadowhawk Lane, Las Vegas, NV Good Afternoon Nicole, I'm sorry to hear that you may be experiencing a third leak. The phone number for Repipe Specialists is 800-737-4746 but I have already reached out to them on your behalf and someone should be in contact with you very soon. Please let me or Stacey know if you need anything further. Kind regards, Christy Christy Wegner Claims Coordinator Uponor North America T +19529975383 F +18663518402 www.uponorpro.com Uponor, Inc. 5925 148th St W Apple Valley, MN, 55124 CONFIDENTIALITY NOTICE: This email message, including any attachments, is for the sole use of intended recipient(s) and may contain confidential or proprietary information. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, immediately contact the sender by reply email and destroy all copies of the original message. From: Nicole Folino [mailto:nfolino@sandlerpartners.com] Sent: Wednesday, December 27, 2017 10:16 AM To: Wegner, Christy Cc: Joe Folino Subject: FW: 42 Meadowhawk Lane, Las Vegas, NV Hi Christy, I noticed that Stacey is out of the office until the 3rd and suggested we contact you if we need immediate assistance. We have a manufacturing defect in the blue and the red piping in our home. We have already had two failures. We are about to have a third. We can hear the pipe is about to burst in our kitchen. We are going to move forward with repiping our entire home after the first of the year but I needed to see if we can get a referral for this immediate leak. There are two companies I believe Uponor uses here in Las Vegas to do the repipes. One is Rakeman Plumbing and the other is Repipe specialists. We are not interested in using Rakeman Plumbing since we are not happy with the way they fixed our last issue in our closet. Do you have a local contact for repipe specialists that you can refer us to? SANDLER PARTNERS				

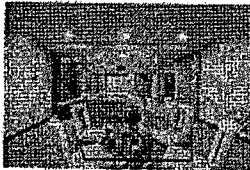
PLT001028

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Nicole Folino Regional Vice President Direct: 702.441.1114 Mobile: 702.812.3834 nfolino@sandlerpartners.com www.sandlerpartners.com Connectivity Cloud Voice Security SD-WAN Colo				
	Document 12/27/2017 03:27pm Christy.Wegner@uponor.com Approved bid! Folino_bld_-_RMA_748395_-_12-27-17.pdf <u>Folino_bld_-_RMA_748395_-_12-27-17.pdf (/OA_HTML/xx_lbeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=54333767)</u>				
	Comment 12/13/2017 02:59pm stacey.beissel@uponor.com Recommendation to Homeowner is that all red and blue tubing be removed and new Uponor AQUAPEX is installed. HO has stated she wants white pipe installed with EP fittings. This is a VERY large and custom home. She will be reaching back out to Uponor after the 1st of the year to discuss options on how we proceed.				
	Document 12/13/2017 02:56pm stacey.beissel@uponor.com Prior Claim Information Sent to HO Uponor_Warranty_Claim_-_RMA_746512__42_Meadowhawk_.msg <u>Uponor_Warranty_Claim_-_RMA_746512__42_Meadowhawk_.msg (/OA_HTML/xx_lbeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=54129468)</u>				
	Document 12/13/2017 02:49pm stacey.beissel@uponor.com Claim Information Sent to Homeowner Uponor_Warranty_Claim_-_RMA_748395__42_Meadowhawk_.msg <u>Uponor_Warranty_Claim_-_RMA_748395__42_Meadowhawk_.msg (/OA_HTML/xx_lbeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=54129288)</u>				

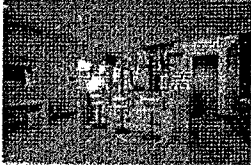
Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Comment 12/13/2017 02:47pm stacey.belssel@uponor.com From: Nicole Folino [mailto:nfolino@sandlerpartners.com] Sent: Wednesday, December 13, 2017 11:07 AM To: Belssel, Stacey Cc: Joe Folino Subject: 42 Meadowhawk - Rakeman Plumbing Hi Stacey, I left you a voicemail but I also wanted to follow up with an email. Myself and my husband Joe are the new home owners for 42 Meadowhawk Lane. I was referred to you from Aaron from Rakeman Plumbing. Rakeman plumbing has advised us that Uponor is suggesting that the piping in our entire house needs to be replaced. I was hoping you can give me the reasoning as to why. They were not able to give me any additional information and they suggested I call you directly so that I can get the data and information straight from you. Can you please provide us with the reasoning why Uponor is stating that we should have our entire home replumbed. I just moved into this house 3 days ago and the home is less than 3 years old. As you can see this is extremely stressful time to hear this information and apparently the home has already had two leaks. One I believe was going on for a year and caused our entire closet to be ripped out and redone due to water damage and mold. Can you please provide me with as much information as possible regarding your products that were used in our home. Can you also confirm if the plumbing that was used was PEX plumbing with brass fittings? Let me know. Thank you very much. SANDLER PARTNERS Nicole Folino Regional Vice President Direct: 702.441.1114 Mobile: 702.812.3834 nfolino@sandlerpartners.com www.sandlerpartners.com Connectivity Cloud Voice Security SD-WAN Colo				
	Internal Comment 12/12/2017 04:38pm John.sommers@Uponor.com Phone conversation with Keith Hubbard to obtain invoices to repipe all lines in this residence. Keith did reach out to Aaron Hawley with Rakeman Plumbing. Aaron Hawley did speak with the homeowner. This residence is over 7,000 sq feet. and valued over 3 million. The new owner has concerns and was given Stacey's number by Aaron Hawley. At this point we are waiting to hear from the homeowner.				

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Request From Customer Estimates 12/12/2017 04:32pm John.sommers@Uponor.com Keith Thank you for reaching out to Rakeman Plumbing for estimates. Aaron Hawley has spoken with the homeowner and sh did have some concerns. Aaron did speak to Stacey and My self about the concerns. The homeowner will be contacting Stacey. Once the homeowner concerns are resolved we will then start getting estimate together. I will update you once we have more information. Thanks, John				
	Comment 12/11/2017 04:18pm sws6@cox.net Did you receive the return tube?				
	Internal Comment 12/06/2017 04:29pm Zappo, Jeffrey C The findings of this evaluation suggest that the crack initiation started at the OD by the ProPex connection of the 3/4" pipe. The findings/conclusions of the RMA report are preliminary and are subject to supplementation/revision should additional information become available at a future time.				
	Comment 12/04/2017 04:38pm sws6@cox.net The part was sent UPS on 11/28/17, you should have shortly.				
	Comment with Email 12/04/2017 04:05pm John.sommers@Uponor.com Keith I looked at the Claim. We are not able to make any recommendation until our Product Quality team can evaluate the product. Does Rakeman have the part that leaked, if so could you have them send it to us. Thanks, John				
	Comment 12/04/2017 02:34pm sws6@cox.net These are pictures of the most recent leak at this address. Originally the same pictures were uploaded to RMA 746512. Please give an update on this RMA, homeowner is concerned this is their second leak with similar conditions.				

PLT001031

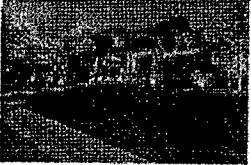
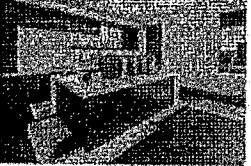
Claim Number	Customer	Claim Date	Status	Claimant	Job Site
Comment with Email 12/01/2017 03:37pm John.sommers@Uponor.com Keith Did the parts get sent to us. John Comment 12/01/2017 02:42pm sws6@cox.net Any movement on this RMA? Comment with Email 11/16/2017 03:56pm John.sor... Keith Could you update this RMA by adding the images adding content here. I think you had put Once the items are received I can have our Product Quality group try to put a rush on it. Thanks, John Images Image 12/13/2017 02:47pm stacey.beissel@uponor.com Picture of Home ISyvecf2jhh2gw0000000000.jpg ISyvecf2jhh2gw0000000000.jpg  (/OA_HTML/xx_ibeGetClaimAttachContent.jsp? claim_number=748395&attached_document_id=54129277) ISyz5gz2jw4rgb0000000000.jpg  (/OA_HTML/xx_ibeGetClaimAttachContent.jsp? claim_number=748395&attached_document_id=54129279) ISyvq13bh1ua8h1000000000.jpg  (/OA_HTML/xx_ibeGetClaimAttachContent.jsp? claim_number=748395&attached_document_id=54129278)					

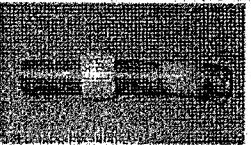
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Claim Number	Customer	Claim Date	Status	Claimant	Job Site
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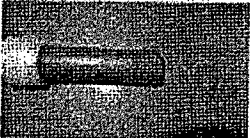
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Claim Number	Customer	Claim Date	Status	Claimant	Job Site
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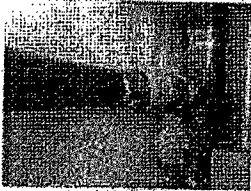
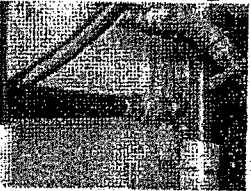
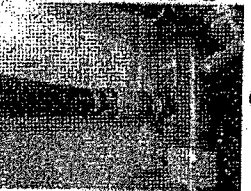
12/06/2017 04:25pm
jeff.zappo@uponor.com

12/9/2019

Uponor Online Service Center - USA

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
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	Internal Image 12/06/2017 04:24pm Zappo, Jeffrey C 748395 As Received (6).JPG  (/OA_HTML/xx_ibeGetClaimAttachContent.jsp? claim_number=748395&attached_document_id=54026478)				

[illegible]

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
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	Rakeman_748395_42_meadowhawk_pic3.JPG				
					
	(/OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=53595067)				
	Rakeman_748395_42_meadowhawk_pic1.JPG				
					
	(/OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=53595065)				

Payment Status

Claim Amount	Status	Payment Details
0	Reimbursement	Paid To: N/A
Cash	Invoice Requested: No	Pay Amount: -\$63,260.00
	Invoice Received:	Check Amount: N/A
	Release Requested: No	Check Number: N/A
	Release Received: No	Check Date: N/A
	<u>Final Decision Letter</u> (/OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=55780431)	
0	Pay	Paid To: Absolute Closets and
Cash	Invoice Requested: No	Cablnetry LLC
	Invoice Received:	Pay Amount: \$1,200.00
	Release Requested: No	Check Amount: \$1,200.00
	Release Received: No	Check Number: 16054
		Check Date: 03/14/2018
	<u>Final Decision Letter</u> (/OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=55780431)	

Claim Number	Customer	Claim Date	Status	Claimant	Job Site
	Claim Amount	Status	Payment Details		
	0	Pay	Paid To: rakeman plumbing		
	Cash	Invoice Requested: No	Pay Amount: \$13,160.00		
		Invoice Received:	Check Amount: \$37,080.00		
		Release Requested: No	Check Number: 15741		
		Release Received: No	Check Date: 02/07/2018		
	<u>Final Decision Letter</u> /OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=55780431				
	\$1000 to	Pay	Paid To: Replpe Specialists		
	\$2500	Invoice Requested: Yes	Inc.		
	Cash	Invoice Received:	Pay Amount: \$48,900.00		
		Release Requested:	Check Amount: \$48,900.00		
		Release Received:	Check Number: 15627		
	<u>Final Decision Letter</u> /OA_HTML/xx_ibeGetClaimAttachContent.jsp?claim_number=748395&attached_document_id=55780431				
Status History					
Related Claims					

Showing 1 to 1 of 1 entries

Previous 1 Next

 Cart (https://services.uponor-usa.com:443/OA_HTML/ibeCScdViewA.jsp?site=10020:22372:US) Orders/Returns (<https://services.uponor->

Exhibit H

ADDENDUM NO. 4-A TO PURCHASE AGREEMENT



In reference to the Purchase Agreement executed by Joseph Folino And
Nicola Folino as Buyer(s) and Lyons Development LLC
as Seller(s), dated 10/22/17
covering the real property at 42 Meadowhawk Lane Las Vegas NV 89135-5201
the ☐ Buyer ☒ Seller hereby proposes that the Purchase

Agreement be amended as follows:

Seller is disclosing that there was a water leak in the master closet from a water pipe that broke. The seller is fully remediating the issue to include new baseboards, carpets, etc. and all repair items regarding this leak will be handled prior to COE.

☐ ADDITIONAL PAGE(S) ATTACHED. This Addendum is not complete without the additional terms on the attached _____ page(s).

When executed by both parties, this Addendum is made an integral part of the aforementioned Purchase Agreement.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

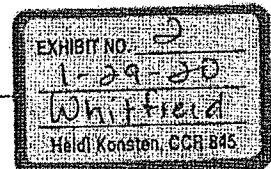
☐ Buyer ☒ Seller 11/15/2017
Date

☐ Buyer ☐ Seller _____
Time

Acceptance:

☐ Buyer ☐ Seller _____
Date

☐ Buyer ☐ Seller _____
Time



Prepared by: Ivan G. Shor 702-400-2400
Agent's Printed Name Phone

Addendum to Purchase Agreement 9/12 © 2012 Greater Las Vegas Association of REALTORS®

This form presented by Ivan G Shor | 888 Nevada Properties | 702-315-0221 | ivan@shapirorandshor.com

InstantForm

Exhibit I

Phone: 702-686-6638
Office: 702-315-0223
e-Fax: 702-317-3175

Shapiro & Sher • Berkshire Hathaway
HomeServices | Luxury Collection
lasvegasfinehomes.com

From: Todd Swanson [mailto:tsv@tswansonmd.com]
Sent: Wednesday, November 15, 2017 7:18 PM
To: Austin Sherwood <Austin@shapiroandsher.com>; Nicky Whitfield <assistant@tswansonmd.com>
Cc: Ivan Sher <Ivan@ShapiroandSher.com>
Subject: RE: 42 Meadowhawk

OK, I found it. Am I supposed to initial? Sign? I signed and dated in 2 places. Let me know if I need to do anything else.

[Quoted text hidden]

Austin Sherwood <Austin@shapiroandsher.com>
To: Ashley Oakes-Lazosky <ashley@vhfelv.com>, Ivan Sher <Ivan@shapiroandsher.com>

Thu, Nov 16, 2017 at 8:31 AM

Hi Ashley,

Good morning. I am waiting for confirmation to get you in the property today and will follow up once I have.

Who all would be going by the property today?

I just reached out for a status update on the stucco as well.

Upon closing we will get you the contact information!

Also, I have attached Addendum 4-A regarding the leak if you can please have the buyer sign.

Best Regards,

Austin Sherwood
Fine Home Specialist | Transaction Manager
Phone: 702-686-6638
Office: 702-315-0223
e-Fax: 702-317-3175

Shapiro & Sher • Berkshire Hathaway
HomeServices | Luxury Collection
lasvegasfinehomes.com

From: Ashley Oakes-Lazosky [mailto:ashley@vhfelv.com]
Sent: Thursday, November 16, 2017 6:52 AM

PLT001871

JA001737

To: Austin Sherwood <Austin@shapiroandsher.com>; Ivan Sher <Ivan@ShapiroandSher.com>
Subject: 42 Meadowhawk

Ivan and Austin,

We sign at 9 today .

We need to please gain access to the house today. Around 12-1ish

We are trying to get the pool company over to give a report on the decking.

Also, ivan I need to know if the seller repaired the missing stucco at the right of the office patio before we do the walk tomorrow ?

If not we will need to do a hold back for that and the decking so we can close.

Please advise

Also, per the agreement the buyer will need access to the house post closing for contractors.

Could you arrange for us to please have the assistants info so that can be arranged?

Thank you

--

Ashley Oakes-Lazosky
Broker/Owner
Vegas Homes and Fine Estates
1180 N Town Center Dr Ste 100
Las Vegas, NV 89144
Ashley@vhfelv.com
702-281-1198 direct
702-874-8555 office
www.yourvegashomesearch.com

****Be aware! Online banking fraud is on the rise. If you receive an email containing WIRE TRANSFER INSTRUCTIONS call your escrow officer immediately to verify the information prior to sending funds.****

NOTICE: The information contained in this message is proprietary and/or confidential and may be privileged. If you are not the intended recipient of this communication, you are hereby notified to: (i) delete the message and all copies; (ii) do not disclose, distribute or use the message in any manner; and (iii) notify the sender immediately.

 **Addendum 4-A.pdf**
124K

PLT001872

JA001738

11:47



New iMessage

To: H1 (702) 400-2400

Morning Ivan

I have the pool contractor able to come 12-1ish today
Can you get us access to house?
Kelly said we can't

Nov 16, 2017, 11:43 PM

The buyer is only agreeable to a 20k hold back since they don't want to rely on the plumber and their warranty

Hi Ashley. Unfortunately that number is excessive. As the seller is always taking the highroad and is diligently working on the solution, we need to be reasonable with regard to the escrow holdback amount.

If there truly is a problem with the house Plumbing, which we know there isn't, then the builder is the one that has the problem.

For me to even have them consider a lesser amount she needs to see a warranty or report from plumber



PLT000948

JA001739

12:00



New iMessage

To: +1 (702) 400-2400

The buyer is only agreeable to a 20k hold back since they don't want to rely on the plumber and their warranty

Hi Ashley. Unfortunately that number is excessive. As the seller is always taking the highroad and is diligently working on the solution, we need to be reasonable with regard to the escrow holdback amount.

If there truly is a problem with the house Plumbing, which we know there isn't, then the builder is the one that has the problem.

For me to even have them consider a lesser amount she needs to see a warranty or report from plumber showing the coverage

But honestly I've had to talk them off the ledge and I think this will cause huge issues

I would be agreeable to hold back a Portion of my commission to make



PLT001002

JA001740

From
Shen
texts

12:01

New iMessage

To: +1 (702) 400-2490

Hi Ashley. Unfortunately that number is excessive. As the seller is always taking the highroad and is diligently working on the solution, we need to be reasonable with regard to the escrow holdback amount.

If there truly is a problem with the house Plumbing, which we know there isn't, then the builder is the one that has the problem.

For me to even have them consider a lesser amount she needs to see a warranty or report from plumber showing the coverage

But honestly I've had to talk them off the ledge and I think this will cause huge issues

I would be agreeable to hold back a Portion of my commission to make up the difference

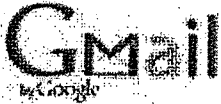
If you would do same



PLT001003

JA001741

Exhibit J



Ivan Sher <ivan@isluxury.com>

Addendum terms for 42 Meadowhawk

2 messages

Ashley Oakes-Lazosky <ashley@vhfelv.com>
To: Ivan Sher <ivan@shapiroandsher.com>

Thu, Nov 16, 2017 at 9:00 PM

Ivan,

Well...I was enjoying my time at the bar until I received your vm

Here are the terms my clients can be agreeable to move forward to closing tomorrow:

- Seller vacates property
- Buyer will refund the 2k rent back credit and pay the original 5k price for furnishings outlined in previous addendum
- Seller to obtain the certification from plumbing company for "pressure test" and that plumbing company will warranty and replace all of the damage from leak.
- Listing agent to coordinate repairs from plumber post closing directly or work with buyers agent (John or Ashley Lazosky) to coordinate repairs. Buyer does not want to be involved.
- 1500- credit to Joey Peccarino paid directly to replace decking tiles
- Hold back of 2k for stucco roof repair
- Mold remediation hold back (amt?)

OR

- Seller per the agreement he already executed, stays in the property until the 28th and adheres to the terms of the agreement which was to allow contractors do the said work on the lower level of home.
- We as the buyers agent will pay for the \$500- fitness equipment transfer to either the garage of new property or wherever he would like stored by Tuesday as planned. (this was the cost quoted by Nicki today)
- Seller to obtain the certification from plumbing company for "pressure test" and that plumbing company will warranty and replace all of the damage from leak.
- Listing agent to coordinate repairs from plumber post closing directly or work with buyers agent (John or Ashley Lazosky) to coordinate repairs. Buyer does not want to be involved.
- 1500- credit to Joey Peccarino paid directly to replace decking tiles
- Hold back of 2k for stucco roof repair
- Mold remediation hold back (amt?)

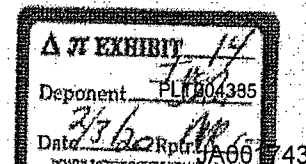
At this point due to the change in circumstances with the last minute issue with the leak, the buyers recourse is to walk at this point if they are not comfortable with the repairs/credits.

I know they will NOT be agreeable to absorbing the cost of repair for the decking and stucco. Especially the stucco since this should have already been repaired.

Please talk with your seller and see if we can come to terms on the above scenarios. He has a ready willing and able buyer and he's willing to risk losing them and carrying two properties over 6k?

My buyers have wired their closing funds but I know they will absolutely cancel this agreement without the prior agreed terms being brought to fruition.

I know between the both of us, we can find a scenario suitable for both parties...





ASHLEY OAKES-LAZOSKY *Vegas Homes*
AND LUXURY ESTATES
Owner/Broker

📍 1180 N. Town Center Dr. Ste 100 Las Vegas, NV 89144

📞 702-281-1198

📞 702-945-2740

✉️ Ashley@VHFELV.com

🌐 www.yourvegashomesearch.com

Ivan Sher <4412EBF5366F4757AE6BC4095C6EB2A2-IVAN@isluxury.com>
To: Austin Sherwood <Austin@shapiroandsher.com>

Fri, Nov 17, 2017 at 8:51 AM

Fyi.

[Quoted text hidden]

PLT004336

JA001744

Exhibit K

[Handwritten signature]

HOME INSPECTION

REPORT

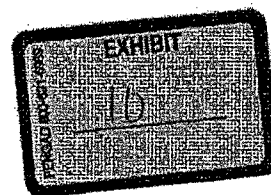
42 Meadowhawk Lane
Las Vegas, NV 89135

Prepared for:

Mr. Todd Swanson

Prepared by:

Criterion - McWilliam Engineers, LLC
P.O. Box 60131
Boulder City, NV 89006
(702) 294-3160



May 11, 2015

Inspection: 15-0194

Date of Inspection: May 8, 2015

Engineer: David Taylor, E.I., Master Inspector

[Handwritten in a circle: Ekh 24]



SWANSON000051

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EXECUTIVE SUMMARY OF FINDINGS

To help provide a perspective for the work that we have recommended be complete before releasing the contractor, we offer the following list of suggested repairs. This list should not be considered all-inclusive since there will surely be other things you will want to make part of this list. Please use this list in conjunction with this Report and the Maintenance Plan provided at the end of this report in Appendix A.

Items to be addressed before releasing the contractor:

- Maintain heating/air conditioning equipment
 - The door at the right side air handler is damaged and does not close properly.
- Repair plumbing fixtures
 - There are leaks at both recirculation pumps.
 - There is a plumbing leak above the ceiling of the basement bathroom.
 - The drain cleanouts should have permanent screw-type caps.
 - There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned.
 - The locking lug is missing from one water heater enclosure.
 - The tubs in the second floor bathroom have controls for some unknown feature. This should be investigated further.
 - The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house. This should be investigated further, and repaired as needed.
- Repair electrical system
 - There is an open outlet at the lower patio.
 - All outlets within six feet of a sink should be protected by GFCIs. The outlets by the master bathroom sinks were not.
 - There is no power at the outlet in the master closet. The cover is also missing from this outlet.
 - The outlet covers are loose at the media room wet bar cabinet.
 - The door at the control box for the automated panel door can not close. The power cord is routed through the door.
 - The whirlpool tub is not GFCI protected.
 - The screws are missing from the deadman covers at the main electrical panels.
 - Review entire electrical system.

- Make interior repairs
 - The drywall is damaged at the right side mechanical closet.
 - The whirlpool tub is not supported from the floor.
 - The cover is missing from the vent fan in the media room.
 - There is a loose light fixture in the master shower.
 - The access cover at the basement hall does not close properly.
 - There are no secondary latches on the patio sliding glass doors.
 - One burner valve at the patio grill is not functional.
 - There is no hardware in the basement bedroom closet.
- Repair exterior
 - The handrail has been removed from a second floor window. The handrail should be properly replaced or the wall penetrations sealed.
 - The grout is missing from the tile joints on the patio stairs.
 - There is no landing at the exterior door in the kitchen.
 - There is unfinished stucco surface at the roof feature.
 - The screens for the patio slider doors do not latch.
 - The patio slider in the basement media room does not latch.
 - The automated panel doors do not close properly.
- Make roof repairs
 - The primary debris guards are not sealed to the roof.
 - The debris guards should be removed from the secondary drains.
 - The cap should be removed from the plumbing vent at the left side roof.
 - The elimination of low spots that accumulate standing water.
 - The gutter downspouts should be made to discharge away from the house. Therefore, a splashblock should be placed under each downspout to direct the water away from the foundation. This on the left side of the house.
- Further investigation of fire sprinkler controls
- Repair garage firewall
- Maintain/repair the whirlpool bath
 - The jet nozzles are missing. They should be installed.
 - There is no support under the tub, appropriate support should be installed.
- Maintain/repair the swimming pool and equipment
 - The water distribution for the water wall should be adjusted to reduce splashing.



P.O. Box 60131
Boulder City, NV 89006

May 11, 2015

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

Re: Home Inspection – 15-0194
42 Meadowhawk Lane, Las Vegas, NV 89135

Dear Mr. Swanson:

At your request, a structural, electrical, and mechanical inspection of the above property was performed on May 8, 2015. The report that follows has been prepared based on that inspection.

This inspection was performed by and report written by David Taylor, E.I., Master Inspector, of Criterium - McWilliam Engineers, LLC. Further, this inspection was supervised by, and report reviewed by, Kevin A. Greene, P.E., of Criterium - McWilliam Engineers, LLC. For your interest, a copy of Mr. Taylor's resume is attached.

The report that follows has been prepared from the perspective of what an owner of this property would benefit from knowing. Thus, it discusses many things beyond those which are of immediate concern. Therefore, the report needs to be read in its entirety to understand fully all the information that has been obtained.

For your convenience, we have prepared the following summary of the condition of the major systems of the house. Please refer to the appropriate section of this report for a more detailed discussion of these systems.



SUMMARY

The structural system is in good condition.

The heating/air conditioning system is operational.

The plumbing system is in good condition, but in need of some repair.

The electrical system is in good condition, but in need of some repair.

The exterior is in good condition, but in need of some repair.

The roofing is in good condition, in need of some repair.

The swimming pool and equipment are in good condition.

This is a new home that has been constructed using good quality materials and workmanship. Overall, while there is some work to do, we consider it to be in somewhat above average condition. It should serve you well for some time to come.

INTRODUCTION

Our primary purpose is to provide an understanding of the house. We do, of course, look for problems, particularly those we would consider major deficiencies. Please keep in mind that we generally define a major deficiency as one that would cost approximately \$1,000.00 or more to correct. Any house will have less important items that still deserve attention. Often these are matters of personal preference. It is not the intent of our inspection to detail every lesser defect we might find.

Our inspection and report **do not include** code compliance, mold investigations, indoor air quality analysis, municipal regulatory compliance, subsurface investigation, verification of prior uses, or records research related to this building.

This inspection report is limited to observations made from visual evidence. No destructive or invasive testing was performed. The report is not to be considered a guarantee of condition and no warranty is implied.

Criterion - McWilliam Engineers, LLC, offers two types of residential inspections; the standard inspection and the comprehensive inspection. Essentially, the standard inspection relies on visual evidence available at the time of the inspection, while the comprehensive inspection relies on visual evidence plus analysis, invasive testing, and extended, on-site evaluation to reach

should serve you well. The seal was checked in these windows and no problems were noted. Such defects are not always visible, however, because of varying temperature and humidity conditions.

The exterior doors were equipped with weather-stripping which was generally in serviceable condition. As it ages, however, it will wear and deteriorate. As this occurs, or if the weather-stripping becomes damaged, you should replace it.

To be sure you are not wasting energy on the production of hot water, you should check the temperature of the hot water produced. If it is above 120°F (140°F for some dishwashers), we recommend that you reduce it to that level to minimize your hot water energy requirements. To be most accurate, use a thermometer at the hot water faucet. Currently the water heaters are set at 125°F and 130°F.

PLUMBING

A plumbing system consists of three major components, the supply piping, the waste or drain piping, and the fixtures. The distribution piping brings the water to the fixture from a public water main, and the waste piping carries the water from the fixture to a public sewer line.

The distribution piping is smaller diameter piping that operates under pressure. These pipes must be water-tight. The drain or waste piping does not operate under pressure, instead typically uses gravity to drain the water from the fixture to the sewer. Thus, these pipes must slope in order to work properly.

As we understand it, this house is served by both municipal water and municipal sewer and, therefore, little problem need be anticipated in either of those areas. You should confirm these connections with the local water and sewer authorities.

You also should be aware that you are typically responsible for the cost of any repairs related to the portions of that system contained within your property lines. Clarification of this responsibility can be obtained through your local code enforcement official.

We do not operate water shut-off valves as part of our inspection because valves that have been in one position for an extended time may leak when operated. We recommend that you check the condition of the main water shut-off valve after you take possession. You should check any other valves that you may want to use.

Where visible, the plumbing distribution system in this home consists of cross-linked polyethylene (PEX). PEX was introduced in to the United States in the 1980s and is suitable for hot and cold water applications, including potable water. PEX is an approved material in all the current editions of national model-plumbing codes. We recommend that you obtain the

manufacturer's warranty information, and retain it with your records. This system was in operating condition at the time of the inspection.

Water pressure in the various plumbing fixtures was normal. Most fixtures were tested and found to be in working order.

The water supply system included water softening equipment. This equipment appeared to be operational at the time of our inspection. This equipment normally serves to reduce the mineral content in the water making it "softer"; more compatible with normal, residential needs. However, we do not water test this equipment to evaluate its capability to soften the water. We suggest you discuss the proper operation and maintenance of this equipment with the current owner and obtain any maintenance records and manufacturer's information that might be available.

The drain lines in this home consisted of ABS piping. Where visible, this system was in good condition at the time of the inspection. Plastic waste lines are normally noisier than iron and this may be noticeable in rooms where the lines are located in the wall.

The basement bathroom uses a sewage ejector pump to lift the wastewater to the elevation of the main sewer pipe. Since these pumps can break down, creating a waste backup condition, it is important to have this system serviced at least once each year. At the time of the inspection, the pump was in working order.

Domestic hot water for the house is provided by four gas-fired tankless water heaters. They were in operation at the time of our inspection. They appear to be properly sized for the normal needs of this house. This type of water heater is somewhat new to the Las Vegas area. Thus, we cannot comment on the life expectancy of this unit. We recommend that you follow the manufacturer's maintenance directions for hard water conditions.

These water heating systems are equipped with hot water re-circulating pumps. The purpose of these pumps is to provide hot water almost instantly to the various fixtures throughout the house. They were operational at the time of our inspection.

The underground lawn sprinkler/irrigation system was operating at the time of inspection. It should be realized that no excavations or diggings were made as part of this inspection; therefore, no comment can be made on the condition of buried pipes.

The following specific deficiencies were noted in the fixtures and related piping:

- There are leaks at both hot water recirculation pumps.
- There is a plumbing leak above the ceiling of the basement bathroom.
- The drain cleanouts should have permanent screw-type caps.

- There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned.
- The locking lug is missing from one water heater enclosure.
- The tubs in the second floor bathroom have controls for some unknown feature. This should be investigated further.
- The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house. This should be investigated further, and repaired as needed.

ELECTRICAL

A typical electrical system consists of two distinct components: (1) the electric service entrance, and (2) the electric circuits. The service entrance determines the capacity of the electric power available to the home. The electric circuits distribute the power through the home.

Electrical devices in a home typically use either 120 or 240 voltage electricity. The major appliances such as clothes dryers, kitchen ranges, water heaters, air conditioners, and electric heating units require 240 volts. General-purpose circuits (lighting, outlets, etc.) require 120 volts.

The electrical system for this house consists of a three-wire service, 120/240 voltage and has an apparent 800 amperes available. It is adequate to serve the needs of this house as it now stands.

Our investigation of the electrical system is limited to the visible components, the entrance cable, meter box, service panel, outlets and switches, and the visible portions of the wiring. A larger portion of the electrical system is hidden behind walls and ceilings, and, obviously, all the conditions relating to these unseen areas cannot be known. The covers of the service panels were removed to investigate the conditions in them.

While some deficiencies in the system may be readily discernible, not all conditions that can lead to the interruption of electrical service, or that are hazardous, can be identified.

The main electric service cable comes to the house underground. No excavation on or near the property should be done unless the electric utility has been consulted.

The main electrical panel is located in the left exterior garage wall. There are also three sub-panels located in the garage, media equipment closet, and pool equipment. These sub-panels are controlled by breakers in the main panel.

You should note that while there is a fence surrounding the backyard there is no fence around the pool area itself. This allows for unwanted entry into the pool by individuals who need close supervision, especially small children.

CONCLUSION

In summary, we consider this home to be in somewhat above average condition. Good quality materials and workmanship are evident throughout. While there is some work to do, as we have discussed in this report, in general, you should consider this home to be of good quality. It should serve you well for quite some time.

In general, keep in mind that many of the suggestions we make in this report represent improvements to this home rather than deficiencies. Thus, much of the work we suggest can be handled as time, finances and personal preference dictate. Owning any home can be overwhelming. Thus, keep in mind that not all of the things we recommend must be done immediately.

There is no one way to build, renovate or remodel a home. As a result, you may encounter contractors whose opinions about the condition of this home will differ from ours. We cannot be responsible for any action you may take based on those opinions unless we have the opportunity to review the situation and examine the relevant conditions before any repairs and/or modifications are made.

Additional data concerning this home are noted on the enclosed field notes and photographs. To aid in your understanding of the field notes, we have enclosed a listing of the standard abbreviations that we have used.

This report has been prepared in strict confidence with you as our client. No reproduction or re-use of this report for the benefit of others is permitted without expressed written consent. We will not release this report to anyone without your permission.

We have also enclosed a *Glossary* to help you understand some of the technical terms that are used in this report or in discussions about homes and their component parts.

As noted, the inspection represented by our report focuses on the major systems in this home. While a spot check of things like electrical switches, outlets, appliances and other equipment was made, the condition of these things can change unexpectedly. Therefore, we recommend that you visit this home at least one more time before taking ownership to confirm that everything is in operating order. Enclosed is a *Pre-Title Checklist* we have developed for your use during this final visit.

If you have any questions about this report or inspection, please feel free to call our engineer for clarification. There is no additional charge for a reasonable number of phone consultations. Should an additional visit to the home be necessary, however, an additional fee will be charged.

Thank you for the opportunity to be of assistance to you.

Criterion - McWilliam Engineers, LLC

DT/eas

APPENDIX A

MAINTENANCE PLAN

Prepared for: Todd Swanson
Property: 42Meadowhawk Lane, Las Vegas, NV 89135

To help provide a perspective for the work that we have recommended for this home, the following schematic maintenance plan is offered. This list should not be considered all-inclusive since there will surely be other things you will want to make part of this list. Our purpose in providing this list is to help you organize some of the work that we have recommended, with particular emphasis on those things that need attention within the next year or so.

Items to be addressed before releasing the contractor:

- Maintain heating/air conditioning equipment
 - The door at the right side air handler is damaged and does not close properly.
- Repair plumbing fixtures
 - There are leaks at both recirculation pumps.
 - There is a plumbing leak above the ceiling of the basement bathroom.
 - The drain cleanouts should have permanent screw-type caps.
 - There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned.
 - The locking lug is missing from one water heater enclosure.
 - The tubs in the second floor bathroom have controls for some unknown feature. This should be investigated further.
 - The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house. This should be investigated further, and repaired as needed.
- Repair electrical system
 - There is an open outlet at the lower patio.
 - All outlets within six feet of a sink should be protected by GFCIs. The outlets by the master bathroom sinks were not.
 - There is no power at the outlet in the master closet. The cover is also missing from this outlet.
 - The outlet covers are loose at the media room wet bar cabinet.



SWANSON000077

JA001757

Exhibit L

Colleen Crawford

Sent: Sunday, May 17, 2015 2:24 PM
To: Henry Regnault (HRegnault@blueheron.com)
Cc: Chris Myers
Subject: 42 Meadowhawk Punch List
Attachments: Henry Regnault--Final Punch List 5-16-15(h).pdf

Henry,

I had a home inspector come in to check everything out since I know that when I sell 42 Meadowhawk, the buyer will do the same thing, and I don't want to end up paying for all of the little repairs (like I just had to do with the house across the street that I sold). Some of the issues in his report may seem unclear, so I added some comments and included his photos, but it might be easiest if we walk the house together so that I can point out some of the issues that are unclear. There are also some final cosmetic issues that need to be addressed that I can go over with you when you are available.

Let me know if you want to go over this list this week. I've been out of town but am returning tonight. And as you can see from my comments, I've already handled (or am handling) some of the issues myself (like loss of hot water, loss of A/C, pool issues, etc.).

Thanks for your help.

Regards,
Todd

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

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

EXECUTIVE SUMMARY OF FINDINGS

To help provide a perspective for the work that we have recommended be complete before releasing the contractor, we offer the following list of suggested repairs. **This list should not be considered all-inclusive since there will surely be other things you will want to make part of this list.** Please use this list in conjunction with this Report and the Maintenance Plan provided at the end of this report in Appendix A.

Items to be addressed before releasing the contractor:

- Maintain heating/air conditioning equipment
 - The door at the right side air handler is damaged and does not close properly. (I had Sierra come out and try to fix it when my A/C went out--the door closes a switch that allows the FAU to power on. His first solution was to tape the switch closed with electrical tape, which is not acceptable. Now the door is bent and not right. They need to come back and fix it correctly.)
- Repair plumbing fixtures
 - (There are 3 water leaks inside the house that need to be fixed.) There are leaks at both recirculation pumps.
 - There is a plumbing leak above the ceiling of the basement bathroom.
 - The drain cleanouts should have permanent screw-type caps.
 - There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned.
 - The locking lug is missing from one water heater enclosure. I had Rakeman come out when I lost hot water in my master shower. They must have come out 3-4 times before it was finally fixed (I think), but they jacked up the cover of one of the enclosures in the process. (see Photo #2)
 - (The 2 upstairs secondary bathroom tubs have controls that have power, but not sure what they do?? Are there supposed to be jets in those tubs??) The tubs in the second floor bathroom have controls for some unknown feature. This should be investigated further.
 - The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house. This should be investigated further, and repaired as needed. This is causing a constant pounding noise in the house when the valve closes. I was told that they have soft close solenoid valves that don't make such a pounding sound.
- Repair electrical system
 - There is an open outlet at the lower patio.
 - All outlets within six feet of a sink should be protected by GFCIs. The outlets by the master bathroom sinks were not.
 - There is no power at the outlet in the master closet. The cover is also missing from this outlet.
 - The outlet covers are loose at the media room wet bar cabinet.
 - The door at the control box for the automated panel door can not close. The power cord is routed through the door. (up in the garage ceiling)
 - The whirlpool tub is not GFCI protected.
 - The screws are missing from the deadman covers at the main electrical panels.
 - Review entire electrical system.

- Make interior repairs
 - The drywall is damaged at the right side mechanical closet.
 - The whirlpool tub is not supported from the floor.
 - The cover is missing from the vent fan in the media room. (Harry Davis knows this)
 - There is a loose light fixture in the master shower. (Harry also knows about this)
 - The access cover at the basement hall does not close properly. (near the bathroom)
 - There are no secondary latches on the patio sliding glass doors.
 - One burner valve at the patio grill is not functional.
 - ~~There is no hardware in the basement bedroom closet.~~
- Repair exterior
 - The handrail has been removed from a second floor window. The handrail should be properly replaced or the wall penetrations sealed. (You already know about this--due to replacement of the window)
 - The grout is missing from the tile joints on the patio stairs.
 - There is no landing at the exterior door in the kitchen. (I was told this is not compliant with code)
 - There is unfinished stucco surface at the roof feature.
 - The screens for the patio slider doors do not latch. (the screen door latches don't latch)
 - The patio slider in the basement media room does not latch. (I showed you this already)
 - The automated panel doors do not close properly. The big glass panel sliders in my family room are not closing/locking at the corner. Rand Sawbuck stopped out to look. He couldn't fix them, and the guy who can fix them is on his honeymoon. Sawbuck was going to let him know that he needs to come out and fix the doors.
- Make roof repairs
 - The primary debris guards are not sealed to the roof.
 - The debris guards should be removed from the secondary drains.
 - The cap should be removed from the plumbing vent at the left side roof.
 - The elimination of low spots that accumulate standing water.
 - The gutter downspouts should be made to discharge away from the house. Therefore, a splashblock should be placed under each downspout to direct the water away from the foundation. This on the left side of the house.
- Further investigation of fire sprinkler controls I was told there should be a shutoff valve on the sprinkler system since it does not shut off with the main water supply.
- Repair garage firewall (see photo)
- Maintain/repair the whirlpool bath
 - The jet nozzles are missing. They should be installed.
 - There is no support under the tub, appropriate support should be installed.
- Maintain/repair the swimming pool and equipment
 - The water distribution for the water wall should be adjusted to reduce splashing. Rick Pinney is coming out to re-program the pool controls after setting up the fire feature. I asked him to take a look at this while he is out. If he can't fix it, Anthony Sylvan will need to be notified.

Henry: There are also some cosmetic problems that need to be addressed, which I can go over with you (small drywall repairs, touch-up paint, etc.).

iii



DEF000144

JA001761

EXECUTIVE SUMMARY OF FINDINGS

To help provide a perspective for the work that we have recommended be complete before releasing the contractor, we offer the following list of suggested repairs. **This list should not be considered all-inclusive since there will surely be other things you will want to make part of this list.** Please use this list in conjunction with this Report and the Maintenance Plan provided at the end of this report in Appendix A.

Items to be addressed before releasing the contractor:

- Maintain heating/air conditioning equipment
 - The door at the right side air handler is damaged and does not close properly. Sierra fixed today.
- Repair plumbing fixtures
 - There are leaks at both recirculation pumps. Need plumber to address
 - There is a plumbing leak above the ceiling of the basement bathroom. Need plumber to address
 - The drain cleanouts should have permanent screw-type caps. Not necessary per Henry
 - There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned. Henry will investigate with plumber
 - The locking lug is missing from one water heater enclosure. Plumber needs to fix
 - The tubs in the second floor bathroom have controls for some unknown feature. This should be investigated further. They are to heat tubs. n/a
 - The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house. This should be investigated further, and repaired as needed. Anthony Sylvan fixed yesterday
- Repair electrical system
 - There is an open outlet at the lower patio. Discussed with electrician
 - All outlets within six feet of a sink should be protected by GFCIs. The outlets by the master bathroom sinks were not. Discussed with electrician
 - There is no power at the outlet in the master closet. The cover is also missing from this outlet. Discussed with electrician
 - The outlet covers are loose at the media room wet bar cabinet. Discussed with electrician
 - The door at the control box for the automated panel door can not close. The power cord is routed through the door. This is for the automated doors. Henry will contact Sawbuck
 - The whirlpool tub is not GFCI protected. Discussed with electrician
 - The screws are missing from the deadman covers at the main electrical panels. Discussed with electrician
 - Review entire electrical system.

Also, the following items need to be addressed (not on this list):

1. Pot filler is not anchored well and droops. Need plumber to address
2. Steamer is not anchored to countertop. Need to address with appliance company
3. Master bathroom light fixtures on mirrors are unstable. I will discuss with electrician
4. Main sliding pocket doors in great room do not fully close and latch. Henry to discuss with Sawbuck
5. Built in wine rack in basement bar area does not hold wine bottles; may cause them to drop down inside. Henry to discuss with Absolute Closets
6. I may have the final drywall, paint, & grouting touch ups done in the next month or so. I will mark areas with blue tape.
7. All double screen doors have no "stop," allowing them to slide all the way off to the side of the double patio doors in 3 areas. Need to ask door company about this.
8. I'm still waiting for the correct stone top to be installed in the main floor powder room. I had Ashley Rogers emailed me 2/13/2015 saying she was working on it.
- 9.



DEF000168

JA001762

- Make interior repairs
 - The drywall is damaged at the right side mechanical closet. Not a problem, but Henry will discuss
 - The whirlpool tub is not supported from the floor. Henry will talk to plumber about this
 - The cover is missing from the vent fan in the media room. (Electrician knows about this)
 - There is a loose light fixture in the master shower. (Electrician also knows about this)
 - The access cover at the basement hall does not close properly. Sierra will fix. Talked to Chris today
 - There are no secondary latches on the patio sliding glass doors. Not necessary per Henry
 - One burner valve at the patio grill is not functional. n/a. Appears to be working fine.
 - ~~There is no hardware in the basement bedroom closet.~~
- Repair exterior
 - The handrail has been removed from a second floor window. The handrail should be properly replaced or the wall penetrations sealed. (You already know about this)
 - The grout is missing from the tile joints on the patio stairs. Will address with final touch ups
 - There is no landing at the exterior door in the kitchen. Not needed per Henry
 - There is unfinished stucco surface at the roof feature. Henry will discuss with Chris Myers
 - The screens for the patio slider doors do not latch. Discussed with door/window company today
 - The patio slider in the basement media room does not latch. Henry will talk to door company
 - The automated panel doors do not close properly. Henry will discuss with Sawbuck
- Make roof repairs
 - The primary debris guards are not sealed to the roof. Not sure what this is about
 - The debris guards should be removed from the secondary drains. Not sure what this is about
 - The cap should be removed from the plumbing vent at the left side roof. Henry will investigate this
 - The elimination of low spots that accumulate standing water. Already done per Henry
 - The gutter downspouts should be made to discharge away from the house. Henry will discuss with
Therefore, a splashblock should be placed under each downspout to direct the Chris Myers
water away from the foundation. This on the left side of the house.
- Further investigation of fire sprinkler controls Called fire sprinkler company. Valve not necessary. n/a
- Repair garage firewall 5/8" drywall sufficient per henry
- Maintain/repair the whirlpool bath
 - The jet nozzles are missing. They should be installed. Henry will call tub installer to provide
 - There is no support under the tub, appropriate support should be installed. Henry will discuss with
plumber
- Maintain/repair the swimming pool and equipment
 - The water distribution for the water wall should be adjusted to reduce splashing. I talked to Anthony
Sylvan yesterday.
I'll try to make some
adjustments in the
frequency the
waterfall runs to see
if this resolves the
problem.

EXECUTIVE SUMMARY OF FINDINGS

To help provide a perspective for the work that we have recommended be complete before releasing the contractor, we offer the following list of suggested repairs. **This list should not be considered all-inclusive since there will surely be other things you will want to make part of this list.** Please use this list in conjunction with this Report and the Maintenance Plan provided at the end of this report in Appendix A.

Items to be addressed before releasing the contractor:

- Maintain heating/air conditioning equipment

~~— The door at the right side air handler is damaged and does not close properly.~~ Sierra fixed today.

- Repair plumbing fixtures

Fixed by plumber There are leaks at both recirculation pumps. Need plumber to address
They couldn't find it. I'll monitor There is a plumbing leak above the ceiling of the basement bathroom. Need plumber to address
~~— The drain cleanouts should have permanent screw type caps.~~ Not necessary per Henry
Plumber is addressing There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned. Henry will investigate with plumber
Plumber is addressing The locking lug is missing from one water heater enclosure. Plumber needs to fix
~~— The tubs in the second floor bathroom have controls for some unknown feature.~~
~~This should be investigated further.~~ They are to heat tubs. n/a
Fixed by Anthony Sylvan The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house. This should be investigated further, and repaired as needed. Anthony Sylvan fixed yesterday

Harry Davis is addressing all Repair electrical system
of these items

- There is an open outlet at the lower patio. Discussed with electrician
- All outlets within six feet of a sink should be protected by GFCIs. The outlets by the master bathroom sinks were not. Discussed with electrician
- There is no power at the outlet in the master closet. The cover is also missing from this outlet. Discussed with electrician
- The outlet covers are loose at the media room wet bar cabinet. Discussed with electrician
- The door at the control box for the automated panel door can not close. The power cord is routed through the door. This is for the automated doors. Henry will contact Sawbuck
- The whirlpool tub is not GFCI protected. Discussed with electrician
- The screws are missing from the deadman covers at the main electrical panels. Discussed with electrician
- Review entire electrical system.

Also, the following items need to be addressed (not on this list):

1. Pot filler is not anchored well and droops. Need plumber to address Fixed by plumber
2. Steamer is not anchored to countertop. Need to address with appliance company Need someone to address
3. Master bathroom light fixtures on mirrors are unstable. I will discuss with electrician Harry Davis is addressing
4. Main sliding pocket doors in great room do not fully close and latch. Henry to discuss with Sawbuck This needs attention. The door has not been fixed so still won't close
5. Built in wine rack in basement bar area does not hold wine bottles; may cause them to drop down inside. Henry to discuss with Absolute Closets Need to find a solution with Absolute
6. I may have the final drywall, paint, & grouting touch ups done in the next month or so. I will mark areas with blue tape.
7. All double screen doors have no "stop," allowing them to slide all the way off to the side of the double patio doors in 3 areas. Need to ask door company about this. Door company needs to address this issue
8. I'm still waiting for the correct stone top to be installed in the main floor powder room. I had Ashley Rogers emailed me 2/13/2015 saying she was working on it. This has not been addressed yet
- 9.

DEF000191

JAO01764

- Make interior repairs

Not a major issue The drywall is damaged at the right side mechanical closet. Not a problem, but Henry will discuss
 Plumbers have fixed; I will check The whirlpool tub is not supported from the floor. Henry will talk to plumber about this
 Harry Davis to address The cover is missing from the vent fan in the media room. (Electrician knows about this)
 Harry Davis to address There is a loose light fixture in the master shower. (Electrician also knows about this)
 Sierra knows and says will fix The access cover at the basement hall does not close properly. Sierra will fix. Talked to Chris today
~~There are no secondary latches on the patio sliding glass doors.~~ Not necessary per Henry
~~One burner valve at the patio grill is not functional.~~ n/a. Appears to be working fine.
~~There is no hardware in the basement bedroom closet.~~

- Repair exterior

Waiting JD Stairs to replace - The handrail has been removed from a second floor window. The handrail should be properly replaced or the wall penetrations sealed. (You already know about this)
 Will address with final touch-up The grout is missing from the tile joints on the patio stairs. Will address with final touch ups
~~There is no landing at the exterior door in the kitchen.~~ Not needed per Henry
 Ask Chris - There is unfinished stucco surface at the roof feature. Henry will discuss with Chris Myers
 Door company is supposed to fix The screens for the patio slider doors do not latch. Discussed with door/window company today
 Door company needs to fix - The patio slider in the basement media room does not latch. Henry will talk to door company
 Sawbuck needs to fix ASAP - The automated panel doors do not close properly. Henry will discuss with Sawbuck

- Make roof repairs

~~The primary debris guards are not sealed to the roof.~~ Not sure what this is about
~~The debris guards should be removed from the secondary drains.~~ Not sure what this is about
 Henry to investigate The cap should be removed from the plumbing vent at the left side roof. Henry will investigate this
~~The elimination of low spots that accumulate standing water.~~ Already done per Henry
 Ask Ghris The gutter downspouts should be made to discharge away from the house. Henry will discuss with
 Therefore, a splashblock should be placed under each downspout to direct the Chris Myers
 water away from the foundation. This on the left side of the house.
~~Further investigation of fire sprinkler controls~~ Called fire sprinkler company. Valve not necessary. n/a
~~Repair garage firewall 5/8" drywall sufficient per henry~~
~~Maintain/repair the whirlpool bath~~

Plumber to supply jets The jet nozzles are missing. They should be installed. Henry will call tub installer to provide
 Plumber fixed; I will check There is no support under the tub, appropriate support should be installed. Henry will discuss with
 plumber

- Maintain/repair the swimming pool and equipment

I think Anthony Sylvan adequately addressed this; I will monitor The water distribution for the water wall should be adjusted to reduce splashing. I talked to Anthony Sylvan yesterday. I'll try to make some adjustments in the frequency the waterfall runs to see if this resolves the problem.

EXECUTIVE SUMMARY OF FINDINGS

To help provide a perspective for the work that we have recommended be complete before releasing the contractor, we offer the following list of suggested repairs. **This list should not be considered all-inclusive since there will surely be other things you will want to make part of this list.** Please use this list in conjunction with this Report and the Maintenance Plan provided at the end of this report in Appendix A.

Items to be addressed before releasing the contractor:

- Maintain heating/air conditioning equipment

~~———— The door at the right side air handler is damaged and does not close properly. Sierra fixed today.~~

- Repair plumbing fixtures

Fixed by plumber ~~———— There are leaks at both recirculation pumps. Need plumber to address ————~~

They couldn't find it. I'll monitor There is a plumbing leak above the ceiling of the basement bathroom. Need plumber to address

~~———— The drain cleanouts should have permanent screw-type caps. Not necessary per Henry~~

Plumber is addressing There is no air gap on the ice maker drain line. In addition, we recommend that the drain line hose be cleaned. Henry will investigate with plumber

Plumber is addressing The locking lug is missing from one water heater enclosure. Plumber needs to fix

~~———— The tubs in the second floor bathroom have controls for some unknown feature.~~

~~This should be investigated further. They are to heat tubs. n/a~~

Fixed by Anthony Sylvan ~~The automatic solenoid valves on the pool fill circuit are noisy and create a water hammer effect throughout the house. This should be investigated further, and repaired as needed. Anthony Sylvan fixed yesterday~~

Harry Davis is addressing all Repair electrical system
of these items

- There is an open outlet at the lower patio. Discussed with electrician
- All outlets within six feet of a sink should be protected by GFCIs. The outlets by the master bathroom sinks were not. Discussed with electrician
- ~~———— There is no power at the outlet in the master closet. The cover is also missing from this outlet. Discussed with electrician~~
- The outlet covers are loose at the media room wet bar cabinet. Discussed with electrician
- ~~The door at the control box for the automated panel door can not close. The power cord is routed through the door. This is for the automated doors. Henry will contact Sawbuck~~
- The whirlpool tub is not GFCI protected. Discussed with electrician
- The screws are missing from the deadman covers at the main electrical panels. Discussed with electrician
- Review entire electrical system.

Also, the following items need to be addressed (not on this list):

- ~~1. Pot filler is not anchored well and droops. Need plumber to address~~ Fixed by plumber
- ~~2. Steamer is not anchored to countertop. Need to address with appliance company~~ Need someone to address
3. Master bathroom light fixtures on mirrors are unstable. I will discuss with electrician Harry Davis is addressing
4. Main sliding pocket doors in great room do not fully close and latch. Henry to discuss with Sawbuck This needs attention. The door has not been fixed so still won't close
5. Built in wine rack in basement bar area does not hold wine bottles; may cause them to drop down inside. Henry to discuss with Absolute Closets I am meeting with Jay with Absolute Closets
6. I may have the final drywall, paint, & grouting touch ups done in the next month or so. I will mark areas with blue tape.
7. All double screen doors have no "stop," allowing them to slide all the way off to the side of the double patio doors in 3 areas. Need to ask door company about this. Door company needs to address this issue
- ~~8. I'm still waiting for the correct stone top to be installed in the main floor powder room. I had Ashley Rogers emailed me 2/13/2015 saying she was working on it. This has not been addressed yet~~

- Make interior repairs

Not a major issue ~~The drywall is damaged at the right side mechanical closet. Not a problem, but Henry will discuss.~~
 Plumbers have fixed; I will check ~~The whirlpool tub is not supported from the floor. Henry will talk to plumber about this~~
 Harry Davis to address ~~The cover is missing from the vent fan in the media room. (Electrician knows about this)~~
 Harry Davis to address ~~There is a loose light fixture in the master shower. (Electrician also knows about this)~~
 Sierra knows and says will fix ~~The access cover at the basement hall does not close properly. Sierra will fix. Talked to Chris today~~
~~There are no secondary latches on the patio sliding glass doors. Not necessary per Henry~~
~~One burner valve at the patio grill is not functional. n/a. Appears to be working fine.~~
~~There is no hardware in the basement bedroom closet.~~

- Repair exterior

~~Waiting JD Stairs to replace~~ ~~The handrail has been removed from a second floor window. The handrail should~~
~~be properly replaced or the wall penetrations sealed. (You already know about this)~~
 Will address with final touch-up ~~The grout is missing from the tile joints on the patio stairs. Will address with final touch ups~~
~~There is no landing at the exterior door in the kitchen. Not needed per Henry~~
 Ask Chris ~~There is unfinished stucco surface at the roof feature. Henry will discuss with Chris Myers~~
~~Door company is supposed to fix~~ ~~The screens for the patio slider doors do not latch. Discussed with door/window company today~~
 Door company needs to fix ~~The patio slider in the basement media room does not latch. Henry will talk to door company~~
 Sawbuck needs to fix ASAP ~~The automated panel doors do not close properly. Henry will discuss with Sawbuck~~

- Make roof repairs

~~The primary debris guards are not sealed to the roof. Not sure what this is about~~
~~The debris guards should be removed from the secondary drains. Not sure what this is about~~
 Henry to investigate ~~The cap should be removed from the plumbing vent at the left side roof. Henry will investigate this~~
~~The elimination of low spots that accumulate standing water. Already done per Henry~~
 Ask Chris ~~The gutter downspouts should be made to discharge away from the house. Henry will discuss with~~
~~Therefore, a splashblock should be placed under each downspout to direct the water away from the foundation. This on the left side of the house.~~
~~Further investigation of fire sprinkler controls. Called fire sprinkler company. Valve not necessary. n/a~~
~~Repair garage firewall 5/8" drywall sufficient per henry~~
~~Maintain/repair the whirlpool bath~~

~~Plumber to supply jets~~ ~~The jet nozzles are missing. They should be installed. Henry will call tub installer to provide~~
~~Plumber fixed; I will check~~ ~~There is no support under the tub, appropriate support should be installed. Henry will discuss with~~
 plumber

- Maintain/repair the swimming pool and equipment

~~I think Anthony Sylvan adequately~~ ~~The water distribution for the water wall should be adjusted to reduce splashing. I talked to Anthony~~
~~addressed this; I will monitor~~ ~~Sylvan yesterday.~~
~~I'll try to make some~~
~~adjustments in the~~
~~frequency the~~
~~waterfall runs to see~~
~~if this resolves the~~
~~problem.~~

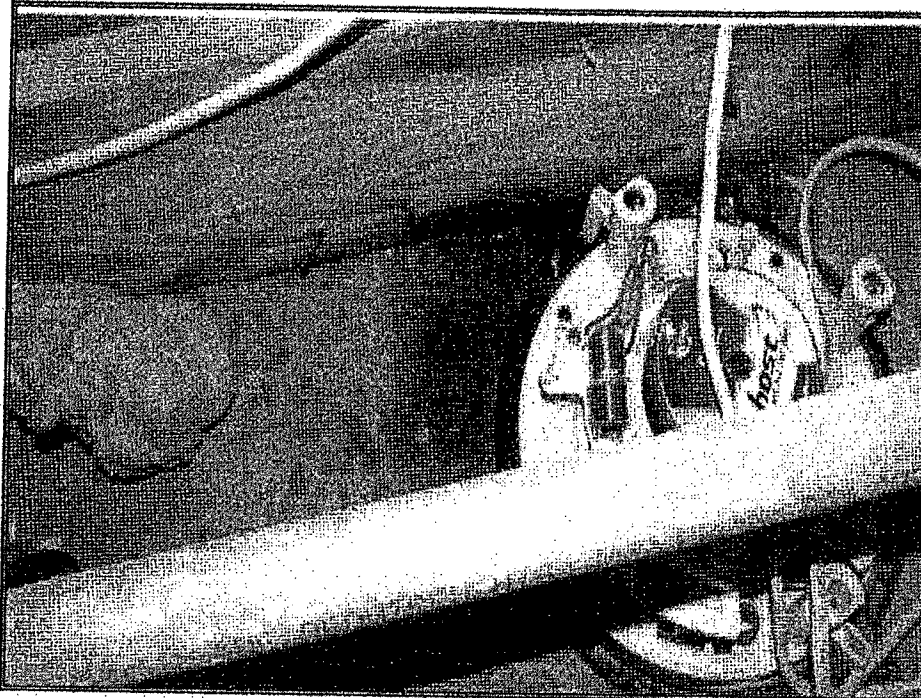
Exhibit M

Location:
42 Meadowhawk Lane
Las Vegas, Nevada

Photo Taken by:
David Taylor, E.I.

Date:
May 8, 2015

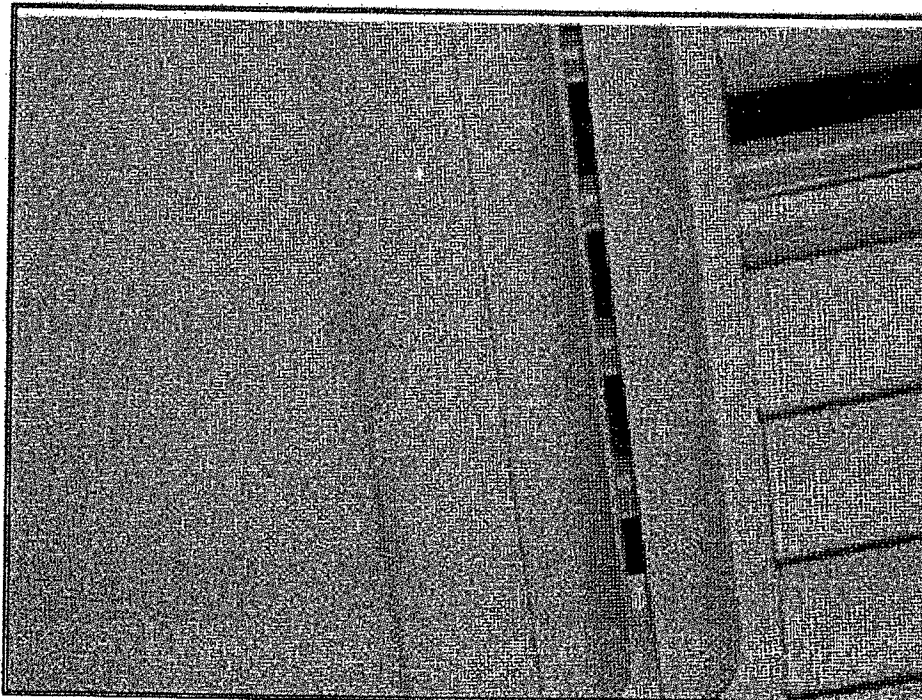
CRITERIUM
ENGINEERS



Description:

There are leaks at
the hot water
recirculation
pumps.

Photo Number
5



Description:

There is a
plumbing leak at
the ceiling of the
basement
bathroom.

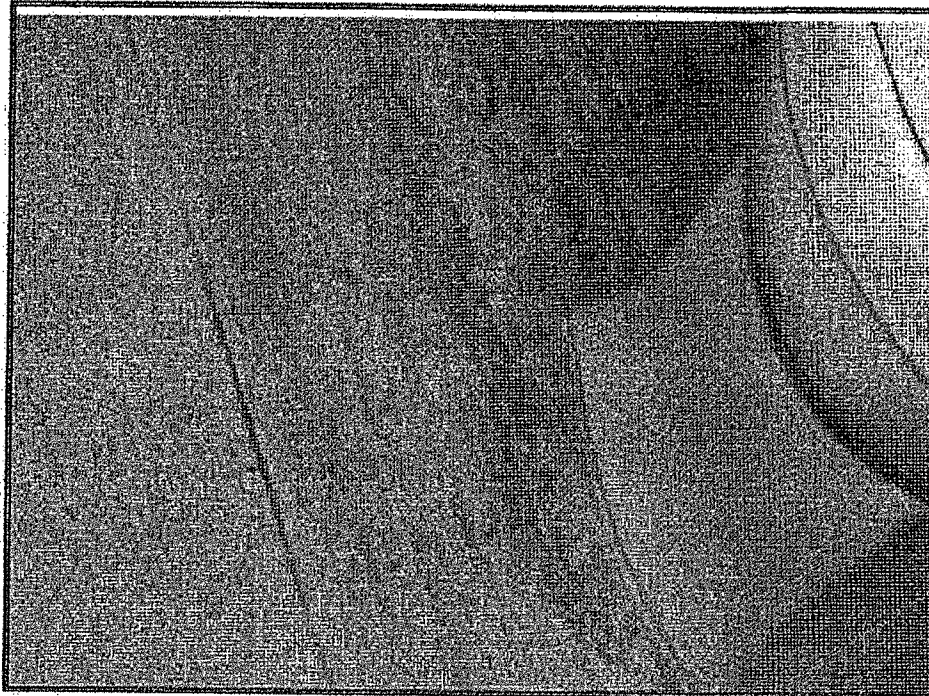
Photo Number
6

Location:
42 Meadowhawk Lane
Las Vegas, Nevada

Photo Taken by:
David Taylor, E.I.

Date:
May 8, 2015

CRITERIUM[®]
ENGINEERS

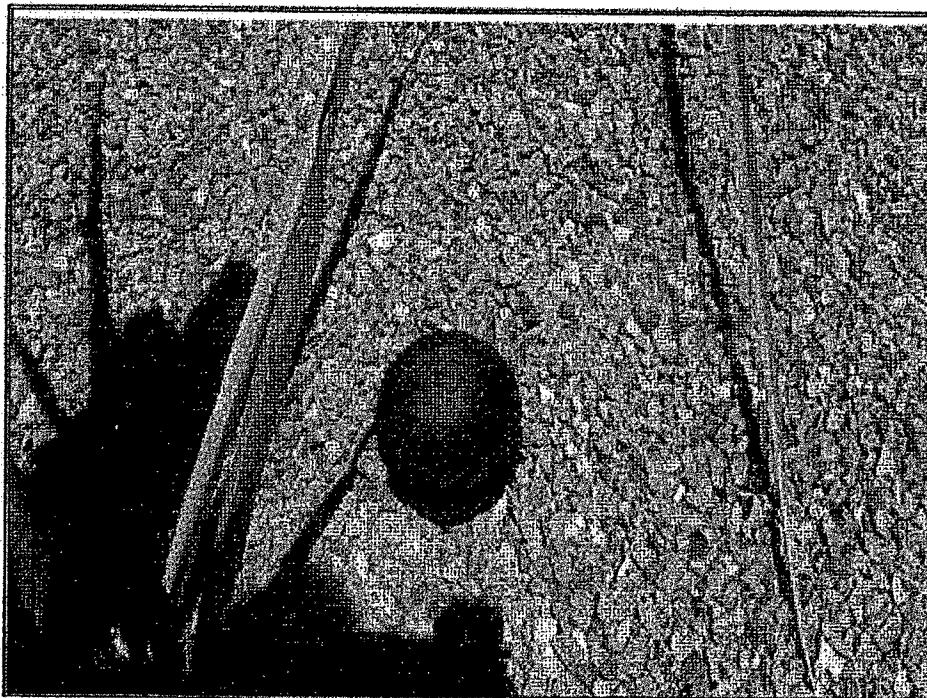


Description:

There is a plumbing leak at the ceiling of the basement bathroom. This is the water on the floor under the drip.

Photo Number

7



Description:

The drain clean-outs should have permanent screw type caps.

Photo Number

8

Exhibit N



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

LIC. #21952-A

NAME		DATE	
472 Meadowhawk		8/12/15	
STREET		P.O. #	
CITY		PHONE	
STATE		ZIP	
MAKE	MODEL	SERIAL NUMBER	VISAMIC AUTHORIZATION #
DESCRIPTION OF WORK		SERVICE	
Water leak at rec. pump			
Arrived and turned water off to rec. pump at side of house.			
Pump was stripped, need to replace.			
night call			
LABORERS CHARGES	HRS @	/HR	
TECHNICIAN CHARGES	HRS @	/HR	
TOTAL OTHER CHARGES			
TECHNICIAN SIGNATURE		Paul #24	
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, guarantee other parts than those we install, if repairs later become necessary due to other defective parts, they will be charged separately.	
TOTAL		AMOUNT DUE	
ABOVE ORDERED WORK HAS BEEN COMPLETED AND I ACKNOWLEDGE RECEIPT OF MY COPY. WANSO000154 X <i>[Signature]</i> /			

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/repaired. 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



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.

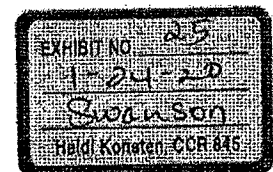
Todd V. Swanson, MD
Desert Orthopaedic Center
2800 E. Desert Inn Rd., #100
Las Vegas, NV 89121

(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			
Determine what was damaged by water in the garage.	1	95.00	95.00
Parts			
Control 4 7 Touch Screen	1	999.00	999.00T
Replace in Garage / Water Damage			
Parts			
Pakedge S24Hav 24 Port POE Switch	1	3,350.00	3,350.00T
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			
Tru-audio GP-6 2 way in-ceiling speaker, 6.5"	2	245.00	490.00T
Labor			
Install and Program 7 Touchscreen, 24 port POE Switch and Speakers	6	125.00	750.00

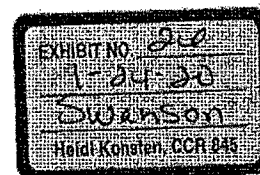
NV Contractors Lic# 0077864

MONEY 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



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JA001775

Exhibit O

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.

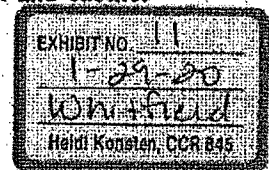
All leaks were repaired by Rakeman Plumbing.

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

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

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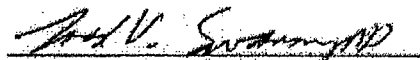
the master bedroom and master closet where the November 7, 2017 water problem was visible.

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.

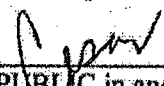
About one month after the closing, on or around December 12, 2017, Aaron Hawley of Rakeman Plumbing informed me that the Folinos were claiming the entire house needed to be re-plumbed. That was the first time I was made aware that the plumbing might be defective. At that time, I also learned the Folinos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

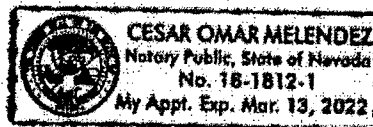
I was informed that the manufacturer was going to replace all that water lines in the entire house, at no expense to the Folinos. It is my understanding that the pipe replacement has been completed.

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

JA001779

Exhibit P

1 TO: RUSTY GRAF, ESQ., their Attorney.

2 Defendant TODD SWANSON by and through its attorney CHRISTOPHER M. YOUNG,
3 ESQ., of the law firm of CHRISTOPHER M. YOUNG, PC, hereby responds to Plaintiff's First
4 Set of Interrogatories pursuant to N.R.C.P. 33, as follows:

5 **INTERROGATORY NO. 1:**

6 Please state your name, date of birth, social security number, and any aliases or
7 other names you may have been known by.

8 **RESPONSE NO. 1:**

9 Todd V. Swanson. DOB January 16, 1959. SSN: XXX-XX-7133. No aliases.

10 **INTERROGATORY NO. 2:**

11 Please state the name, address, and contact information of each person known to you,
12 your attorneys, agents or any investigators employed by you or your attorneys or by anyone
13 acting on your behalf, having knowledge of facts relevant to the subject matter or this action.

14 For each person, please state:

15 (a) The subject matter allegedly known by each such person regarding this matter;

16 (b) Whether any such person had provided to anyone a written, recorded transcribed or
17 other graphic statement or representation concerning the subject matter of this action; and

18 (c) Whether you intend to call the individual as a witness at the time of the trial.

19 **RESPONSE NO. 2:**

20 1. Nicole "Nicky" Whitfield. 2435 Marlene Way, Henderson, NV 89014. 702-816-1405.

21 Nicky was employed by myself and worked out of my house beginning 8 days after the
22 2/16/2017 water leak and at the time of the sale to the Folinos and the 11/7/2017 water leak. She
23 was also present for the repair and remediation of both leaks.

24 Nicky prepared a timeline of events for the 11/7/2017 water leak, a summary of her
25 communications with Buyers and their agent at the time of the sale of the subject property, and
26 an affidavit for the mediation.

27 ///

1 **RESPONSE NO. 3:**

2 Lyons Development, LLC (100%): 9/12/2008 – 7/29/2013; 2/3/2014 – 11/17/2017.

3 Todd Swanson (100%,): 7/29/2013 - 2/3/2014.

4 **INTERROGATORY NO. 4:**

5 Please identify the first time you became aware of any form of water leak, water loss or
6 water damage at the Property, how you became aware of the water leak, water loss, or water
7 damage, and what actions were taken as a result.

8 **RESPONSE NO. 4:**

9 8/2/2015

10 The carpet in the master closet was damp and later a rush of water came from under the
11 master bathroom sink.

12 I turned off the water main and called Rakeman Plumbing who sent a plumber out that day
13 to repair the leaks. I also immediately vacuumed and dried all visibly wet flooring areas.

14 Rakeman Plumbing also sent out a water remediation specialist to thoroughly dry out all the
15 wet areas, and later other trades to repair or replace carpet, baseboards, cabinets, and
16 drywall.

17 I also had Rakeman Plumbing check all visible plumbing fittings throughout the house to be
18 sure they were securely attached.

19 **INTERROGATORY NO. 5:**

20 Please identify each and every incident of water leakage, water loss or water damage,
21 which occurred at the Property from January 1, 2015 to the date the Property was transferred to
22 Plaintiffs, how you became aware of each water leak, water loss, or drywall damage from
23 January 1, 2015 to the date the Property was transferred to Plaintiff, and what actions were taken
24 as a result of each incident.

25 **RESPONSE NO. 5:**

26 A. Hot water recirculating pump leak near master closet and connector fitting slippage
27 under master bathroom sink

28

1 8/2/2015

2 The carpet in the master closet was damp and later a rush of water came from under the
3 master bathroom sink.

4 I turned off the water main and called Rakeman Plumbing who sent a plumber out that day
5 to repair the leaks. I also immediately vacuumed and dried all visibly wet flooring areas.

6

7 B. Hot water recirculating pump leak in single garage

8 8/3/2015

9 I found water in the single garage.

10 I called Rakeman Plumbing who sent a plumber out that day to repair the leaks. Then water
11 remediation specialist to dry out the garage, and later drywall and media/low voltage trades
12 to finalize repairs.

13

14 C. Leaking water pipe near master closet

15 2/16/2017.

16 The carpet in the master closet was damp.

17 I called Rakeman Plumbing who came out that day to repair the leak. They then sent out a
18 water remediation specialist to dry out all areas. Then carpet, baseboard, drywall, and
19 cabinet trades to make repairs.

20

21 D. Leaking water pipe near master closet

22 11/7/2017

23 My assistant, Nicole Whitfield, found moisture in the master closet when she came to work
24 at my house.

25 Nicky called Rakeman Plumbing who came out that day to repair the leak. Then they sent
26 out a water remediation specialist to dry out all areas. A mold testing company was called
27 after the closet was dry, then carpet, baseboard, cabinet, and drywall trades to make repairs.

28

1 I immediately called Ivan Sher who notified the Buyers' agent of the water leak, and I made
2 a written disclosure of the leak to the Buyer.

3 **INTERROGATORY NO. 6:**

4 Please identify the individuals or entities who were responsible for the initial construction
5 of the Property, the scope of their responsibilities, and the identity of the original plumbing
6 subcontractor.

7 **RESPONSE NO. 6:**

8 Blue Heron designed and built the house. Rakeman Plumbing did all the plumbing.

9 **INTERROGATORY NO. 7:**

10 Please identify all persons and/or businesses who have performed any type of repairs,
11 remodeling, repiping, or construction involving the plumbing system at the Property or who have
12 inspected the Property for any reason from January 1, 2015 to the date the Property was
13 transferred to Plaintiffs.

14 **RESPONSE NO. 7:**

15 A. Rakeman Plumbing: 4075 Lossee Rd., N. Las Vegas, NV 89030. 702-642-8553

16 B. Water remediation company—I don't know the name of the company; they were hired
17 by Rakeman Plumbing.

18 C. Infinity Environmental Services, LLC, 9594 Newton Grove Ct., Las Vegas, NV 89148.
19 702-736-7437: Mold testing.

20 D. Absolute Cabinetry: repaired closet cabinets after water intrusion.

21 E. EH Design: Low voltage/media subcontractor replaced damaged low voltage electrical in
22 the single garage.

23 F. I don't recall the names of the companies who repaired drywall, baseboards, or carpet.
24 These trades were hired by Rakeman Plumbing.

25 **INTERROGATORY NO. 8:**

26 Please state with specificity the dates, manner (text, phone, email, or other form of
27 correspondence), and content of your communications with the company Uponor regarding
28

1 the use of their products on the Property, the recall of their products, any notice of defect
2 they provided, and the warranty you held for their products.

3 **RESPONSE NO. 8:**

4 I have had no communication with Uponor at any time.

5 **INTERROGATORY NO. 9:**

6 Please state when you became aware of the class action lawsuit pending against the
7 company Kitec for defective products.

8 **RESPONSE NO. 9:**

9 I did not know of a class action lawsuit against Kitec.

10 **INTERROGATORY NO. 10:**

11 Please state with specificity the reason or reasons you marked no on the seller's real
12 property disclosure form for the question asking are you aware of "previous or current moisture
13 conditions and/or water damage."

14 **RESPONSE NO. 10:**

15 It was my understanding that if there were no ongoing problems with the property (i.e. any prior
16 problem had been fully repaired), that the proper way to answer the questions on the SRPD was
17 "no."

18 **INTERROGATORY NO. 11:**

19 Please state your rationale for why a repaired leak does not qualify as a "previous"
20 moisture condition.

21 **RESPONSE NO. 11:**

22 Objection, calls for a legal conclusion and invades the attorney/client privilege.

23 **INTERROGATORY NO. 12:**

24 Please identify and state insurance and/or warranty claims made due to water leakage,
25 water loss, water damage, defective pipes, or plumbing fixtures at the Property and identify
26 which individual or entity filed said claims.

27 ///

1 **RESPONSE NO. 12:**

2 All plumbing issues were related to the water leaks described herein above and were covered
3 under warranty by Rakeman Plumbing and/or, as I have now become aware, Uponor.

4 **INTERROGATORY NO. 13:**

5 Please state with specificity each time you contacted Rakeman Plumbing regarding work
6 at the property, each time employees or Rakeman Plumbing visited the Property, and identify
7 exactly what actions were taken by Rakeman Plumbing each time they visited the Property.

8 **RESPONSE NO. 13:**

9 Rakeman Plumbing installed the original plumbing when the house was constructed. They were
10 called and came to the house with each water leak as described above and as needed thereafter to
11 assess and ensure that all issues related to the leaks were repaired. I don't recall specific dates
12 that they visited the property or communications with them other than the initial contact when
13 each water leak occurred as described above and an email and phone call from Aaron Hawley on
14 12/12/2017 when he learned that Uponor recommended re-piping the house. My assistant,
15 Nicky, may have had additional contact with Rakeman after the 11/7/2017 leak to coordinate
16 remediation, repairs, and mold testing.

17 **INTERROGATORY NO. 14:**

18 Please identify each and every lawsuit to which you have been a party.

19 **RESPONSE NO. 14:**

20 Objection. This interrogatory is unduly burdensome and not limited in time or scope and
21 otherwise not reasonably calculated to lead to the discovery of admissible evidence. Information
22 of this nature is publicly available and equally as accessible to the Plaintiffs.

23 **INTERROGATORY NO. 15:**

24 Please state with specificity if you have any occurrences of mold or other moisture
25 related damages in homes you have owned or occupied from January 1, 2000 to present.

26 ///

27 ///

1 **RESPONSE NO. 15:**

2 Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible
3 evidence. Without waiving said objection, my ex-wife and I purchased a house at 8123 Planting
4 Fields Place, Las Vegas, NV 89117 around 2000 that we eventually found to have construction
5 defects resulting in slow water leaks and airborne mold.

6 **INTERROGATORY NO. 16:**

7 Please state any health problems you have personally suffered or claims you have filed
8 for exposure to mold or other moisture related damages in homes you have owned or occupied
9 and identify any healthcare professionals you have seen regarding these health problems.

10 **RESPONSE NO. 16:**

11 Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible
12 evidence. Without waiving said objection, I required sinus surgery by Dr. Walter Schroeder in
13 2001 that was thought to be related to chronic exposure to mold spores from 8123 Planting
14 Fields Place. I made a claim against the builder, Trophy Homes.

15 **INTERROGATORY NO. 17:**

16 Please state any claims that you children or wife have filed for exposure to mold or other
17 moisture related damages in homes you have owned or occupied and identify any healthcare
18 professionals you have seen regarding these health problems.

19 **RESPONSE NO. 17:**

20 Objection. This interrogatory is not reasonably calculated to lead to the discovery of admissible
21 evidence. Without waiving said objection, two of my children also required sinus surgery by Dr.
22 Walter Schroeder thought to be related to chronic exposure to mold spores from 8123 Planting
23 Fields Place. My ex-wife made a construction defect claim against Trophy Homes for expenses
24 incurred to remediate the residence, for loss of use of the residence, and the children's medical
25 problems.

26 ///

27 ///

1 **INTERROGATORY NO. 18:**

2 Please state the date you first communicated with Repipe Specialist of Nevada and with
3 specificity identify all work they conducted at the Property.

4 **RESPONSE NO. 18:**

5 I have had no communications with Repipe Specialists of Nevada.

6 **INTERROGATORY NO. 19:**

7 Please state the exact dates during which you occupied the Property.

8 **RESPONSE NO. 19:**

9 I occupied the property from April 2015 through 11/27/2017.

10 **INTERROGATORY NO. 20:**

11 Please state with specificity the actions you took following any repairs conducted by
12 Rakeman Plumbing from January 1, 2015 to present to ensure that the work they performed had
13 been fully and properly completed.

14 **RESPONSE NO. 20:**

15 I observed some of the work done to repair the plumbing and areas affected by the water.
16 However, I am not a plumbing or contracting expert, so I relied on Rakeman Plumbing and the
17 various trades to properly repair all items. All repairs appeared to me as a layperson to be
18 satisfactory, and the areas with water leaks appeared as new after the repairs.

19 **INTERROGATORY NO. 21:**

20 Please state whether you have had any communications with the Summerlin Association
21 regarding any water leakage, water loss, water damage, construction, repair, or remodeling at the
22 Property and state the content of those communications.

23 **RESPONSE NO. 21:**

24 I do not recall having any communications with the Summerlin Association regarding any water
25 leakage, water loss, water damage, construction, repair, or remodeling at the Property.

26 ///

27 ///

1 **INTERROGATORY NO. 22:**

2 Please state whether you have had any communications with Ivan Sher or any other real
3 estate agent regarding any water leakage, water loss, water damage, construction, repair, or
4 remodeling at the Property and state the content of those communications.

5 **RESPONSE NO. 22:**

6 While I cannot recall any specific conversation, I'm sure I discussed the 2015 water leaks with
7 Kelly Contenta, but not in the context of a realtor but because she was living with me at the time.
8 I discussed the 11/7/2017 water leak with Ivan Sher since the house was under contract. His
9 company notified the Buyers' agent of the leak, and we made a written disclosure to the Buyer.
10 I emailed Ivan Sher on 12/15/2017 to inform him of Uponor's recommendation to repipe the
11 house after Aaron Hawley made me aware of it and to discuss Mrs. Folino's reaction to the news
12 and comments made to Aaron Hawley regarding a potential lawsuit.
13 Ivan Sher discussed with me and later emailed me on 7/5/2018 his opinion regarding diminution
14 of value after repiping a house.

15 DATED this 23rd day of December, 2019.

16 CHRISTOPHER M. YOUNG, PC

17 */s/ Christopher M. Young*

18 CHRISTOPHER M. YOUNG, ESQ.

19 Nevada Bar No. 7961

20 2460 Professional Court, #200

21 Las Vegas, Nevada 89128

22 Tel: (702) 240-2499

23 Fax: (702) 240-2489

24 cyoung@cotomlaw.com

25 Attorney for Defendant Todd Swanson, et al.

Exhibit Q

AFFIDAVIT OF NICOLE WHITFIELD

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

I am an assistant to Todd Swanson, M.D. I am also a Real Estate Transaction Coordinator since 2014, in the State of Nevada.

I have extensive personal knowledge of the events surrounding the sale of the Property located at 42 Meadowhawk Lane, and am competent to testify thereto.

From my experience, it is highly unusual in a real estate transaction for the buyer to be given virtually unbridled access to the house, except for inspections and walk-throughs permitted by the contract. Nonetheless, as a courtesy, Dr. Swanson wanted to give the Folinos liberal access to the Property so that Mrs. Folino could make remodeling plans and to plan for their move.

Mrs. Folino was very excited to move into her new home.

I was present for all of the Folinos' visits, which were numerous.

After the November 7, 2017 water leak, Mrs. Folino came to the property on several occasions. I witnessed that Mrs. Folino was in the master bedroom and that she saw the water damage from the November 7, 2017 water leak.

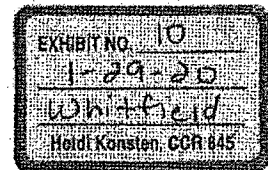
Rakeman Plumbing took responsibility for the water leak, and documented their commitment in writing. I gave a copy of the Rakeman letter to Mrs. Folino.

Following Dr. Swanson's disclosure of the November 7, 2017 leak, on November 15, 2017, the Folinos requested a mold test.

On November 16, Mr. & Mrs. Folino conducted a walk-through of the entire house. I was present for the walk-through.

I personally walked Mrs. Folino through the master bedroom closet and showed her exactly where the leak had occurred and I showed her the damages.

At their walk-through, the Folinos again requested a mold test and also requested a visual pipe inspection.



SWANSON000186

Dr. Swanson asked me to, in addition, schedule a pressure test "to assure there are no weak spots in the water lines."

I called Allison Brooks of Rakeman Plumbing and requested a mold test, pressure test and visual inspection.

Ms. Brooks informed me that CPI Restoration would conduct the mold test, but Rakeman Plumbing would do the visual inspection and the pressure test. Ms. Brooks informed me that the tests were scheduled for November 17, 2017, but would not be completed until after the closing. The Folinis were aware that the tests would be completed after the closing, but chose to close on November 17th anyway.

I was present during the pressure test and visual inspection and was informed that both came back normal.

I later spoke with mold company representatives who informed me that the mold tests were positive with a low spore count. I gave the mold company information directly to Mrs. Folino to permit her to contact them directly. Mrs. Folino spoke with the mold company representative and was informed of the results.

I was informed that no construction work was to be performed in the home until the mold remediation was completed. I informed the Folinis' agent, Ashley, but the Folinis nonetheless decided to conduct the construction on the basement and newly added laundry room on the 2nd floor.

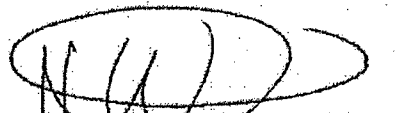
Based on my personal interactions with the Folinis, they were aware of the leak prior to the close of escrow.

SWANSON000187

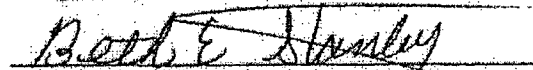
JA001792

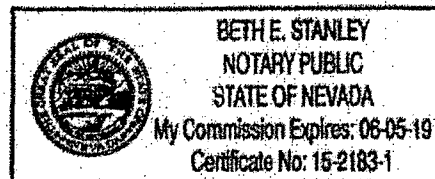
The Folinos were aware within the first week of escrow that Dr. Swanson needed a closing date extension. I personally informed Mrs. Folino of the renovations that were being conducted at the La Madre Ridge home. I informed the Folinos that the renovations would not be completed by the November 17, 2017 closing date, thus requiring an extension, which the Folinos granted. Based on the Folinos' knowledge that this was the reason for the extension, together with their actual knowledge of the water damage, their claim that the extension was to "cover-up" the water damage is ridiculous.

FURTHER AFFIANT SAITH NAUGHT


NICOLE WHITFIELD

SUBSCRIBED AND SWORN to before me
this 10 day of August, 2018.


NOTARY PUBLIC in and for said
County and State



SWANSON000188

JA001793

Exhibit R

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3 * * * * *
4
5 JOSEPH FOLINO, an individual
6 and NICOLE FOLINO, an
individual,
7 Plaintiffs,
8 vs. Case No. A-18-782494-C
Dept. No. XXIV
9 TODD SWANSON, an individual;
10 TODD SWANSON, Trustee of the
SHIRAZ TRUST; SHIRAZ TRUST, a
11 Trust of unknown origin; LYONS
DEVELOPMENT, LLC, a Nevada
12 limited liability company; DOES
I through X; and ROES I through
13 X,
Defendants.
14
15
16 VIDEOTAPED DEPOSITION OF
17 NICOLE WHITFIELD
18 Taken on January 29, 2020
19 at 10:01 a.m.
20 By a Certified Court Reporter
21 Las Vegas, Nevada
22
23 Stenographically reported by:
Heidi K. Konsten, RPR, CCR
24 Nevada CCR No. 845 - NCRA RPR No. 816435
JOB NO. 597256
25

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.

Exhibit S

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1 occurrences of moisture having ever occurred, or any occurrences of mold/fungi, or that
2 mold/fungi was ever present in the Subject Property.

3 8. That there were no disclosures in any form by Todd Swanson, Lyon
4 Development, or the Shiraz Trust, of any water event, water loss, moisture conditions or the
5 existence of fungi/mold, prior to the execution or during the escrow period of the residential
6 purchase agreement.
7

8 9. That after signing the paperwork to close on the Subject Property on November
9 16, 2017, we were told by our Realtor, Ashley Lazosky that there was a leak.

10 10. That my Realtor Ashley Lazosky informed me that she had a conversation with
11 Todd Swanson or his representatives about the leak and was told that it was an isolated incident
12 of water loss.
13

14 11. That I relied upon the representations made by Todd Swanson in the Seller's
15 Real Property Disclosure form and his statements to Ashley Lazosky in deciding to purchase 42
16 Meadowhawk Lane.

17 12. That I would not have purchased the Subject Property if the previous incidents of
18 water loss and mold had been disclosed in the Seller's Real Property Disclosure Form.

19 13. That I would not have purchased the Subject Property, if the Defendants, or any
20 of them, had correctly stated to Ashley Lazosky that the leak was not an isolated incident.
21

22 14. That on or about December 12, 2017, I was informed by Rakeman Plumbing that
23 the entire property would need to be replumbed due to a manufacturing defect in the plumbing
24 of the home.
25
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27
28

1 15. That I subsequently contacted the plumbing system manufacturer, Uponor, on or
2 about December 12, 2017. Uponor had provided the pipes and pipe fittings for the Subject
3 Property. I was informed that the Defendants and/or their plumbing subcontractor had made a
4 claim for repair on the pipes warranty on or about June 9, 2017, related to the February 2017
5 water loss event.
6

7 16. That I have since become aware of numerous, specifically in excess of six (6)
8 water leaks, conditions of moisture and other leaks that occurred from May 2015 through
9 November 2017 at the Subject Property, while it was owned by Defendants.

10 17. That the Seller's Real Property Disclosure Form Addendum 4-A only addressed
11 one water incident that happened on or around the first week of November 2017, and it did not
12 reference mold or fungi at all. Addendum 4-A also never addressed any of the other 6 water
13 leaks or any other conditions of moisture.
14

15 18. That it was not until our Realtor tried to arrange for us to have access to the
16 Subject Property during the time Todd Swanson was renting it from us that we were notified of
17 the more recent water leak that happened on or about the first week of November 2017.

18 19. That upon information and belief, Todd Swanson rented 42 Meadowhawk Lane
19 and continued to live on the Subject Property until on or about November 28, 2017 for the
20 purpose of concealing repairs taking place on a leak that had occurred on or about the first week
21 of November 2017.
22

23 20. That subsequent to another water loss and condition of moisture at the Subject
24 Property, affiant was informed by Uponor that they would be replacing the entire plumbing
25 system due to a "manufacturing defect" in all of the APEX blue and red piping installed at the
26 Subject Property. I was told by Uponor that if I did not move forward and replumb the house
27 that my 25-year warranty would be null and void.
28

21. That after replumbing the house, we have since experienced two additional water leaks. In addition to the two water leaks after the replumbing of our home, we have also experienced consistent interior wall hammering noises that several plumbing companies evaluated and could not find root cause or resolution.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

JOSEPH FOLINO

SUBSCRIBED and SWORN to before
me this _____ day of _____ 2020

NOTARY PUBLIC

Exhibit T

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AFFIDAVIT OF PLAINTIFF NICOLE FOLINO

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

NICOLE FOLINO, being first duly sworn, deposes and states as follows:

1. That I am over the age of eighteen and am competent to testify to the matters stated herein. I have personal knowledge of the facts stated herein, except for those matters stated upon information and belief, and as to those matters, I believe them to be true.
2. That I am the Plaintiff in this matter. That I make this Affidavit in support of my Complaint against Defendants.
3. That on or about October 22, 2017, I entered into a Residential Purchase Agreement to purchase the property identified as 42 Meadowhawk Lane, Las Vegas, NV 89135 (the "Subject Property"), for the purchase price of THREE MILLION DOLLARS AND 00/100 (\$3,000,000.00) with the Shiraz Trust, Dr. Todd Swanson, Trustee and Lyons Development, LLC.
4. That on information and belief, 42 Meadowhawk Lane was constructed in 2015 by Lyons Development and owned by both Lyons Development and Todd Swanson.
5. That pursuant to the terms of residential purchase agreement, NRS 113.130 and NRS 113.140, the Defendants were required to complete and execute a Seller's Real Property Disclosure form, and did execute that form on October 24, 2017.
6. That the Seller's Real Property Disclosure form was executed by Todd Swanson on or about October 24, 2017.
7. That the Seller's Real Property Disclosure form did not contain any notification regarding any problems or defects in the plumbing system or any other related systems, any

1 occurrences of moisture having ever occurred, or any occurrences of mold/fungi, or that
2 mold/fungi was ever present in the Subject Property.

3 8. That there were no disclosures in any form by Todd Swanson, Lyon
4 Development, or the Shiraz Trust, of any water event, water loss, moisture conditions or the
5 existence of fungi/mold, prior to the execution or during the escrow period of the residential
6 purchase agreement.
7

8 9. That after signing the paperwork to close on the Subject Property on November
9 16, 2017, we were told by our Realtor, Ashley Lazosky that there was a leak.

10 10. That my Realtor Ashley Lazosky informed me that she had a conversation with
11 Todd Swanson or his representatives about the leak and was told that it was an isolated incident
12 of water loss.
13

14 11. That I relied upon the representations made by Todd Swanson in the Seller's
15 Real Property Disclosure form and his statements to Ashley Lazosky in deciding to purchase 42
16 Meadowhawk Lane.

17 12. That I would not have purchased the Subject Property if the previous incidents of
18 water loss and mold had been disclosed in the Seller's Real Property Disclosure Form.

19 13. That I would not have purchased the Subject Property, if the Defendants, or any
20 of them, had correctly stated to Ashley Lazosky that the leak was not an isolated incident.
21

22 14. That on or about December 12, 2017, I was informed by Rakeman Plumbing that
23 the entire property would need to be replumbed due to a manufacturing defect in the plumbing
24 of the home.
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1 15. That I subsequently contacted the plumbing system manufacturer, Uponor, on or
2 about December 12, 2017. Uponor had provided the pipes and pipe fittings for the Subject
3 Property. I was informed that the Defendants and/or their plumbing subcontractor had made a
4 claim for repair on the pipes warranty on or about June 9, 2017, related to the February 2017
5 water loss event.
6

7 16. That I have since become aware of numerous, specifically in excess of six (6)
8 water leaks, conditions of moisture and other leaks that occurred from May 2015 through
9 November 2017 at the Subject Property, while it was owned by Defendants.

10 17. That the Seller's Real Property Disclosure Form Addendum 4-A only addressed
11 one water incident that happened on or around the first week of November 2017, and it did not
12 reference mold or fungi at all. Addendum 4-A also never addressed any of the other 6 water
13 leaks or any other conditions of moisture.
14

15 18. That it was not until our Realtor tried to arrange for us to have access to the
16 Subject Property during the time Todd Swanson was renting it from us that we were notified of
17 the more recent water leak that happened on or about the first week of November 2017.

18 19. That upon information and belief, Todd Swanson rented 42 Meadowhawk Lane
19 and continued to live on the Subject Property until on or about November 28, 2017 for the
20 purpose of concealing repairs taking place on a leak that had occurred on or about the first week
21 of November 2017.
22

23 20. That subsequent to another water loss and condition of moisture at the Subject
24 Property, affiant was informed by Uponor that they would be replacing the entire plumbing
25 system due to a "manufacturing defect" in all of the APEX blue and red piping installed at the
26 Subject Property. I was told by Uponor that if I did not move forward and replumb the house
27 that my 25-year warranty would be null and void.
28

21. That after replumbing the house, we have since experienced two additional water leaks. In addition to the two water leaks after the replumbing of our home, we have also experienced consistent interior wall hammering noises that several plumbing companies evaluated and could not find root cause or resolution.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

NICOLE FOLINO

SUBSCRIBED and SWORN to before
me this _____ day of _____ 2020

NOTARY PUBLIC

Exhibit U



AGREEMENT TO OCCUPY AFTER THE CLOSE OF ESCROW

The undersigned Seller and Buyer, having heretofore executed an Agreement of Sale dated November 6th, 2017, relating to the real property located at 42 Meadow hawk Lane, City of Las Vegas, County of Clark, State of NV; (hereinafter Premises) and Seller desiring to retain possession of Premises after the close of escrow with Buyer, Seller hereby agrees:

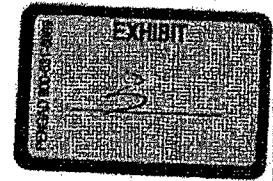
1. Upon execution of this Agreement by the parties, Buyer grants permission to Seller to retain possession of Premises after close of escrow.
2. In consideration of Buyer's permission to Seller to retain possession of Premises after the close of escrow, Seller agrees as follows:
- To accept Premises in its current condition as approved by Buyer and repaired by Seller pursuant to the walk through completed prior to close of escrow.
 - To pay Buyer, as compensation for use of Premises the sum of _____ dollars (\$ 0.00) per month, from and including the date of close of escrow through 11/28/17. Compensation shall be paid in advance through escrow and may be prorated on a daily basis from and including the date of close of escrow through n/a. Daily rent for the purposes of proration shall be \$ _____.
 - Seller agrees to pay a security deposit in the amount of \$ 0.00 to n/a. Security Deposit shall be debited from the Sellers funds at the close of escrow and paid to n/a.
 - Seller shall pay all utilities and services on a pro-rated basis, commencing on the date of close of escrow.
 - Seller shall maintain heating, sewer, plumbing and electrical systems, any built in appliances and equipment in normal working order. Seller shall keep the roof watertight, maintain the grounds, pool and spa (if any) commencing on the date of close of escrow.
 - Seller shall not make any alterations to Premises without prior written authorization from Buyer.
 - Seller shall abide by all laws and government regulation with respect to use or occupancy of Premises.
 - Seller, upon twenty-four (24) hour notice, shall admit Buyer and Buyer's representatives' at all reasonable times for the purpose of inspecting Premises.
 - Seller agrees to hold Buyer and the Agent or Agents in this transaction harmless from any claims for damages or injury to Seller, or any person, or to any property as a result of this Agreement.
3. Buyer shall maintain a policy of fire and extended coverage on the Premises. Seller shall be responsible for repair or replacement of all damages to Premises after the close of escrow until such time as possession is given to Buyer. Buyer shall have thirty (30) days after receipt of possession to determine if Seller has maintained the Premises in the condition as at time of close of escrow as described in the walk through completed prior to close of escrow. If Seller has damaged the Premises, Buyer shall have same repaired and shall furnish copies of receipts to Seller and may deduct the costs of same from Seller's Security Deposit. In the event that Seller's Security Deposit is insufficient to repair all such damage, Seller shall be responsible for the payment of any additional costs.
4. ~~It is the intent of the parties to create a tenancy upon a day-to-day basis, pending Seller's vacating the Premises. Either party shall have the right to terminate the tenancy upon seven (7) days written notice. Such notice shall be delivered or mailed via US Mail to the Seller at the Premises and may be mailed, via US Mail, or delivered to Buyer at _____. Seller agrees to pay all costs incurred in any legal action instituted by Buyer to enforce the terms of this Agreement or for the eviction of Seller from the Premises including reasonable attorney's fees and costs.~~
5. Additional Terms:
See addendum 3 for additional terms of rent back. Seller to maintain pool, landscaping and any other utilities at the property during this time. Also, adhere to the HOA guidelines. Buyer is not liable for any of sellers personal belongings that will be left in the property during this time. Buyer is also held harmless to any injuries that could occur at the property. Seller should hold renters insurance on his personal items during this time.

WHEN PROPERLY COMPLETED, THIS IS A BINDING CONTRACT. IF YOU DO NOT FULLY UNDERSTAND ITS CONTENTS, YOU SHOULD SEEK COMPETENT LEGAL COUNSEL BEFORE SIGNING.

<i>Joseph Folino</i> dotloop verified 11/07/17 3:07PM EST ATVW-GBKS-OCV-4230	<u>11/06/2017</u>	<i>Nicole Folino</i> dotloop verified 11/07/17 2:44PM EST NRKS-VTUP-GDQK-MOVL	<u>11/06/2017</u>
☒ Buyer ☐ Seller Joseph Folino	Date	☒ Buyer ☐ Seller Nicole Folino	Date
Acceptance:			
<i>Add Signature, Po-Transfer</i> Authenticor	<u>11/08/2017</u>		
☐ Buyer ☒ Seller ☐ PST	Date	☐ Buyer ☐ Seller	Date
Prepared by: <u>Ashley Oakes-Laxosky</u>		<u>702-281-1198</u>	
Agent's Printed Name		Phone	

Exhibit V

AFFIDAVIT OF AARON HAWLEY



STATE OF NEVADA)
 : ss.
COUNTY OF CLARK)

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.

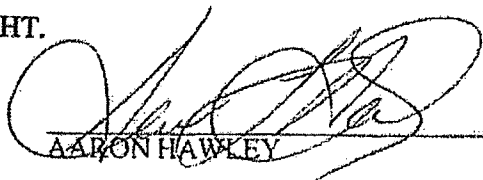
11. I invoiced Uponor, the manufacturer of the repaired pipe because the pipes at the residence were under a 25-year Uponor warranty.

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

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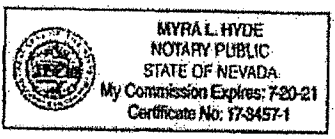
13. The attached Exhibits A & B are business records of Rakeman Plumbing. Those records were kept in the regular course of business. I have personal knowledge that the invoice was created at or near the time the leak was repaired on or about May 23, 2017 and that the June 9, 2017 letter from Uponor was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

FURTHER AFFIANT SAYETH NAUGHT.


AARON HAWLEY

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


NOTARY PUBLIC in and for said
County and State



HAOpen Case Files\0300.003\AFF-RAKEMAN

Exhibit W

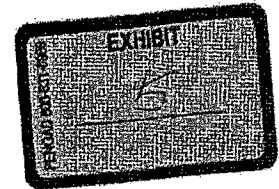


Infinity
Environmental
Services, LLC

Project No.17-0572-01

November 24, 2017

To Whom It May Concern
Rakemari Plumbing
4075 Losee Road
North Las Vegas, NV 89030



Subject: **Fungal Indoor Air Quality Assessment Report (FIAQA)**
Visual, Airborne, and Surface Fungal Assessment
Water Damaged Master Bedroom Closet
42 Meadow Hawk Lane
Las Vegas, NV 89135

To Whom It May Concern:

In accordance with your request and authorization for services, Infinity Environmental Services, LLC (Infinity) of Las Vegas, Nevada, provided the subject services on November 17, 2017. The Visual, Airborne, and Surface Fungal Assessment (FIAQA) was requested to assess for possible fungal levels in the master bathroom and master closet of the subject residence. Infinity was also requested to provide a Fungal Remediation Operating Procedures for the remediation activities.

Scope of Services

The Visual, Airborne, and Surface Fungal Assessment included the professional services of Mr. Steven Havens, the owner of Infinity, and a mold trained professional. The following services were provided:

1. The fungal assessment in the master bedroom and master closet in the subject residence was visually conducted using nondestructive methods.
2. Air sampling was conducted in two areas (master bathroom and master closet) of the residence to assess for airborne fungal spore levels. In addition, one outdoor airborne fungal spore sample was collected for the purpose of comparison (in back of the residence).
3. Surface sampling was conducted in the master bedroom closet on the damaged lower wall under the cabinet that is adjacent to the master bathroom and water heater for surface fungal spore levels.

Exh 23

Airborne Samples:

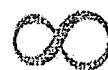
The airborne samples collected were analyzed by Forensic Analytical Laboratories, Inc. (Forensic) of Las Vegas, Nevada. Forensic participates in the American Industrial Hygiene Association's (AIHA) Environmental Microbiology Proficiency Analytical Testing (EMPAT) program and is accredited under the AIHA 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

During our visual inspection of the master bedroom closet, we found suspect visible fungi on lower wall under the closet cabinet that is adjacent to the master bathroom and water heater.

The results of the Air-O-Cell cassette sample (enclosed reports titled Non-Viable Air Fungal Analysis) indicated the total fungal genera detected in the indoor samples were higher than the concurrent outdoor genera levels with elevated levels of *Alternaria* (13 spores per cubic meter [S/m³] detected in the master bathroom compared to zero spores detected in the master closet and in the outdoor sample), *Chaetomium* (13 S/m³ detected in the master closet compared to zero spores detected in the master bathroom and in the outdoor sample), *Penicillium/Aspergillus* (900 S/m³ detected in the master bathroom compared to zero spores detected in the master closet and in the outdoor sample), and *Ascospores* (200 S/m³ detected in the master closet and 58 S/m³ detected in the master bedroom, compared 230 S/m³ detected in the outdoor sample).



Surface Fungal (Swab):

The surface swab sample was analyzed by Forensic Analytical Laboratories, Inc. (Forensic) located in Las Vegas, Nevada. 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).

The fungal surface sample was collected and analyzed using methods prescribed by common industry practice, Forensic recommendations, and the ASTM standards. The sample was collected by swiping a swab over approximately a 4" x 4" area. The swab was placed back into the sterile container, placed in a zip lock bag, and delivered to Forensic using chain-of-custody procedures for analysis.

Results and Discussion

The surface swab sampling results of the discolored area previously described are enclosed in the attached Forensic report titled *Non-Viable Bulk Fungal Analysis*.

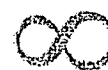
1. Sample MH - S - 01: Collected from the master bedroom closet, on lower damaged wall under the closet cabinet that is adjacent to the master bathroom and water heater. Infinity considers the fungal spores detected in the sample to be indicative of active fungal growth.

Alternaria: Major
Ascospores: Trace
HYPHAEE: Minor
Ulocladium: Minor

Results and Conclusions

Based upon the previously described results, the following conclusions are made:

1. During our visual inspection of the master bedroom closet, we found suspect visible fungi on lower wall under the closet cabinet that is adjacent to the master bathroom and water heater.
2. The air samples indicated fungal levels in the subject closet and bathroom. Alternaria that was found in the surface sample was also found in the air sample collected in the closet.



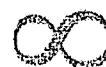
Recommendations

Based upon the previously described results and conclusions, the following recommendations are made:

1. Master Bathroom: The master bathroom should be placed under a negative containment system to include the closet. After the area has been placed under a negative containment system, the remediation activities may be performed. See attached Fungal Remediation Operating Procedures.
2. The cabinets adjacent to the master bathroom and water heater should be removed. After the cabinets have been removed, remediation of the walls that are adjacent to the bathroom and water closet should be performed.
3. Due to the spore level detected of *Penicillium/Aspergillus* in the air sample collected from the master bathroom, and not detected in the air sample and the swab samples collected in the closet, Infinity recommends that after the bathroom has been placed under the containment system, an inspection of the wall adjacent to the closet and water heater should be performed.

Limitations

This report is for the use of Rakeman Plumbing as it applies to 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 at 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.



Infinity
Environmental
Services, LLC
JA001817

Rakeman Plumbing
Project No. 17-0572-01
November 24, 2017
Page 5

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

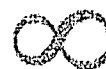
Respectfully submitted,

Infinity Environmental Services, LLC



Steven Havens
Owner

Encl: Infinity Environmental Services, Chain of Custody Forms
Forensic Analytical Laboratories, Laboratory Results
Fungal Remediation Operating Procedures
Photographs



Infinity
Environmental
Services, LLC
JA001818

Exhibit X

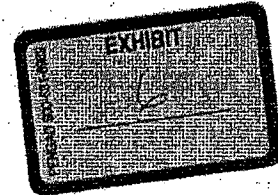


Infinity
Environmental
Services, LLC

Project No. 17-0572-02

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.

Rakeman Plumbing
Project No. 17-0572-02
December 7, 2017
Page 3

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 Visible Samples
			Time On/Off	Avg. LPM	Total Time	Air Volume	☐ MEA ☐ DG-18 ☐ CMA ☐ TSA ☐ Cellulose
MHL - 1A - 01	12-5-17 0955	Master Bedroom Closet	0955 1000	15	5 Min	75 L	N/A
MHL - 1A - 02	12-5-17 1001	Master Bedroom	1001 1006	15	5 Min	75 L	N/A
MHL - 0A - 03	12-5-17 1015	Outdoors In Back of the Residence	1015 1020	15	5 Min	75 L	N/A
Sampled By: Steven Havens		Date 12-5-17		Sampling Times: 0955 Thru 1020			
Shipped Via: Drop Off							
Relinquished By: Steven Havens		Relinquished By:					
Date / Time: 12-5-17		Date / Time:					
Condition Acceptable? ☒ Yes ☐ No		Condition Acceptable? ☐ Yes ☐ No					
Received By: J. Williams		Received By:					
Date / Time: 12/5/17 10:52am		Date / Time:					
Condition Acceptable? ☒ Yes ☐ No		Condition Acceptable? ☐ Yes ☐ No					

Los Angeles Office: 2959 Pacific Coast Highway, Rancho Dominguez, California 90221 / Telephone: (310) 763-2374 / Fax: (310) 763-4459
Las Vegas Office: 6765 S. Eastern Avenue, Suite 3, Las Vegas, Nevada 89119 / Telephone: (702) 84-0090 / Fax: (702) 784-0010

SWANSON000207



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-D-Cell
Analysis: Direct Microscopy; FAL Method IAQ 101; Modified ASTM D7391
Job ID / Site: 17-0572-02, 42 Meadow Hawk Lane

Client ID: L1234
Report Number: F123905
FAL 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.

FAL 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

Analytical results and reports are generated by Forensic Analytical at the request of and for the exclusive use of the person or entity (client) named on such report. Results, reports or copies of same will not be released by Forensic Analytical to any third party without prior written request from client. This report applies only to the sample(s) tested. Supporting laboratory documentation is available upon request. This report must not be reproduced except in full, unless approved by Forensic Analytical. The client is solely responsible for the use and interpretation of test results, and reports requested from Forensic Analytical. Forensic Analytical is not able to assess the degree of hazard resulting from materials analyzed. Forensic Analytical reserves the right to dispose of all samples after a period of thirty (30) days, according to all state and federal guidelines, unless otherwise specified. Unless otherwise noted, these samples were not blank corrected. All samples were received in acceptable condition unless otherwise noted.

Todd Swanson

From: Nicky Whitfield
Sent: Friday, November 17, 2017 1:09 PM
To: Austin@shapiroandsher.com
Cc: Todd Swanson
Subject: 42 Meadowhawk - Email from Rakeman Plumbing

Hi Austin,

Please see the email below from Rakeman Plumbing on the estimated timeframe for repairs.

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 11:49 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 things

-----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

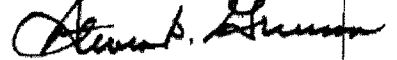
Good afternoon Aaron,

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



1 ACSR
2 Rusty Graf, Esq.
3 Nevada Bar No. 6322
4 Shannon M. Wilson, Esq.
5 Nevada Bar No. 13988
6 **BLACK & LOBELLO**
7 10777 West Twain Avenue, 3rd Floor
8 Las Vegas, Nevada 89135
9 Telephone: (702) 869-8801
10 Facsimile: (702) 869-2669
11 E-mail: rgraf@blacklobello.law
12 E-mail: swilson@blacklobello.law
13 Attorneys for Plaintiff

14 **DISTRICT COURT**
15 **CLARK COUNTY, NEVADA**

16 JOSEPH FOLINO, an individual and NICOLE
17 FOLINO, an individual,

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

18 Plaintiff,

19 v.

ACCEPTANCE OF SERVICE

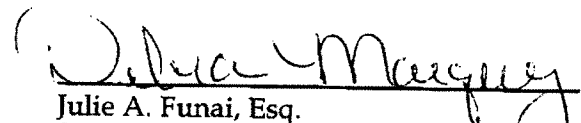
20 TODD SWANSON, an individual; TODD
21 SWANSON, Trustee of the SHIRAZ TRUST;
22 SHIRAZ TRUST, a Trust of unknown origin;
23 LYONS DEVELOPMENT, LLC, a Nevada
24 limited liability company; DOES I through X;
25 and ROES I through X,

26 Defendants.

27 I, Julie A. Funai, do hereby accept service of the Amended - Videotaped
28 Deposition Subpoena for Ashely Oakes-Lazosky. A true and correct copy attached.

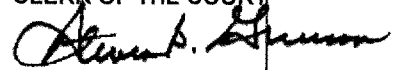
DATED this 10 day of March 2020.

LIPSON/NEILSON


Julie A. Funai, Esq.
9900 Covington Cross Drive, Suite 121
Las Vegas, NV 89144-7052
(702) 382-1500
Attorney for Ashley Oakes-Lazosky

JA001827

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



1 RTRAN

2
3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 JOSEPH FOLINO, an individual
9 and NICOLE FOLINO, an
individual,

10 Plaintiffs,

11 vs.

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

17 Defendants.

CASE#: A-18-782494-C

DEPT. XXIV

18
19 BEFORE THE HONORABLE JIM CROCKETT, DISTRICT COURT JUDGE
20 TUESDAY, MARCH 3, 2020

21 **RECORDER'S TRANSCRIPT OF HEARING**
22 **DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S SECOND**
AMENDED COMPLAINT

23 APPEARANCES (continued on page 2):

24 For the Plaintiffs:

J. RUSTY GRAF, ESQ.

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APPEARANCES (continued):

For the Defendants:

JEFFREY L. GALLIHER, ESQ.
CHRISTOPHER M. YOUNG,
ESQ.
JAY T. HOPKINS, ESQ.

RECORDED BY: GAIL REIGER, COURT RECORDER

1 Las Vegas, Nevada, Tuesday, March 3, 2020

2
3 [Case called at 9:14 a.m.]

4 MR. GALLIHER: Good morning, Your Honor, Jeff Galliher,
5 along with Jay Hopkins, Christopher Young for the Defendants.

6 THE COURT: Good morning.

7 MR. GRAF: Good morning, Your Honor, Rusty Graf on behalf
8 of the Folinos.

9 THE COURT: Good morning.

10 Have a seat. All right, so this is Defendant's Motion to
11 Dismiss Plaintiff's Second Amended Complaint.

12 This is a case in which the Plaintiffs purchased a home from
13 the Defendant. It was a high-end home, very modern and sophisticated
14 in its appearance and in its cost of construction. The suit claims that the
15 Defendant failed to disclose a plumbing leak and also claims fraud.

16 So historically what had happened in this case was there had
17 been a Motion for Summary Judgment earlier or Motion to Dismiss. And
18 that was heard, I don't know, sometime ago, November 7th.

19 And at that time, the Court stated its inclination as to the
20 Defendant's Motion to Dismiss Plaintiff's Second Amended Complaint,
21 noting that an affidavit was required seeking 56(d), now (e) relief.

22 Further, there were two questions of fact. Moreover, the Court
23 was inclined to grant the Motion for Summary Judgment and to deny the
24 inappropriately filed Countermotion for Sanctions. There were
25 arguments by counsel.

1 So what the Court did was I granted 90 days to demonstrate
2 the existence of a genuine issue of material fact by February 6th,
3 Defendants reply due February 20th.

4 So counsel did in fact file supplemental materials. But from
5 what I've read on February 13th, Plaintiff filed a supplemental brief and a
6 supplemental list of witnesses and documents, referencing unattached
7 and unauthenticated materials with Bates numbering in the 4- to 5,000
8 range.

9 And I don't know, was I supposed to treat that as an
10 argument, because it isn't. And of course, I didn't have access to any of
11 the 4- to 5,000 pages of documents.

12 So -- and we have no courtesy copy of it either, not that I was
13 looking forward to a courtesy copy of 4- to 5,000 pages. But there's
14 also --

15 MR. GRAF: Your Honor -- oh.

16 THE COURT: -- most importantly, there's no affidavit to
17 contradict the affidavit of Aaron Holley [phonetic]. And the whole
18 purpose of the month delay was to permit Plaintiff to demonstrate a
19 genuine dispute as to a material issue of fact.

20 Recall that Mr. Holley was the superintendent or foreman or
21 some kind of a key employee --

22 MR. GRAF: He was.

23 THE COURT: -- of the plumbing company. And he's --

24 MR. GRAF: He's the owner.

25 THE COURT: Pardon?

1 MR. GRAF: He's the owner, Your Honor.

2 THE COURT: Owner.

3 MR. GRAF: Yes.

4 THE COURT: He provided a detailed affidavit telling us what
5 the plumbing leak issues were that he was hired to investigate and
6 correct.

7 And he explained that his company, his personnel did in fact
8 investigate, identify, ongoing plumbing leaks and repair them to the point
9 where he was able to report to the person who hired him, the Defendant,
10 we've fixed those plumbing leaks.

11 And at that point, under the law, once somebody has repaired
12 a problem and they have no reason to think it wasn't repaired, they're
13 absolved of any obligation to report it by law, cited extensively in the
14 Defendant's brief.

15 So what I was giving you the chance to do was to come back
16 with an affidavit from somebody saying actually leaks continued in those
17 very same areas that were allegedly repaired.

18 There were complaints from the owner to the plumbing
19 company saying you didn't fix anything. We're not going to pay you,
20 something to show that the representations of Mr. Holley in his affidavit,
21 which is very comprehensive, could be disputed or questioned.

22 But there is -- there was no affidavit offered by anybody on
23 behalf of the Plaintiff to dispute Holley's contentions, which I think takes
24 us right back to where we were to begin with, after the filing of Holley's
25 affidavit, because you can't just do an information dump and say it's in

1 there somewhere, Judge.

2 You'll find that there's -- you could genuinely dispute Holley's
3 affidavit somewhere in these documents. I just -- it doesn't do it. So --

4 MR. GRAF: A couple of things, Your Honor, if I could. We did
5 drop off a copy of a thumb drive that had all of the documents attached.

6 The documents that were attached are also referenced in our
7 supplemental brief, beginning on page 15 and incorporated by
8 reference.

9 Included in those documents is the deposition transcript of Mr.
10 Holley and the deposition transcript of Mr. Gerber, who are both
11 referenced in there. Both sworn --

12 THE COURT: You understand, though, that when you're
13 pitching your case to the Court, you don't just hand them a banker's box
14 and say our file is in there. If you read it, you will see that we have a
15 case.

16 MR. GRAF: And we didn't do that, Your Honor. We argued
17 that in our brief.

18 THE COURT: You didn't reference any sworn testimony. You
19 didn't attach any excerpts.

20 MR. GRAF: Your Honor --

21 THE COURT: There's nothing that refutes Holley's affidavit at
22 all.

23 MR. GRAF: Your Honor, we did. There's -- they're replete
24 with footnotes citing the exact page and line of the testimony that we're
25 referencing.

1 We gave you all of that information. We produced it. And we
2 dropped a copy off for your Court, Your Honor.

3 So I -- there's several things that are included in those
4 documents, Your Honor, and they're all footnoted in our brief. And they
5 include Dr. Swanson's two volumes of depositions, which we referenced
6 extensively.

7 And in that deposition, we also reference, you know, I thought
8 His Honor put me on a task to go and find some sort of incidence of
9 moisture or water that had not been repaired.

10 We found that. There was a water leak that Dr. Swanson
11 testified to at length in his deposition. And it's cited to multiple times in
12 our supplemental brief that he is aware that there was a leak in the
13 basement bathroom, that it was not repaired.

14 I got Mr. Holley and Mr. Gerber, both employees of the
15 plumbing company, to admit that they did not make that repair. They
16 were not aware of the leak, period.

17 So all of that is cited in our brief, Your Honor. I -- you had put
18 me down the track of saying, okay, if there was an incidence of moisture
19 or something along those lines, go and find it.

20 We did. That's why we produced all this stuff. We took, in
21 addition to Dr. Swanson's two volumes of depositions, we did written
22 discovery on all Defendants.

23 THE COURT: Okay, but don't tell me about two volumes of
24 depositions because I'm not going to read -- nobody's going to read two
25 volumes of depositions.

1 MR. GRAF: Your Honor, there's --

2 THE COURT: Your job as counsel is to tease out the
3 information and provide me with the specific information.

4 MR. GRAF: There's --

5 THE COURT: Now if there was a leak that Swanson wasn't
6 aware of or the plumbing company wasn't aware of and didn't attempt to
7 repair, that's something else.

8 My question is do you refute the affidavit of Holley? And if so,
9 you just say Holley says this. We have this information that's in direct
10 contravention to that.

11 MR. GRAF: And that is in here, Your Honor.

12 THE COURT: Well --

13 MR. GRAF: That is in our brief. It's in the footnotes. And
14 more importantly, Your Honor --

15 THE COURT: Why would you put it in the footnotes? I love
16 footnotes and I read them, but if you're --

17 MR. GRAF: Well, because Your Honor, I apologize. The
18 formatting of our brief is we make the statement above. Then we say
19 footnote, and then you go to the footnote, and it says Volume 2, page
20 138 of Dr. Swanson's depo.

21 THE COURT: That part's fine. That part's fine. Do you take
22 Holley's affidavit side by side and compare it to say so when Holley says
23 this, we can dispute that?

24 Because the moment there's a dispute, it's all over with in
25 terms of a motion for summary judgment that has to be tried by a jury.

1 MR. GRAF: And I agree, Your Honor. And there is a disputed
2 fact here. The disputed fact is that incidence of water that occurred in a
3 May 2015 report that Dr. Swanson testified to at length, and then, Your
4 Honor, he kind of then -- and the way I argue it in the brief is in kind of
5 an OCD manner, he keeps a series of versions of that report, which is
6 Exhibit 49 to that production. And it says in multiple areas that Dr.
7 Swanson didn't fix it, the plumbers couldn't find it, so they didn't fix it.

8 And we've got photographs. You know, Dr. Swanson in his
9 deposition, we talk about that too in our brief, Your Honor, tries to
10 dispute the actual instance of the occurrence.

11 So I brought with me and what was produced on the drive,
12 Your Honor, I apologize, were color copies. And here's the color copies.

13 And if I can approach, Your Honor, I mean, this is on the disk.
14 It shows actual water dripping from the ceiling. This is the water
15 condition that he never repaired.

16 THE COURT: Counsel, if you want your reader to see
17 documents, give your reader the documents, not a thumb drive or a DVD
18 or some --

19 MR. GRAF: Your Honor, on page 13, we incorporated by
20 reference all of those documents that we attached and that we
21 produced.

22 THE COURT: You can incorporate anything by reference, but
23 just in terms of trying to persuade somebody to your point of view, just
24 give them the information. Don't make them have to go look for it.

25 All right, let me hear from Defense counsel?

1 MR. GALLIHER: Well, Your Honor, I think that's exactly what
2 happened is the Court said go and find some information that what Mr.
3 Holley has presented in this affidavit is inaccurate, i.e. that either these
4 repairs were not made.

5 But not only that the repairs are not made, but that Dr.
6 Swanson knew the repairs were not made because both of those
7 problems are required under Nelson.

8 And he didn't do that. What he did was he came up with what
9 he just talked to you about, which we addressed in our brief, which is the
10 reddest of herrings really is five years ago, a home inspector hired by Dr.
11 Swanson saw a couple drips on a vent and a couple drips on the
12 ground.

13 Dr. Swanson was made aware of that. He informed
14 Rakeman. They came out. They couldn't find anything. For the next
15 two years, Dr. Swanson lived in the house, never saw water there again.

16 For the last two years, the Folinos have lived in that house.
17 No evidence from the Folinos that they've ever seen water there. No
18 evidence that any -- from any plumber or anybody else that there's ever
19 been a leak there.

20 It's a exhaust vent over the toilet in the bathroom. That water
21 could have come from -- could have gone inside the flapper and ran out.
22 Nobody knows where it came from, but we know that Rakeman went
23 and looked and could not identify a plumbing leak up there.

24 So that's not what was pled in his complaint, which was that
25 Dr. Swanson was aware of a systemic problem --

1 THE COURT: Ongoing problem.

2 MR. GALLIHER: -- in the Uponor system. And there's been
3 no evidence of that over the last 90 days. We've produced almost a
4 thousand documents.

5 We didn't try at all to ratchet back the discovery. All three
6 Defendants responded to requests for production, requests for
7 admission, interrogatories.

8 We've produced Dr. Swanson twice, his assistant, Dr. -- both
9 of Dr. Swanson's realtors, and both the plumbers for deposition.

10 We've spent thousands and thousands of dollars allowing him
11 to do what the Court asked him to do, which was to go and find some
12 information, some evidence that would create a triable issue of fact here
13 that Dr. -- that to meet the Nelson standard, Dr. Swanson --

14 THE COURT: Yeah, you realize that the Holley affidavit
15 embraces the time period and the subject leaks that would be a subject
16 for your clients to complain about had they not -- no, you can't talk about
17 something that happened in 2015 and didn't occur. It doesn't matter,
18 okay?

19 MR. GRAF: No, Your Honor, the -- yes, I can talk about that
20 because that's what the SRPD is exactly for. The sellers real property
21 disclosure form.

22 And we argued it, Your Honor, in particular on page 15 of our
23 brief. More importantly, Dr. Swanson informed the Plaintiffs of the water
24 moisture condition in 2017. And he did an Addendum 4A, that we talk
25 about in our brief.

1 And it talks about the water loss. And, Your Honor, there's a
2 report that we produced in these documents from a mold testing
3 company that on November 17th, the day he did the Addendum 4A, that
4 he was informed that the house tested positive for mold.

5 Dr. Swanson testified in his deposition absolutely that's the
6 date of the report, November 17th, 2017. And it's exhibit -- I can give
7 you the exhibit that we produced it, Your Honor.

8 And that report says that there's is mold, aspergillus and
9 stachybotrys in this house that has to be remediated. On that date,
10 that's the date that Dr. Swanson then produced the addendum report
11 that just identifies the water leak.

12 Mysteriously enough, Your Honor, also in the production that
13 came from the Plaintiffs, we didn't get the November 17th report
14 identifying the mold.

15 What we got from the Plaintiff was a December clearance
16 report. We got that mold report from November from the actual Infinity
17 Environmental Company.

18 THE COURT: What's the December clearance report?

19 MR. GRAF: December clearance report says the mold has
20 been cleaned up.

21 THE COURT: Right, so the problem has been remedied.

22 MR. GRAF: But Your Honor, it doesn't vitiate --

23 THE COURT: So the Nelson case --

24 MR. GRAF: -- the fact that on November 17th, there's a
25 question of fact as to whether or not Dr. Swanson was aware that there

1 was mold and ongoing -- what he testified to in his deposition is he had
2 an obligation to identify ongoing problems in the house.

3 THE COURT: Ongoing. And so, the problem is once you
4 have a clearance report where you have a plumbing company repair it
5 by virtue of state law and the Nelson Supreme Court case, it allows,
6 rightly or wrongly, it allows the home seller to close the door on the
7 obligation to report those issues. They become no longer relevant and
8 required to be reported.

9 MR. GRAF: So here's my point, Your Honor, I want to make
10 sure we're very clear on this. The date of the addendum where Dr.
11 Swanson puts my clients on notice of the water leak from November 7,
12 2017, he does not identify the fact that there's a mold condition in the
13 house. He --

14 THE COURT: Hadn't there been a clearance report issued in
15 December?

16 MR. GRAF: Your Honor, that's after the fact. I'm talking about
17 the addendum. Telling them that there wasn't a -- was a condition of
18 mold, he did not do that. That is a question of fact, but --

19 THE COURT: But of what consequence is it if it's been
20 cleared?

21 MR. GRAF: Your Honor, you're talking about two different
22 dates.

23 THE COURT: I know.

24 MR. GRAF: The clearance was a month later, a month and a
25 half later.

1 THE COURT: Right, but it's a clearance report.

2 MR. GRAF: Okay. And I get that, Your Honor, so --

3 THE COURT: So if your client is not suing, claiming that
4 there's aspergillus or stachybotrys that they've had to remediate,
5 correct?

6 MR. GRAF: Correct, Your Honor.

7 THE COURT: Okay, so --

8 MR. GRAF: What we're suing --

9 THE COURT: -- talking about things that were wrong but had
10 been remediated, there's no cause of action based upon that.

11 MR. GRAF: So --

12 THE COURT: Even if the Plaintiff or the Defendant seller
13 didn't disclose them because it's of no consequence. There's no harm,
14 no foul.

15 MR. GRAF: So, Your Honor, that's why we took the
16 depositions of Mr. Gerber [phonetic], who is referenced in the affidavit
17 and Mr. Holley. And we also took Mr. Holley's deposition.

18 Both of those individuals testified that they were not aware of
19 any of the repairs that were ever performed in 2015. That directly
20 contradicts the testimony presented by the Defense. They say they are
21 not aware of Rakeman Plumbing going out and making the repairs of the
22 over four different water losses in that year.

23 In 2015, Dr. Swanson was made aware in May 21st report
24 that --

25 THE COURT: Okay, are you arguing that repairs were made,

1 that the Defendant seller didn't disclose?

2 MR. GRAF: I'm arguing that there is no testimony by
3 Rakeman Plumbing that the repairs that Dr. Swanson testified were
4 repaired in 2015 were actually made. They don't have any record of it
5 and they don't recall ever going out there. Both individuals testified the
6 same.

7 As a matter of fact, on pages 34 and 20 for Mr. Gerber's
8 report -- excuse me, deposition, and then also on page 63 of Mr.
9 Holley's deposition, he testifies he's not aware of any repairs that were
10 made at that house in 2015.

11 THE COURT: Okay, but of what consequence is that?

12 MR. GRAF: Because there were several -- His Honor's
13 previous ruling as far as I understood, so that Your Honor --

14 THE COURT: No, here's what I'm saying --

15 MR. GRAF: -- on Nelson v. Heer was that if there's --

16 THE COURT: Here's what I'm saying, here's what I'm saying.
17 If Holley says I'm not aware of any repairs being made in 2015 --

18 MR. GRAF: Correct.

19 THE COURT: -- the fact that he's not aware of any repairs
20 being made doesn't mean that the Plaintiff made any misrepresentations
21 to -- that the Defendant made any misrepresentations to the
22 Defendant -- to Plaintiff.

23 MR. GRAF: No, Your Honor, it's the omission. And if we
24 just -- just talking about the one leak in the bathroom basement, Your
25 Honor, he was aware of it. It's in this report, Your Honor. Exactly on the

1 executive summary, it says -- I apologize, Your Honor.

2 THE COURT: Now imagine trying to find it on a thumb drive
3 on my computer.

4 MR. GRAF: I understand, Your Honor. I thought we did a
5 good job of saying exactly where these -- where this information was in
6 the footnotes. And if His Honor wants some sort of supplement to go
7 through all this stuff, I'm more than willing to do that.

8 THE COURT: The problem is the courtesy copy that we
9 received was actually a listing of the witnesses and documents. That's
10 what I got. And I thought what am I supposed to do with this?

11 MR. GRAF: No, there was a separate thumb drive that came
12 over with all 5,500 pages of documents.

13 THE COURT: No, no, I'm not talking about the thumb drive.

14 MR. GRAF: Okay.

15 THE COURT: I'm talking about your supplemental brief.
16 What I received under the guise of a supplemental brief was not a
17 supplemental brief really. It was a listing of witness' names and exhibits.
18 That's what I got.

19 MR. GRAF: Your Honor, if I could approach?

20 THE COURT: Okay.

21 MR. GRAF: We -- if my office didn't drop our supplemental
22 brief off, then I apologize, Your Honor, but there was a brief that was
23 done.

24 MR. GALLIHER: And, Your Honor, Defendant -- this was our
25 motion, so we provided the courtesy copy. And what we provide to the

1 Court was everything that was filed by the Plaintiffs, which was the brief
2 and the list.

3 So we didn't provide to the Court anything that wasn't filed by
4 the Plaintiff because it's my -- why would we?

5 THE COURT: Well, I'm just telling you that whoever provided
6 the courtesy copy, it's on the Movant to do so, but I did not get that brief.
7 I got something called supplemental brief.

8 MR. GRAF: So --

9 THE COURT: And what it actually was was just a listing of all
10 the witnesses and the exhibits.

11 MR. GRAF: Okay, so you see that I did argument and we
12 cited to the record and we cited to the documents saying exactly where
13 this information was.

14 THE COURT: No, I don't see that because I haven't seen
15 that.

16 MR. GRAF: Oh, well, then I would -- Your Honor, if they didn't
17 give you this brief then, yeah.

18 But my office actually -- I actually spoke with my associate
19 yesterday, Your Honor. He told me that he sent this over with the thumb
20 drive of the 5,500 pages too last week --

21 THE COURT: You don't have a thumb drive, do you?

22 MR. GRAF: -- because we got an email saying, hey, this had
23 to be here seven days prior to the hearing and I made sure get it to them
24 seven days prior to the hearing.

25 THE COURT: We didn't see this?

1 UNIDENTIFIED SPEAKER: For some reason, we only got the
2 list of the documents.

3 THE COURT: That's all we got, that's all we got.

4 UNIDENTIFIED SPEAKER: It came in a red envelope.

5 MR. GRAF: I did the thumb drive myself, Your Honor, so --

6 THE COURT: No, no, no, I'm not saying --

7 MR. GRAF: -- if you want us to do another one.

8 THE COURT: -- what you generated in your office. I'm saying
9 what made it here to the Phoenix building on the 11th floor.

10 MR. GALLIHER: Your Honor, the binder that I hand-delivered
11 last Thursday and you -- of course, I ran into Your Honor out there, it
12 had Plaintiff's brief in it. It was I think 24 pages. And it had that list
13 because that's what Plaintiff filed and served on us.

14 MR. GRAF: I apologize, Your Honor, because I know what
15 you're referring to. We did do a, you know, an NRCP supplemental
16 production --

17 THE COURT: Right.

18 MR. GRAF: -- with list of witnesses and everything. We did
19 that also, but no, we did a full-blown brief.

20 MR. GALLIHER: And --

21 MR. GRAF: If you haven't seen it, then I'd ask that we --

22 THE COURT: I will. I'll take a --

23 MR. GRAF: -- have the opportunity to take a look at it.

24 THE COURT: I will take a look at it, but let me tell you
25 something. And this applies to everybody. Don't ever send a thumb

1 drive or a DVD to the Court expecting that the Court is going to reach
2 down under the desk, find a receptacle for the thumb drive, plug it in,
3 and use it, okay?

4 If you have documents you want to see, let's say you have a
5 200-page deposition. Am I going to be impressed if you attach a
6 200-page deposition?

7 No, I'll be very impressed if you attach the six-pages that you
8 refer to and highlight the language you want me to look at.

9 MR. GRAF: And that's what we do in the brief, Your Honor.

10 THE COURT: Well, but not if you said a thumb drive, counsel.

11 The other thing is I've had attorneys send over what they call
12 a courtesy copy and it's a photocopy of a DVD or it's a photocopy of a
13 thumb drive.

14 And I think really if you were going to feed your dog, would
15 you send it a picture of some Purina dog chow? So --

16 MR. GRAF: Your Honor, I was a law clerk.

17 THE COURT: -- think about what you're doing in terms of
18 presentation of information to the Court, so that it can see it.

19 I will most definitely go back and look at whatever is in the
20 package. We'll confirm that there's a supplemental brief in there and not
21 just a listing of witnesses and exhibits.

22 But thumb drives, DVDs, and so forth, those are useless in
23 terms of our study of the paperwork. If you saw the volume of materials
24 we have to go through, you would understand that there's no way we
25 can also look at a thumb drive and DVD and try to find things on it. Just

1 can't be done.

2 MR. GRAF: Your Honor, I was a law clerk for a lady that now
3 works down the hall, Justice Becker. And I would never have done that
4 if I hadn't had my office call and say, how do you want these
5 documents? I would never have done that. So I -- my apologies to the
6 Court and to your staff --

7 THE COURT: No.

8 MR. GRAF: -- if I misunderstood --

9 THE COURT: I'm not making myself clear.

10 MR. GRAF: No, no, no, you are making yourself clear.

11 THE COURT: 4,500 pages would fill a banker's box, okay?
12 There's no way that you refer to 4,500 pages. You're going to be
13 referring to isolated pages from that --

14 MR. GRAF: We are, Your Honor.

15 THE COURT: -- the ones that are operative like when you
16 pulled out the pictures of the leak. You aren't going to pull out pictures
17 of 40 pages of photographs. You're going to pull out the ones that
18 matter.

19 So I will take a look at this again, but I can tell you that I think
20 you're barking up the wrong tree. You're referencing things that
21 happened, were rectified, and were of no consequence at the time of
22 sale.

23 And your clients are upset that there were misrepresentations
24 made, even if it turned out that they were of no consequence to the
25 buyers. That's my impression of what's going on.

1 And I understand that they're upset because it was a very
2 expensive home. And one would not expect there to be any issues with
3 a very expensive home. I understand that.

4 MR. GRAF: And --

5 THE COURT: So we'll set this down for 30 days from today.
6 I'll take a look at the binder that Mr. Galliher sent over. We'll confirm that
7 there is in fact a brief in there separate and apart from the listing of
8 witnesses and exhibits. I'll review it and we'll have you come back for
9 continued hearing on --

10 THE CLERK: Let's do it -- that will be March -- no, April 7th.

11 THE COURT: April 7th.

12 THE CLERK: 9 a.m.

13 THE COURT: That date work for everybody?

14 MR. GRAF: It'll have to, yes.

15 MR. GALLIHER: It will, Judge, but I want to make sure
16 because now we created a little bit of a record here and I want to make
17 sure that there are -- that we're clear so that when Your Honor goes
18 back and looks at this.

19 The Addendum 4A, which was where Dr. Swanson disclosed
20 a leak, was made on the 16th of November. The mold testing was done
21 on the 17th of November, which is the day of the closing.

22 The mold testing result report that he said was dated
23 November 17th is actually dated November 24th. It's addressed to
24 Rakeman Plumbing.

25 Dr. Swanson testified under oath he'd never seen it until his

1 deposition a month ago. So, which by the way, the problem with that for
2 Mr. Graf and his clients is that November 24th is after the -- after closing.

3 Also, there is ample evidence of emails from the Folino's
4 agent where she discusses the leak. She discusses potential remedies.
5 It's cited in our brief. It's appended to our brief. She discusses potential
6 remedies, including on the night before closing that my clients can just
7 walk away.

8 So they elected not to do that with full knowledge of this leak.
9 And so, I mean, they -- I think they clearly waive that.

10 But I want to make sure that the Court is crystal clear that the
11 only evidence of mold came on the 24th, which was a week after the
12 closing. So it's impossible for Dr. Swanson to have knowledge of the
13 mold before the closing.

14 THE COURT: Okay, and there was a remediation or?

15 MR. GALLIHER: And there was a remediation. And two
16 weeks later, there's the report. And that report was provided to Dr.
17 Swanson. By whom and for what reason we don't know, but there was a
18 remediation in the meantime on --

19 THE COURT: Okay.

20 MR. GALLIHER: And then on December 5th --

21 THE COURT: We'll see you April 7th.

22 MR. GALLIHER: Thank you, Your Honor.

23 [Proceedings concluded at 9:41 a.m.]

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

a h

Chris Hwang
Transcriber