

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

JAY KVAM,
Appellant,

vs.

BRIAN MINEAU; and LEGION
INVESTMENTS, LLC,
Respondents.

Electronically Filed
Jul 30 2020 09:52 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 81422
District Court Case No. CV1800764

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately, and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d. 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: 2nd Department: 6
County: Washoe Judge: Lynne K. Simons
District Ct. Case No. CV18-00764

2. **Attorney Filing this Docketing Statement:**

Attorney: Michael L. Matuska Telephone: (775) 350-7220
Firm: Matuska Law Offices, Ltd.
Address: 2310 South Carson Street, Suite 6
Carson City NV 89701

Client(s): JAY KVAM v. BRIAN MINEAU; LEGION INVESTMENTS, LLC;
7747 S. May Street, an Unincorporated Joint Venture; and DOES I-X,
inclusive

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. **Attorney(s) Representing Respondent(s):**

Attorney: Austin Sweet Telephone: (775) 829-1222
Firm: Gunderson Law Firm
Address: 3895 Warren Way
Reno, NV 89509

Client(s): BRIAN MINEAU; and LEGION INVESTMENTS, LLC,

(List additional counsel on separate sheet if necessary)

4. **Nature of Disposition Below (check all that apply):**

- | | |
|---|---|
| <input type="checkbox"/> Judgment After Bench Trial | <input type="checkbox"/> Dismissal: |
| <input type="checkbox"/> Judgment After Jury Verdict | <input type="checkbox"/> Lack of Jurisdiction |
| <input checked="" type="checkbox"/> Summary Judgment | <input type="checkbox"/> Failure to State a Claim |
| <input type="checkbox"/> Default Judgment | <input type="checkbox"/> Failure to Prosecute |
| <input type="checkbox"/> Grant/Denial of
NRCP 60(b) Relief | <input type="checkbox"/> Other (specify): _____ |
| <input checked="" type="checkbox"/> Grant/Denial of Injunction | |
| <input checked="" type="checkbox"/> Grant/Denial of
Declaratory Relief | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Review of Agency
Determination | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| | <input type="checkbox"/> Other Disposition (specify): _____ |

5. Does this Appeal Raise Issues Concerning Any of the Following

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of Parental Rights

6. Pending and Prior Proceedings in this Court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Petition for Writ of Prohibition or Alternatively, Mandamus, Kvam v. Second Judicial District Court (In re Mineau/Legion), Dock.# 81480

7. Pending and Prior Proceedings in Other Courts. List the case name, number, and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

8. Nature of the Action. Briefly describe the nature of the action and the result below:

In 2017 Kvam invested \$93,781.31 to purchase and renovate a house located at 7747 S. May Street in Chicago, Illinois. Kvam did so after meeting with Brian Mineau (“Mineau”) and upon the representations that Mineau had success and experience flipping houses in Chicago and that Mineau would put up one-third of the project financing and manage the project. Mineau acquired the property in the name of his limited liability company, Legion Investments, LLC on February 13, 2017.

The parties did not have a detailed writing, but rather, their understanding is reflected in notes taken at the initial meeting, a subsequent Terms of Agreement and various oral communications. Pursuant to the Terms of Agreement, Kvam was to receive “7% annual return on any funds provided” together with “33.33% of net profit.” Kvam has therefore described the agreement as a hybrid loan agreement and joint venture/profit sharing agreement.

The project was never completed and Kvam eventually filed suit in the court below on April 11, 2018. The Complaint included causes of action as follows: 1. Declaration of Joint Venture; 2. Rescission or Reformation of Agreement; 3. Breach of Contract – Loan; 4. Breach of Contract and Tortious Breach of the Implied Covenant of Good Faith and Fair Dealing – Joint Venture Agreement; 4. Accounting; 5. Court Supervision of Dissolution and Winding Up, and Appointment of Receiver; 6.

Temporary and Permanent Injunction; 7. Derivative Claim (on behalf of the unincorporated joint venture referred to as 7747 S. May Street).

Mineau/Legion filed various counterclaims all of which were dismissed by Hon. Jerome Polaha, who was originally assigned the case, except for Mineau/Legion's third counterclaim for declaratory relief which was largely (but not entirely) repetitive of Kvam's first cause of action. During these early proceedings, Kvam discovered that Mineau did not provide funding for the project and that he had sold the house for a loss. Kvam therefore requested and was granted relief to file a *First Amended Complaint* ("FAC") which included an additional cause of action for Fraud, Fraudulent Inducement and Fraudulent Concealment. The FAC was filed on January 31, 2019. Mineau/Legion did not file any counterclaims in response to the FAC.

Kvam later discovered that Mineau/Legion had various other projects underway in Chicago at the same time, that the same contractor was working on these other projects and that Kvam's project funds were co-mingled with funds for these other projects and possibly used on the other projects. Kvam therefore requested and was granted relief to file a *Second Amended Complaint* ("SAC") that added claims for conversion and RICO claims. The SAC was filed on September 11, 2019. Mineau/Legion did not file any counterclaims in response to the SAC.

Discovery closed on December 6, 2019, trial was scheduled to commence March 2, 2020 and Mineau/Legion filed a *Motion for Summary Judgment* on January 6, 2020 in which they sought summary judgment on all Kvam's causes of action. In their motion, Mineau/Legion conceded that the investment at 7747 S. May Street should be considered a joint venture and admitted to Mineau's corresponding fiduciary duties. Mineau/Legion included a declaration in which Mineau disavowed his previous declarations and now claimed that he borrowed \$20,000 from Bradley Tammen to fund his share of project financing.

25. On or about May 26, 2017, Mr. Cole called me and requested the next \$20,000.00 progress payment for the project. I was travelling at the time and was unable to promptly make direct payment; however, at my request, Spinola agreed to arrange to have the funds wired to TNT on my behalf. I have previously testified in this action that Spinola retrieved these funds from my personal safe. However, upon further reflection and consideration in preparing this Declaration and preparing for trial, I believe my previous testimony was mistaken. I now recall that I borrowed the \$20,000 from Bradley Tammen In exchange for the short-term loan of \$20,000, I agreed to repay Mr. Tammen a flat amount of \$28,000 (which has since been repaid in full).

(See January 6, 2020 Declaration in support of *Motion for Summary*

Judgment) (emphasis added).

This was a sham declaration that was submitted after the close of discovery and was not supported by any evidence of a loan or repayment thereof.

Kvam's opposition was supported by lengthy points and authorities, a detailed declaration from Jay Kvam and forty-eight (48) exhibits. Kvam also requested that the court defer ruling on the motion until after it ruled on the Discovery Commissioner's January 10, 2020 *Recommendation for Order* and he had the benefit of the discovery anticipated thereunder. Kvam also objected to the admission of Mineau's sham declaration and filed a corresponding *Motion for Reconsideration of Order Affirming Discovery Commissioner's Recommendation, Entered May 16, 2019; for Discovery Sanction; and for Other Relief* ("Motion for Reconsideration"). In the *Motion for Reconsideration*, Kvam renewed the request for tax information in order to determine if Mineau ever reported a loan or the repayment thereof, for an order to show cause why Mineau should not be held in contempt for perjury, and for related sanctions. Judge Simons never ruled on Kvam's *Motion for Reconsideration*.

Judge Simons proceeded to grant Mineau/Legion's *Motion for Summary Judgment* in large part, despite the fact that she never ruled on the Discovery Commissioner's *Report and Recommendation* or Kvam's *Motion for Reconsideration* and Kvam never received the discovery to which he is entitled. To make matters worse, she largely, if not completely ignored Kvam's declaration and extensive evidentiary record in favor of Mineau's sham declaration and sua sponte granted summary judgment on Mineau/Legion's superseded counterclaim for declaratory relief. Mineau/Legion's counterclaims were almost completely dismissed and were not restated in response to Kvam's FAC or SAC. Despite this obvious point, most of the findings in Judge Simons' order are supported by a citation to "DA" which, according to her, means "Deemed Admitted" by not filing an answer to the non-existent counterclaims. Judge Simons basically granted summary judgment by default against a plaintiff who had prosecuted the case to the eve of trial, based on her sua sponte ruling that he failed to respond to an earlier pleading that had long since been superseded.

As for Kvam's Sixth Cause of Action for Temporary and Permanent Injunction, Judge Simons ruled that cause of action to be "legally ineffectual."

9. Issues on Appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

1. Whether Judge Simons committed multiple errors of law and abused her discretion by granting partial summary judgment in favor of Mineau/Legion based on DA (deemed admitted) findings of fact and a sham declaration, and by failing to rule on underlying discovery motions.

2. Whether genuine issues of fact remain for trial.
3. Did Judge Simons abuse her discretion by failing to rule on the Discovery Commissioner's January 10, 2020 *Recommendation for Order*?
4. Did Judge Simons abuse her discretion by failing to rule on Kvam's *Motion for Reconsideration*? This issue raises multiple related issues:
 - a. What is the duty of the District Judge to punish a party for perjury?
 - b. Whether DCR 13(7) precluded Judge Simons from reconsidering Judge Polaha's earlier discovery order which limited Kvam's ability to obtain Mineau's tax schedules when: i) the order was based on limited information then available; and ii) Mineau subsequently changed his testimony when he stated under oath that he borrowed and repaid a loan from Bradley Tammen to fulfill his share of the project financing?
 - c. Does WDCR 10(3) preclude Judge Simons from considering Kvam's *Motion for Reconsideration* because it requests multiple, related forms of relief?
 - d. Whether Mineau/Legion's tax schedules and financial information are discoverable under *Hetter v. Dist. Court*, 110 Nev. 513, 520, 874 P.2d 762, 766 (1994) and *Cain v. Price*, 134 Nev. Adv. Op. 26 at 7, 415 P.3d 25, 30 (2018) when: i) Mineau/Legion did not keep separate accounting records for the joint venture; ii) did not file a separate tax return for the joint venture; and iii) the requested information will prove or disprove Mineau's new testimony that he borrowed and repaid a loan to fulfill his share of the project financing?

10. Pending Proceedings in this Court Raising the Same or Similar Issues. If you are aware of any proceedings presently pending before this court which raise the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issues raised:

11. Constitutional Issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other Issues. Does this appeal involve any of the following issues?

- ☐ Reversal of well-settled Nevada precedent (identify the case(s))
- ☐ An issue arising under the United States and/or Nevada Constitutions
- ☐ A substantial issue of first impression
- ☐ An issue of public policy
- ☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or Retention in the Supreme Court.

Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case and include an explanation of their importance or significance.

This case may be assigned to the Court of Appeals because it involves the grant or denial of injunctive relief under NRAP 17(b)(12), pre-trial discovery orders under NRAP 17(b)(14) and an order granting in part a motion for summary judgment and it does not involve matters presumptively retained by the Supreme Court pursuant to NRAP 17(a).

14. Trial. If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice? _____

No.

16. Date of Entry of Written Judgment or Order Appealed from.

June 5, 2020.

17. Date Written Notice of Entry of Judgment or Order Was Served

June 5, 2020

Was service by:

☐ Delivery

☒ Mail/Electronic/Fax

18. If the Time for Filing the Notice of Appeal was Tolloed by a Post-Judgment Motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date, and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of Filing: _____

☐ NRCP 52(b) Date of Filing: _____

☐ NRCP 59 Date of Filing: _____

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev._____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion: _____

(c) Date written notice of entry of order resolving tolling motion was served: _____

Was service by:

☐ Delivery

☐ Mail

19. Date Notice of Appeal Filed.

June 29, 2020.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify Statute or Rule Governing the Time Limit for Filing the Notice of Appeal, e.g., NRAP 4(a) or other: NRAP 4(a)(1).

SUBSTANTIVE APPEALABILITY

21. Specify the Statute or Other Authority Granting this Court Jurisdiction to Review the Judgment or Order Appealed From:

(a)

- | | |
|---|---------------------------------------|
| <input type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input type="checkbox"/> NRS 233B.150 |
| <input checked="" type="checkbox"/> NRAP 3A(b)(3) | <input type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify): | |

(b) Explain how each authority provides a basis for appeal from the judgment or order: Appeal from an order denying injunctive relief.

22. List All Parties Involved in the Action in the District Court:

(a) Parties:

Plaintiff, JAY KVAM.

Defendants, BRIAN MINEAU; LEGION INVESTMENTS, LLC; 7747 S. MAY STREET, an unincorporated joint venture

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other: 7747 S. MAY STREET, an unincorporated joint venture, is a nominal defendant that was included only for purposes of Appellant's cause of action for "derivative claim" and does not have standing separate from the parties and has not separately appeared in this case.

23. Give a Brief Description (3 to 5 words) of Each Party's Separate Claims, Counterclaims, Cross-Claims, or Third-Party Claims, and the Date of Formal Disposition of Each Claim:

1. Declaratory Relief – Declaration of Joint Venture
2. Rescission or Reformation of Agreement
3. Breach of Contract – Loan
4. Breach of Contract and Tortious Breach of the Implied Covenant of Good

Faith and Fair Dealing – Joint Venture Agreement.

5. Accounting
6. Court Supervision of Dissolution and Winding Up, and Appointment of Receiver;
7. Temporary and Permanent Injunction – to preclude further activities pending final winding up and prevent disposition of the proceeds of sale
8. Fraud
9. Conversion – diversion of project funds and withholding proceeds of sale
10. RICO - Taking property from another not under circumstances amounting to robbery; Embezzlement of money or property valued at \$650 or more; Obtaining possession of money or property valued at \$650 or more, or obtaining a signature by means of false pretense; Perjury or subornation of perjury; Offering false evidence.
11. Derivative Claim (on behalf of the unincorporated joint venture referred to as 7747 S. May Street).

24. Did the Judgment or Order Appealed From Adjudicate ALL the Claims Alleged Below and the Rights and Liabilities of ALL the Parties to the Action Below?

- ☐ Yes
☒ No

25. If You Answered “No” to Question 24, Complete the Following:

- (a) Specify the claims remaining pending below:
 1. Declaratory Relief – Declaration of Joint Venture
 5. Accounting
 6. Court Supervision of Dissolution and Winding Up, and Appointment of Receiver;

(b) Specify the parties remaining below:

Plaintiff, JAY KVAM.

Defendants, BRIAN MINEAU; LEGION INVESTMENTS, LLC; 7747 S. MAY STREET, an unincorporated joint venture

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

- ☐ Yes
☒ No

(d) Did the district court make any express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

- ☐ Yes
☒ No

26. If You Answered “No” to Any Part of Question 25, Explain the Basis for Seeking Appellate Review (e.g., order is independently appealable under NRAP 3A(b)):

The order is independently appealable under NRAP 3A(b)(3) as an order granting or refusing to grant an injunction. Even though the district court purported to deny Defendant/Respondent’s motion for summary judgment on Plaintiff/Appellant’s Seventh Cause of Action in the Second Amended Complaint for Temporary and Permanent Injunction, the district court actually ruled that “. . . the SAC’s Seventh Cause of Action for Temporary and Permanent Injunction is legally ineffectual based on the deposit of funds.” In fact, Plaintiff/Appellant’s Seventh Cause of Action was intended to preclude further activities pending final winding up and prevent disposition of the proceeds of sale. Regardless, the effect is a refusal to grant an injunction.

27. Attach File-Stamped Copies of the Following Documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims, and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal

- Notices of Entry for each attached order

•

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information, and belief, and that I have attached all required documents to this docketing statement.

Jay Kvam
Name of Appellant

Michael L. Matuska
Name of Counsel of Record

July 30, 2020
Date


MICHAEL L. MATUSKA, ESQ.

Carson City, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 30th day of July, 2020 I served a copy of this completed docketing statement upon all counsel of record:

Austin K. Sweet, Esq.
Mark H. Gunderson, Esq.
Gunderson Law Firm
3895 Warren Way
Reno, NV 89509
Attorney for Brian Mineau; and Legion Investments, LLC

Janet L. Chubb, Esq.
Kaempfer Crowell
50 W. Liberty Street
Suite 700
Reno, NV 89501
Settlement Judge

- ☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically filed a true and correct copy of the above-identified document with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the persons named above.
- ☐ By personally serving it upon him/her.
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

Dated this 30th day of July, 2020.

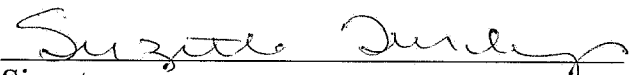

Signature

Exhibit Index
DOCKETING STATEMENT CIVIL APPEALS

EXHIBIT	DOCUMENT	NO. OF PAGES
1	Second Amended Verified Complaint	13
2	Order Granting, In Part, and Denying, In Part Defendant's Motion for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant to Court's NRCP 56 Notice	45
3	Notice of Entry of Order - Order Granting, In Part, and Denying, In Part Defendant's Motion for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant to Court's NRCP 56 Notice	50

Exhibit 1
SECOND AMENDED VERIFIED COMPLAINT
(Docketing Statement Civil Appeals)

Exhibit 1
SECOND AMENDED VERIFIED COMPLAINT
(Docketing Statement Civil Appeals)

CODE: 1090
Michael L. Matuska, Esq. SBN 5711
MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City, NV 89701
Attorneys for Plaintiff

THE SECOND JUDICIAL DISTRICT COURT OF NEVADA
IN AND FOR THE COUNTY OF WASHOE

JAY KVAM,
Plaintiff,
v.
BRIAN MINEAU; LEGION INVESTMENTS,
LLC; 7747 S. May Street, an Unincorporated
Joint Venture; and DOES I-X, inclusive,
Defendants.

Case No. CV18-00764

Dept. No. 6

**SECOND AMENDED VERIFIED
COMPLAINT**

COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
Offices, Ltd., Michael L. Matuska, and hereby complains, alleges, and avers as follows:

I.

PARTIES

1. Plaintiff JAY KVAM ("KVAM") is now and at all times mentioned herein was a
resident of Washoe County, Nevada.

2. Defendant LEGION INVESTMENTS, LLC ("LEGION") is a Nevada limited
liability company, duly formed and operating pursuant to Chapter 86 of the Nevada Revised
Statutes, with its principal place of business in Washoe County, Nevada.

3. Defendant BRIAN MINEAU ("MINEAU") is now and at all times mentioned
herein was a resident of Washoe County, Nevada and the member/manager of LEGION.

4. 7747 S. May Street, Chicago, Illinois, is an unincorporated joint venture formed
between KVAM, MINEAU, LEGION, and Michael Spinola, and is hereafter referred to "7747."

///

6. Plaintiff is informed and believes, and on that basis alleges, that each Defendant is the duly authorized agent, employee, or representative of the other named Defendants, and that each Defendant is liable for the acts and omissions of the other named Defendants.

7. Plaintiff is informed and believes, and therefore alleges, that at all times relevant herein, the fictitious entities identified herein were mere shams and were organized and operated as the alter ego of the individual Defendants named herein for their personal benefit and advantage, in that the individual Defendants have at all times herein mentioned exercised total dominion and control over the fictitious entities. The individual Defendants and the fictitious entities have so intermingled their personal and financial affairs that the fictitious Defendant entities were, and are, the alter egos of the individual Defendant(s), and should be disregarded. By reason of the failure of the fictitious entities, each individual Defendant should be and is liable to the Plaintiff for the relief prayed for herein.

20 | GENERAL ALLEGATIONS

8. On or about February 14, 2017, KHAM entered an agreement with MINEAU and LEGION to participate in a joint venture, along with Michael Spinola (the “Agreement”). The purpose of the joint venture was to purchase, restore, and resell a house located at 7747 S. May Street, Chicago, Illinois (the “House”) for profit. The general terms of the Agreement were memorialized in writing and include the following:

26 a. KVAM would provide the money to purchase the House, and would be
27 entitled to a 7% annual return on investment, with an annual payment due 12 months from the date
28 of disbursement;

1 b. Renovation would proceed through three (3) funding draws, one draw to be
2 funded by each joint venturer;

3 c. MINEAU would manage the project;

4 d. The profits would be shared 1/3rd each between KHAM, LEGION, and
5 Spinola; and

6 e. MINEAU would transfer all interest in the joint venture to KHAM in the
7 event the joint venture failed.

8 9. The joint venture created by the Agreement identified above and described herein
9 as 7747 was an unincorporated association that was not registered with the Nevada Secretary of
10 State and did not file a Statement of Partnership pursuant to NRS 87.4327.

11 10. KHAM invested \$93,784.31 in the project to date through a series of five (5) wire
12 transfers as follows:

13 a. \$44,000 on February 13, 2017 for the purchase money

14 b. \$784.31 on February 13, 2017 for closing costs

15 c. \$20,000 on March 23, 2017 for the first draw

16 d. \$20,000 on April 14, 2017 for the second draw

17 e. \$9,000 on May 18, 2017 for the third draw.

18 11. The amounts listed in Par. 10 are exclusive of any additional costs and interest, and
19 include KHAM's funding contribution, as well as Spinola's funding contribution, for which
20 KHAM acceded to Spinola's interest in the joint venture such that Spinola is no longer part of the
21 joint venture.

22 12. KHAM has not received his annual interest payment on any of the advances
23 identified in Par. 10.

24 13. Title to the House was vested in LEGION, which is MINEAU's limited liability
25 company.

26 14. MINEAU initially represented that the project would take approximately six (6)
27 weeks to complete. The timeframe was later extended to 90 days for the construction phase.

28 15. MINEAU failed to fund his required renovation draw.

4 17. KVAM has demanded payment and an accounting from MINEAU and LEGION on
5 multiple occasions, including demands and letters sent on February 16, 2018, March 9, 2018, and
6 March 14, 2018. These demands have been refused and MINEAU and LEGION have not made
7 any payment to KVAM.

8	18. KIAM is now disassociated from 7747.
---	--

19. Plaintiff has been forced to retain an attorney to prosecute the action and is entitled to recover the legal fees and costs incurred a result thereof.

FIRST CAUSE OF ACTION
(Declaration of Joint Venture)

14 20. Plaintiff hereby incorporates by reference all of the paragraphs above as though
15 fully set forth herein.

16 21. There is an actual, justifiable, present controversy between KHAM, MINEAU, and
17 LEGION on the question of whether the Agreement identified in Par. 8 constitutes a joint venture
18 agreement, an agreement for MINEAU to transfer his membership interest in LEGION, or some
19 other type of agreement.

20 22. KVAM therefore requests a declaration on the legal rights created by the
21 Agreement, the status of the unincorporated joint venture referred to herein as 7747 and the
22 respective interests of the joint venturers.

23 23. KVAM further requests a declaration on the amount of loans and contributions
24 made to the 7747 by each of the joint venturers.

25 24. KVM further requests a declaration that 7747, MINEAU, and LEGION were
26 required to assign the entire interest in the 7747 to KVM in the event it failed in any way.

27 || 11

28 //

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.
SECOND CAUSE OF ACTION
(Rescission or Reformation of Agreement)

25. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.

26. The parties were mutually mistaken about the viability of the project, the legal status of the joint venture created by the Agreement and identified herein as 7747, and the rights and obligations of the Parties as a result thereof.

27. The Agreement should be rescinded and KVAM should be restored to his original position with all money returned at a reasonable rate of interest of not less than 7%.

28. In the alternative, the Agreement should be reformed to clarify the status of 7747 as a joint venture and the role of the joint venturers.

V.
THIRD CAUSE OF ACTION
(Breach of Contract - Loan)

29. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.

30. KVAM has demanded his annual payment and repayment of the monies loaned, but Defendants have failed and refused to repay him.

31. KVAM has performed all conditions precedent to his right to be repaid on the loan and, to the extent any further conditions were not performed, KVAM's performance was excused or rendered impossible by the acts of the Defendants.

32. As a result of the foregoing, KVAM has been damaged in an amount to be proven at trial in excess of \$15,000.

VI.
FOURTH CAUSE OF ACTION
(Breach of Contract and Tortious Breach of Implied Covenant of Good Faith and Fair Dealing - Joint Venture Agreement)

33. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.

34. As parties to the joint venture Agreement, MINEAU and LEGION owed multiple contractual, legal and fiduciary duties to KVAM and 7747, which included the duty to provide funding, the duty to maintain books and records, the duty to account to KVAM and 7747, the duty of loyalty, the duty of care, and the duty to fulfill the purpose of the joint venture and the terms of Agreement in good faith in a timely manner.

35. As parties to the joint Venture Agreement, MINEAU and LEGION further owed a duty of good faith to KVAM and 7747.

36. MINEAU and LEGION breached their legal, contractual, and fiduciary duties to KVAM and 7747 by inter alia: failing to provide funding; failing to properly manage and complete the renovation; comingling joint venture funds with LEGION's accounts; failing to account to KVAM and 7747; concealing facts and making multiple misrepresentations to KVAM as set forth above regarding the timing of completion, the status of the project and the sale thereof.

37. As a result of the foregoing, KVAM and 7747 have been damaged in an amount to be determined at trial in excess of \$15,000.

38. As a further result of the above-described wrongful, fraudulent, oppressive, and malicious conduct, KVAM and 7747 are also entitled to punitive and exemplary damages.

VII.
FIFTH CAUSE OF ACTION
(Accounting)

39. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.

40. As a joint venturer in 7747, MINEAU and LEGION have the duty to account to KVAM and KVAM has the right to examine the books and records of the joint venture.

41. The exact amount owing KVAM is yet unknown and KVAM is entitled to an equitable accounting in order to determine the same.

VIII.
SIXTH CAUSE OF ACTION
(Court Supervision of Dissolution and Winding Up, and Appointment of Receiver)

42. Plaintiff hereby incorporates by reference all of the paragraphs above as though

1 fully set forth herein.

2 43. KVAM has disassociated from the joint venture, the joint venture is no longer
3 viable, the conduct of MINEAU and LEGION has frustrated the joint venture, the purpose of the
4 joint venture has been completed, and it is not reasonably practicable to carry on the joint venture,
5 such that 7747 should be dissolved and wound up.

6 44. As part of the winding up, KVAM is entitled to an accounting and settlement of all
7 partnership accounts and liquidation of the partnership assets.

8 45. The winding up should be conducted with court supervision and a receiver should
9 be appointed.

10 **IX.**
11 **SEVENTH CAUSE OF ACTION**
12 **(Temporary and Permanent Injunction)**

13 46. Plaintiff hereby incorporates by reference all of the paragraphs above as though
14 fully set forth herein.

15 47. Following dissolution of the joint venture, MINEAU and LEGION should be
16 temporarily and permanently enjoined from conducting any business on behalf of 7747 or
17 incurring any liabilities in furtherance of the joint venture, except as approved by the Court and
18 necessary to preserve the proceeds of sale.

19 **X.**
20 **EIGHTH CAUSE OF ACTION**
21 **(Fraud, Fraudulent Inducement and Fraudulent Concealment)**

22 48. Plaintiff hereby incorporates by reference all of the paragraphs above as though
23 fully set forth herein.

24 49. As parties to the joint venture Agreement, MINEAU and LEGION owed multiple
25 contractual, legal and fiduciary duties to KVAM and 7747, which included the duty to disclose
26 material facts.

27 50. Prior to signing the Agreement, MINEAU and LEGION misrepresented and
28 concealed the true facts, including their intention and ability to fund the project and complete the
project in a timely manner.

1 be determined at trial in excess of \$15,000.

2 60. As a further result of the above-described wrongful, fraudulent, oppressive, and
3 malicious conduct, KVAM and 7747 are also entitled to punitive and exemplary damages in an
4 amount to be determined at trial.

5 **XII.**
6 **TENTH CAUSE OF ACTION**
7 **(RICO)**

8 61. Plaintiff hereby incorporates by reference all of the paragraphs above as though
9 fully set forth herein.

10 62. Defendants MINEAU and LEGION violated predicate racketeering acts under
11 Nevada's Racketeer Influenced and Corrupt Organizations act (NRS 207.360 et seq.), including
12 but not necessarily limited to the following:

- 13 a. Fraud, misappropriation, conversion and embezzlement;
- 14 b. Obtaining money by false pretenses;
- 15 c. Perjury;
- 16 d. Fraud and deceit in connection with the offer, sale and purchase of a
17 security interest in LEGION;
- 18 e. Fraudulent business practices and conduct

19 63. KVAM did not participate in the racketeering scheme.

20 64. As a result of the foregoing, KVAM and 7747 have been damaged in an amount to
21 be determined at trial in excess of \$15,000 and under NRS 207.470, they are entitled to damages
22 from MINEAU and LEGION for three (3) times the actual damages sustained.

23 65. As a further result of the above-described wrongful, fraudulent, oppressive, and
24 malicious conduct, KVAM and 7747 are also entitled to punitive and exemplary damages in an
25 amount to be determined at trial.

26 **XIII.**
27 **ELEVENTH CAUSE OF ACTION**
28 **(Derivative Claim)**

66. Plaintiff hereby incorporates by reference all of the paragraphs above as though

1 fully set forth herein.

2 67. KVAM is disassociated from the joint venture identified herein as 7747.

3 68. Any all claims, causes of action, and prayers for relief asserted by KVAM are also
4 asserted derivatively on behalf of 7747 to the fullest extent permitted by law.

5 69. KVAM has made multiple requests for MINEAU and LEGION to return his
6 investment and to provide an accounting.

7 70. Because Defendants have already refused KVAM's numerous requests to cure the
8 multiple breaches of the Agreement and to comply with the Nevada Revised Statutes, it would be
9 futile for him to delay the filing of this Complaint in order to attempt to secure Defendants'
10 agreement to initiate this action.

11 WHEREFORE, Plaintiff prays for relief as follows:

12 1. For an order declaring the rights and obligations of KVAM, MINEAU, LEGION,
13 and 7747;

14 2. For Court supervised winding up and an order appointing a receiver to secure any
15 remaining assets and to complete any remaining steps to winding up 7747;

16 3. For a temporary and permanent injunction enjoining MINEAU and LEGION from
17 any further involvement with 7747 and its assets;

18 4. For an order declaring that MINEAU and LEGION are liable for any debts of 7747
19 existing prior to or after the disassociation of KVAM and that they are further obligated to
20 indemnify KVAM against any liabilities;

21 5. For an equitable accounting;

22 6. For compensatory damages in an amount to be proven at trial in excess of \$15,000;

23 7. For punitive and exemplary damages in excess of \$100,000;

24 8. For an award of costs and attorney fees incurred in prosecuting this action;

25 9. For such other and further relief as the Court deems just in the premises.

26 **AFFIRMATION**

27 The undersigned does hereby affirm that the preceding document does not contain the
28 social security number of any person.

1 Dated this 11th day of September, 2019.

2
3 MATUSKA LAW OFFICES, LTD.

4
5 By: 

6 MICHAEL L. MATUSKA, SBN 5711

7 Attorneys for Plaintiff, JAY KVAM,

8 individually and derivatively on behalf of

9 the unincorporated joint venture identified as 7747

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
MATUSKA LAW OFFICES, LTD.
2310 S. Carson Street, #6
Carson City NV 89701
(775) 350-7220

VERIFICATION

STATE OF NEVADA)
COUNTY OF Carson City) ss.

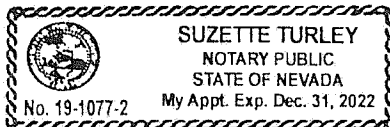
JAY KVAM, being first duly sworn, deposes and says:

That he is the Plaintiff in the above-entitled action; that he has read the foregoing instrument and knows the contents thereof and that the same is true of his own knowledge except for those matters stated on information and belief, and as to those matters, he believes them to be true.

Jay Kvam
JAY KVAM

SUBSCRIBED AND SWORN to before me,
this 11th day of September 2019,
by JAY KVAM.

Suzette Turley
NOTARY PUBLIC



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 14th day of September 2019, I served a true and correct copy of the preceding document entitled **SECOND AMENDED VERIFIED COMPLAINT** as follows:

Austin K. Sweet, Esq.
GUNDERSON LAW FIRM
3895 Warren Way
Reno, NV 89509
asweet@gundersonlaw.com

☒ **BY CM/ECF:** I electronically filed a true and correct copy of the above-identified document with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the person(s) named above.

☐ **BY U.S. MAIL:** I deposited for mailing in the United States mail, with postage fully prepaid, an envelope containing the above-identified document(s) at Carson City, Nevada, in the ordinary course of business.

☐ **BY EMAIL:** (as listed above)

☐ **BY PERSONAL SERVICE:** I personally delivered the above-identified document(s) by hand delivery to the office(s) of the person(s) named above.

☐ **BY FACSIMILE:**

☐ **BY FEDERAL EXPRESS ONE-DAY DELIVERY:**

☐ **BY MESSENGER SERVICE:** I delivered the above-identified document(s) to Reno-Carson Messenger Service for delivery.

/s/ SUZETTE TURLEY
SUZETTE TURLEY

Exhibit 2

**ORDER GRANTING, IN PART, AND DENYING, IN PART
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; ORDER
GRANTING SUMMARY JUDGMENT ON CLAIM PURSUANT TO
COURT'S NRCP 56 NOTICE**
(Docketing Statement Civil Appeals)

Exhibit 2

**ORDER GRANTING, IN PART, AND DENYING, IN PART
DEFENDANT'S MOTION FOR SUMMARY JUDGMENT; ORDER
GRANTING SUMMARY JUDGMENT ON CLAIM PURSUANT TO
COURT'S NRCP 56 NOTICE**
(Docketing Statement Civil Appeals)

Code:

IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR THE COUNTY OF WASHOE

JAY KVAM,

Plaintiff,

Case No.: CV18-00764

vs.

Dept. No: 6

BRIAN MINEAU; LEGION INVESTMENTS,
LLC; 7747 S. May Street, an Unincorporated
Joint Venture; and DOES I-X, inclusive,

Defendants.

BRIAN MINEAU and LEGION
INVESTMENTS, LLC,

Counterclaimant,

vs,

JAY KVAM,

Counterdefendant

**ORDER GRANTING, IN PART, AND DENYING, IN PART
DEFENDANTS' MOTION FOR SUMMARY JUDGMENT;
ORDER GRANTING SUMMARY JUDGMENT
ON CLAIM PURSUANT TO COURT'S NRCP 56 NOTICE**

Before this Court is a *Motion for Summary Judgment* ("Motion") filed by
Defendants/Counterclaimants BRIAN MINEAU ("Mr. Mineau") and LEGION

1 INVESTMENTS, LLC (“Legion”) (hereinafter “Mineau/Legion” unless individually
2 referenced), by and through their attorney of record, Gunderson Law Firm.
3 Plaintiff/Counterdefendant JAY KVAM (“Mr. Kvam”) filed his *Opposition to Defendants’*
4 *Motion for Summary Judgment; and Cross Motion for Partial Summary Judgment*¹
5 (“*Opposition*”), by and through his attorney of record, Matuska Law Offices. Mineau and
6 Legion filed a *Reply in Support of Motion for Summary Judgment* (“*Reply*”). The *Reply*
7 does not address the merits of the countermotion portion of the *Opposition* but does
8 request that the Court strike it. Thereafter, the matter was submitted for decision.
9

10 The Court heard oral arguments on the *Motion* (“Hearing”), requested counsel to
11 provide proposed orders, and the matter was taken under advisement. As a result of oral
12 arguments, this Court conducted further review of the pleadings and papers filed,
13 conducted additional research and gave notice under NRCP 56 of its intention to grant
14 summary judgment on one of Mineau/Legion’s claims that was not subject of their *Motion*.
15 The Court heard additional argument in this regard. This Order follows.

16 **I. FACTUAL AND PROCEDURAL BACKGROUND.**

17 This action involves an agreement to purchase, restore, and resell a house in
18 Chicago (“the Property”). *Second Amended Verified Complaint* (“SAC”), ¶ 8. Mr. Kvam
19 provided funding for the Property. SAC, ¶ 8a. Mineau/Legion were designated to manage
20 the operation. SAC, ¶ 8c.

21
22 Mr. Kvam asserts he demanded his money back because he did not receive any
23 interest payments and because renovation activity on the Property ceased. SAC, ¶¶

24
25 ¹The Court admonished counsel in a pretrial conference on January 14, 2020, that cross motions
26 are not allowed under applicable court rules. WDCR 10(3)(“Any motion, opposition, reply, etc.,
must be filed as a separate document . . .”). It appears Mr. Kvam has disregarded the Court’s
admonishment. At the February 11, 2010, hearing on the *Motion* and *Opposition*, the Court
again admonished counsel of the same.

1 8a,17. Mr. Kvam also asserts that he is entitled to receive a return of his investment, plus
2 interest, prior to the sale of the Property. SAC, ¶¶ 12-17. In addition, Mr. Kvam alleges
3 Mineau/Legion sold the Property at a loss and concealed the sale. SAC, ¶ 16.

4 Terms were provided for return on Mr. Kvam's investment if investment was
5 profitable and in the event if was not. Mr. Kvam anticipated an approximate \$13,000
6 profit. When the project failed, Mr. Kvam filed an action.

7 The original *Complaint* was filed by Mr. Kvam on April, 2018, asserting claims of
8 relief for: (1) Declaration of Joint Venture; (2) Rescission or Reformation of Agreement;
9 (3) Breach of Contract - Loan; (4) Breach of Contract and Tortious Breach of Implied
10 Covenant of Good Faith and Fair Dealing; (5) Accounting; (6) Court Supervision of
11 Dissolution and Winding Up, and Appointment of Receiver; (7) Temporary and Permanent
12 Injunction; and, (11) Derivative Claim. *Complaint*.

13 The original *Answer and Counterclaim* (filed as one document) was filed on June
14 5, 2018 and alleges eleven claims for relief for: (1) Breach of Contract; (2) Breach of the
15 Covenant of Good Faith and Fair Dealing; (3) Declaratory Relief; (4) Intentional
16 Interference with Prospective Economic Advantage; (5) Deceptive Trade Practices; (6)
17 Abuse of Process; (7) Trespass; (8) Trespass to Chattels; (9) Conversion; (10) Fraud;
18 and (11) Negligence.²

19 On September 4, 2018, the Court³ entered its *Order* on Mr. Kvam's *Motion for*
20 *Dissolution*. The Court declined to enter the order requested, finding the record did not
21
22
23
24

25 ² The Tenth Claim for Relief (Fraud) and the Eleventh Claim for Relief (Negligence) are
26 identified as "Tenth Claim for Relief."

³ This matter was proceeding in Department 3 before Judge Jerome M. Polaha until June 6, 2019.

1 support an adjudication of the issues at that time and was premature due to lack of
2 discovery. *Order*, p. 2.

3 On September 5, 2018, the Court dismissed Mineau/Legion's claims: (8) Trespass
4 to Chattels and (9) Conversion. The Court granted Mr. Kvam's *Motion for a More Definite*
5 *Statement* on claims: (5) Deceptive Trade Practices; (10) Fraud; and (11) Negligence.

6 Mineau/Legion filed their *First Amended Counterclaim ("FACC")* on October 5,
7 2018 (The *Answer* was not restate; the *FACC* was filed as a separate document)
8 asserting the same claims for relief set forth in the original *Answer and Counterclaim* for:
9 (1) Breach of Contract; (2) Breach of the Covenant of Good Faith and Fair Dealing; (3)
10 Declaratory Relief; (4) Intentional Interference with Prospective Economic Advantage; (5)
11 Deceptive Trade Practices; (6) Abuse of Process; (7) Trespass; (8) Trespass to Chattels;
12 (9) Conversion; (10) Fraud; and (11) Negligence.

13 In response, Mr. Kvam filed his *Motion to Dismiss and for Summary Judgment* on
14 October 25, 2018. Mr. Kvam requested that the Court dismiss the *FACC's* Fifth
15 (Deceptive Trade Practices), Tenth (Fraud), and Eleventh Claims for Relief (Negligence),
16 dismiss any remaining claims dependent on allegations regarding the Atlas Investors
17 Southside LLC, and grant summary judgment on all *FACC* claims for relief. *Motion to*
18 *Dismiss and for Summary Judgment*, p. 1.

19 On January 9, 2019, the Court entered summary judgment in favor of Mr. Kvam on
20 Mineau/Legion's counterclaims for: (1) Breach of Contract; (2) Breach of Covenant of
21 Good Faith and Fair Dealing; (4) Intentional Interference with Prospective Economic
22 Advantage; (5) Deceptive Trade Practice (indicated as dismissed); (6) Abuse of Process;
23 (7) Trespass; (10) Fraud; and (11) Negligence (indicated as dismissed). Mineau/Legion's
24 *FACC* Third Claim for Relief for Declaratory Relief remained viable.
25
26

1 Mr. Kvam did not file an answer to the *FACC* Third Claim for Relief for Declaratory
2 Relief and has not done so to date.

3 On January 31, 2019, Mr. Kvam filed his *First Amended Verified Complaint*
4 (*"FAC"*), asserting: (1) Declaration of Joint Venture; (2) Rescission or Reformation of
5 Agreement; (3) Breach of Contract - Loan; (4) Breach of Contract and Tortious Breach of
6 Implied Covenant of Good Faith and Fair Dealing; (5) Accounting; (6) Court Supervision
7 of Dissolution and Winding Up, and Appointment of Receiver; (7) Temporary and
8 Permanent Injunction; (8) Fraud, Fraudulent Inducement and Fraudulent Concealment;
9 and, (9) Derivative Claim.

10
11 On February 19, 2019, Mineau/Legion filed their *Answer to First Amended Verified*
12 *Complaint*.

13 On September 11, 2019, Mr. Kvam filed his *SAC* asserting claims of relief for: (1)
14 Declaration of Joint Venture; (2) Rescission or Reformation of Agreement; (3) Breach of
15 Contract - Loan; (4) Breach of Contract and Tortious Breach of Implied Covenant of Good
16 Faith and Fair Dealing; (5) Accounting; (6) Court Supervision of Dissolution and Winding
17 Up, and Appointment of Receiver; (7) Temporary and Permanent Injunction; (8) Fraud,
18 Fraudulent Inducement and Fraudulent Concealment; (9) Conversion; (10) RICO; and,
19 (11) Derivative Claim. *SAC*, p. 4-10. The *SAC* is the operative complaint.

20
21 On September 25, 2019, Mineau/Legion filed their *Answer to Second Amended*
22 *Verified Complaint*.

23 The claims that remain viable at this time are Mr. Kvam's First through Eleventh
24 Causes of Action set forth in the *SAC* and Mineau/Legion's *FACC* Third Claim for Relief
25 for Declaratory Relief.

1 The SAC's First Cause of Action for Declaration of Joint Venture and
2 Mineau/Legion's Third Claim for Relief for Declaratory Relief in the *FACC* compare as
3 follows:

<u>MR. KVAM'S FIRST CAUSE OF ACTION</u> (Declaration of Joint Venture)	<u>MINEAU/LEGION'S THIRD CLAIM FOR RELIEF</u> (Declaratory Relief)
20. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.	32. Mineau and Legion reallege the allegations contained in the other paragraphs of this Counterclaim and incorporate them by reference as if fully set forth here.
21. There is an actual, justifiable, present controversy between KVAM, MINEAU, and LEGION on the question of whether the Agreement identified in Par. 8 constitutes a joint venture agreement, an agreement for MINEAU to transfer his membership interest in LEGION, or some other type of agreement.	33. A justiciable controversy has arisen between the parties regarding their respective rights, restriction, duties, and obligations pursuant to the Agreement and the House.
22. KVAM therefore requests a declaration on the legal rights created by the Agreement, the status of the unincorporated joint venture referred to herein as 7747 and the respective interests of the joint venturers.	34. Mineau's and Legion's interests in the controversy are adverse to Kvam's.
23. KVAM further requests a declaration on the amount of loans and contributions made to the 7747 by each of the joint venturers.	35. Mineau's and Legion's interests in the controversy are legally protectable.
24. KVAM further requests a declaration that 7747, MINEAU, and LEGION were required to assign the entire interest in the 7747 to KVAM in the event it failed in any way.	36. The controversy is ripe for judicial determination.

25 SAC, generally; *FACC*, generally. During argument, Mineau/Legion concurred the
26 legal entity was a joint venture. *Transcript of Proceedings, Oral Arguments (Motion for*

1 *Summary Judgment*), February 11, 2020 (“TOP, MSJ”). The joint venture/partnership
2 was created for acquisition of the Property.

3 At the Pre-trial Conference and Pre-trial Motions hearing, the Court rendered its
4 oral ruling on the *MSJ*, including giving NRCP 56(f) notice that it intended to grant
5 summary judgment on Mineau/Legion’s *FACC* Third Claim for Relief for Declaratory
6 Relief. The Court further rendered its oral ruling on the claims on which it was denying
7 summary judgment, such as SAC’s Fifth Claim for Relief for Accounting and the claims
8 it was holding a ruling in abeyance, i.e. the dissolution claim and request for
9 appointment of a receiver. *Transcript of Proceedings, Pre-trial Conference & Pretrial*
10 *Motions, 2/27/2020 (“Tr.”)*, p. 9-13.

12 **A. Motion for Summary Judgment**

13 In their *Motion*, Mineau/Legion seek summary judgment on the SAC’s eleven (11)
14 causes of action. *Motion*, p. 11. Mineau/Legion did not seek summary judgment on
15 *FACC*’s Third Claim for Relief for Declaratory Relief. *Motion*, p. 11.

16 On the SAC’s first claim (Declaration of Joint Venture), Mineau/Legion request a
17 judicial declaration in Mineau/Legion’s favor regarding the parties’ respective rights and
18 interests as there are no genuine dispute of material facts. *Motion*, p. 11-13.

19 On the SAC’s Mr. Kvam’s second claim (Rescission or Reformation of Agreement)
20 Mineau/Legion seek summary judgment on the grounds Mr. Kvam has not produced any
21 evidence to establish that the parties, at the time of contracting, shared a misconception
22 about a vital fact upon which they based their bargain. *Motion*, p. 13-14.

23 On the SAC’s third claim (Breach of Contract – Loan), Mineau/Legion contend the
24 Terms of Agreement establish the terms of a joint venture which lacks critical elements of
25 a loan, including a defined borrower or a maturity date. *Motion*, p. 14-15.

1 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
2 Covenant of Good Faith and Fair Dealing), Mineau/Legion assert they owed Mr. Kvam no
3 affirmative duty to properly manage and complete the renovation, and the duty of loyalty
4 only requires a partner to account to the partnership for any partnership property held by
5 that partner. *Motion*, p. 16-19.

6 On the SAC's fifth claim, (Accounting), Mineau/Legion claim Nevada law only
7 requires a partner to account to the partnership for any partnership property held by that
8 partner which, in this case, was the Property itself, the proceeds from its sale of the
9 Property, and the disposition of those assets which are entirely accounted for and not
10 subject to genuine dispute. *Motion*, 19-20.

11 On the SAC's sixth claim (Court Supervision of Dissolution and Winding Up, and
12 Appointment of Receiver), Mineau/Legion maintain the partnership only has two
13 remaining assets: (1) its claims against TNT and (2) the proceeds from the sale of the
14 Property in the amount of \$26,337.91 which are to be assigned to Mr. Kvam pursuant to
15 the Terms of the Agreement. *Motion*, p. 20.

16 On the SAC's seventh claim (Temporary and Permanent Injunction),
17 Mineau/Legion claim upon dissolution of the partnership and assignment of its assets to
18 Mr. Kvam, the partnership will cease to exist thereby rendering this cause of action moot.
19 *Motion*, p. 20.

20 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
21 Concealment), Mineau/Legion posit Mr. Kvam has not produced any admissible evidence
22 to establish any of the elements of fraud because Mr. Mineau's statements, either
23 personally or on behalf of Legion, were made in good faith and were true to the best of
24 Mr. Mineau's knowledge. *Motion*, p. 21-22.

1 On the SAC's ninth claim, (Conversion), Mineau/Legion assert conversion only
2 applies to personal property, and Mr. Kvam has not produced any admissible evidence to
3 establish any of the other elements of conversion regarding the Property. *Motion*, p. 22.

4 On the SAC's tenth claim (RICO), Mineau/Legion argue Mr. Kvam has not
5 produced any admissible evidence, and none exists, to establish any of the elements of a
6 RICO claim. *Motion*, p. 23.

7 Finally, on the SAC's eleventh claim (Derivative Claim), Mineau/Legion state Mr.
8 Kvam has not produced any admissible evidence to establish the partnership holds any
9 independent claim for relief against Mineau/Legion. *Motion*, p. 24.

10
11 **A. Opposition to Mineau/Legion's Motion for Summary Judgment;
12 and Cross Motion for Partial Summary Judgment⁴.**

13 In his *Opposition*, Mr. Kvam claims, regarding his first claim (Declaration of Joint
14 Venture), Mineau/Legion have changed their position, and conceded the parties formed a
15 partnership pursuant to NRS 87.4322. *Opposition*, p. 16-19.

16 On the SAC's second claim (Rescission or Reformation of Agreement), Mr. Kvam
17 asserts the Terms of Agreement does not purport to be a complete integration of the
18 entire agreement between the parties, and it is not the entire agreement because Mr.
19 Mineau induced Mr. Kvam to believe he was in charge of project, and he proceeded to
20 sign the purchase agreement and escrow papers, procure the contractor, prepare and
21 sign the Contractor Agreement, and instruct Mr. Kvam when to make payments.
22 *Opposition*, p. 19-20.

23
24
25
26

⁴It is notable that, although improperly filed, the cross motion contained in the *Opposition*, must
assert there are no genuine issues of material fact on the SAC's claims. *Opposition*, generally.

1 On the SAC's third claim (Breach of Contract – Loan), Mr. Kvam contends the
2 Terms of Agreement contain both a profit-sharing agreement and a loan agreement.
3 *Opposition*, p. 20-21.

4 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
5 Covenant of Good Faith and Fair Dealing), Mr. Kvam states Mr. Mineau was in a superior
6 and entrusted position in which Mr. Kvam imposed a special element of reliance due to
7 Mr. Mineau's extensive handling of the Property project. *Opposition*, p. 21-23.

8 On the SAC's fifth claim (Accounting), Mr. Kvam argues Mr. Mineau failed to
9 account, for the loans, capital contributions, and expenses despite holding title to the
10 Property "as trustee." *Opposition*, p. 23-24.

11 On the SAC's sixth claim (Court Supervision of Dissolution and Winding Up, and
12 Appointment of Receiver), Mr. Kvam posits winding up is incomplete because Mr. Mineau
13 refuses to release funds to Mr. Kvam due to other claims to the funds. *Opposition*, p. 24.

14 On the SAC's seventh claim (Temporary and Permanent Injunction), Mr. Kvam
15 maintains once the remaining funds are distributed and the joint venture finally wound up,
16 this cause of action will be complete. *Opposition*, p. 25.

17 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
18 Concealment), Mr. Kvam incorporates broad arguments, but does not identify specific
19 facts, regarding various types of fraud and deceit at issue: (1) fraudulent or intentional
20 misrepresentation; (2) false promise; (3) Concealment; (4) Fraud by Nondisclosure
21 (Silence); (5) Negligent Misrepresentation; and, (6) Constructive Fraud. *Opposition*, p.
22 25-29.

23 On the SAC's ninth claim (Conversion), Mr. Kvam contends the conversion was
24 diverting project funds and holding the proceeds of sale. *Opposition*, p. 29-31.

1 On the SAC's tenth claim (RICO), Mr. Kvam asserts the predicate act, for example,
2 to establish a RICO claim derives from Mr. Mineau obtaining a signature from Mr. Kvam
3 to obtain his money under false pretenses including the misrepresentation the money
4 would be placed in a separate account. *Opposition*, p. 31-34.

5 Lastly, on the SAC's eleventh claim (Derivative Claim), Mr. Kvam stresses all of his
6 claims are asserted on his own behalf and on behalf of the joint venture, which is
7 permissible under applicable law. *Opposition*, p. 34.

8 **A. Reply in Support of Motion for Summary Judgment**

9
10 In their *Reply* on the SAC's first claim (Declaration of Joint Venture),
11 Mineau/Legion assert all parties agree the Court should enter a judicial declaration the
12 parties formed a partnership pursuant to NRS 87.4322; however, Mineau/Legion maintain
13 there is simply no legal or factual basis upon which a jury could decide Mr. Kvam's
14 investment of \$93,784.31 was a loan. *Reply*, p. 5-6.

15 On the SAC's second claim (Rescission or Reformation of Agreement),
16 Mineau/Legion contend Mr. Kvam fails to offer any admissible evidence to establish he
17 believed Mr. Mineau agreed to be "in charge of the project," or that the parties ever
18 agreed upon any terms other than those set forth in the Terms of Agreement. *Reply*, p. 6-
19 7.

20
21 On the SAC's third claim (Breach of Contract – Loan), Mineau/Legion claim Mr.
22 Kvam argues the Property was purchased not with a loan or borrowed funds, but with
23 joint venture funding, which is consistent with the terms of a joint venture, not a loan.
24 *Reply*, p. 7-8.

25 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
26 Covenant of Good Faith and Fair Dealing), Mineau/Legion maintain Mr. Kvam's

1 allegations fall well short of the "grievous and perfidious misconduct" standard as a matter
2 of law. *Reply*, p. 8.

3 On the SAC's fifth claim (Accounting), Mineau/Legion state they prepared
4 spreadsheets and delivered them to Mr. Kvam to provide the requested accounting.
5 *Reply*, p. 9.

6 On the SAC's sixth and seventh claims (Court Supervision of Dissolution and
7 Winding Up, and Appointment of Receiver and Temporary and Permanent Injunction),
8 Mineau/Legion note Mr. Kvam does not appear to dispute the relief sought by
9 Mineau/Legion. *Reply*, p. 9.

10 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
11 Concealment), Mineau/Legion posit Mr. Kvam's incorporated claims are very broadly pled
12 and fail to contain any specific allegations. *Reply*, p. 9-12.

13 On the SAC's ninth claim (Conversion), Mineau/Legion assert Mr. Kvam has not
14 presented evidence they exerted a distinct act of dominion over Mr. Kvam's personal
15 property, rather Mr. Kvam merely alleges Mr. Mineau allowed TNT to commingle project
16 funds with TNT's other funds. *Reply*, p. 12-13.

17 On the SAC's tenth claim (RICO), Mineau/Legion note Mr. Kvam fails his burden of
18 establishing Mineau/Legion violated Nevada's RICO Act. *Reply*, p. 13-14.

19 On the SAC's eleventh claim (Derivative Claim), Mineau/Legion claim Mr. Kvam
20 has conceded the partnership does not hold any independent claim for relief against
21 Mineau/Legion other than the claims discussed above. *Reply*, p. 14.

22 Finally, Mineau/Legion request this Court strike Mr. Kvam's cross-motion contained
23 within his *Opposition*. *Reply*, p. 15.

1 The Court finds it appropriate to strike the relief requested in the cross-motion and
2 considers the document filed as an opposition only.

3 **II. STANDARD OF REVIEW.**

4 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
5 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and
6 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
7 material fact exists, and the moving party is entitled to judgment as a matter of law."
8 Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134
9 (2007). A factual dispute is genuine when the evidence is such that a rational trier of fact
10 could return a verdict for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724,
11 731, 121 P.3d 1026, 1031 (2005). Further, a fact is material if the fact "might affect the
12 outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S.
13 242, 248, 106 S.Ct. 2505, 2510 (1986). The pleadings and other proof "must be
14 construed in a light most favorable to the nonmoving party," who bears the burden to "do
15 more than simply show that there is some metaphysical doubt as to the operative facts in
16 order to avoid summary judgment" in favor of the moving party. Id., 121 Nev. at 732, 121
17 P.3d at 1031. The substantive law controls which factual disputes are material and will
18 preclude summary judgment; other factual disputes are irrelevant. Id., 121 Nev. at 731,
19 121 P.3d at 1031.
20
21

22 The manner in which each party may satisfy its burden of production depends on
23 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze,
24 123 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion
25 (Mineau/Legion on *FACC*), that party must present evidence that would entitle it to a
26 judgment as a matter of law in the absence of contrary evidence. Id. If the nonmoving

1 party will bear the burden of persuasion at trial (Mr. Kvam on SAC), the party moving for
2 summary judgment (Mineau/Legion) may satisfy the burden of production in two ways: (1)
3 the moving party may submit evidence which negates an essential element of the
4 nonmoving party's claim, or (2) the moving party may merely point out the absence of
5 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in
6 order to defeat summary judgment, the nonmoving party must transcend the pleadings
7 and, by affidavit or other admissible evidence, **introduce specific facts** that show a
8 genuine issue of material fact. Id. "The non-moving party must not simply rely on the
9 pleadings and must do more than make 'conclusory allegations [in] an affidavit.'" Choi v.
10 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan
11 v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex
12 Corp. v. Catreet, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment
13 must be granted for the moving party if the nonmoving party 'fails to make showing
14 sufficient to establish an element essential to that party's case, and on which that party
15 bears the burden of proof at trial.'" Choi v. 8th Bridge Capital, 2020 WL1446700, Slip
16 Copy, March 25, 2020 (citing same).

17
18 "Effect of Failing to Deny. An allegation—other than one relating to the amount
19 of damages – is admitted if a responsive pleading is required and the allegation is not
20 denied." NRCP 8(b)(6). An answer to counterclaim is a required responsive pleading.
21 Bowers v. Edwards, 79 Nev 834, 389, 385 P.2d 783, 785 (1963).

22
23 By way of the stricken cross-motion relief, Mr. Kvam on the one hand asserts
24 there is no genuine issue of fact but in argument contends there is. The *Opposition*
25 without citation to specific facts and after admitting facts by failing to file an answer to
26 the FACC. He also attaches forty (48) exhibits without pointing to specific facts even

1 upon inquiry at the hearing. *TOP, MSJ*, passim. Even Mr. Kvam's Declaration offered in
2 support of the *Opposition* and his purported cross motion includes conclusionary facts
3 with regard to material facts asserted by Mineau/Legion as not in dispute or claims for
4 which Mineau/Legion assert there is no evidence.

5 This Court is not obligated to search for facts. "[A] district court is not obligated
6 to wade through and search the entire record for some facts which might support the
7 nonmoving party's claim." Jauregui v. Carter Mfg. Co., Inc., 173 F.3d 1076, 1084 (8th
8 Cir. 1999) (quotation omitted). "[R]equiring the district court to search the entire record,
9 even though the adverse party's response does not set out the specific facts or disclose
10 where in the record the evidence for them can be found, is unfair. Carmen v. San
11 Francisco Unified School Dist., 237 F. 3d 1026, 1031 (9th Cir. 2001). "We refuse to do
12 this work for it. See Indep. Towers of Wash. v. Washington, 350 F.3d 925, 929 (9th Cir.
13 2003) ('[J]udges are not like pigs, hunting for truffles.') (quoting United States v. Dunkel,
14 927 F.2d 955, 956 (7th Cir. 1991))." Freeman Inv. Mgmt. Co., LLC v. Frank Russell
15 Co., 729 F. App'x 590, 591 (9th Cir. 2018) (considering summary judgment).

16 This Court has considered the properly filed papers and the other papers and
17 pleadings on file and makes the following findings of undisputed material facts and
18 conclusions of law.
19
20

21 **III. STATEMENT OF UNDISPUTED MATERIAL FACTS.**

22 The Court finds the following material facts are undisputed:

23 1. In early 2017, Mr. Mineau, Mr. Kvam, and Michael J. Spinola ("Mr.
24 Spinola") began formulating a plan to purchase the property located at 7747 S. May
25 Street, Chicago, Illinois ("Property"), renovate it, and sell it for a profit. *Motion*, Ex. 1,
26

¶ 5; *Opposition*, Ex. 1, ¶ 2; *FACC* allegations deemed admitted due to failure to answer⁵ (“DA”).

2. Mr. Mineau serves as sole member/manager of Legion Investments, LLC (“Legion”), a Nevada limited liability company. SAC, ¶ 2, ¶ 13; *Answer to SAC*, ¶ 1, ¶ 8.

3. On January 3, 2017, Legion entered into a *Residential Real Estate Purchase and Sale Contract* to purchase the Property for \$44,000.00. *Motion*, Ex. 1, ¶ 6; DA ¶ 4.

4. On February 13, 2017, Mr. Kvam wired \$44,000.00 to Citywide Title Corp, Escrow No. 719630, for the purchase of the Property. *Motion*, Ex. 3; *Opposition*, Ex. 7; DA ¶ 5 (“paid the seller directly”).

5. Mr. Kvam later wired an additional \$784.31 to the title company to cover the buyer’s portions of the closing costs. *Motion*, Ex. 4; *Opposition*, Ex. 8.

6. Legion took title to the Property on February 13, 2017. *Motion*, Ex. 1, ¶ 10; *Opposition*, Ex. 10.

7. On February 13, 2017, Mr. Mineau, and Mr. Spinola executed a document entitled “*Terms of Agreement between Legion Investments LLC (its Members) And Jay Kvam (Initial Funding Member of Same) RE: 7747 S. May Street, Chicago Illinois*” (“Terms of Agreement”). *Motion*, Ex. 2; *Opposition*, Ex. 11; DA, ¶ 2.

8. Mr. Kvam drafted the Terms of Agreement. DA, ¶ 3.

9. On February 14, 2017, Mr. Kvam executed the Terms of Agreement with Mr. Mineau and Mr. Spinola. *Motion*, Ex. 2; *Opposition*, Ex. 11; DA ¶ 2.

⁵ As discussed herein, Mr. Kvam did not file an answer to the *FACC* . The Court identifies the allegations deemed admitted as “DA” in addition to its other citations to the record.

1 10. The Terms of Agreement reads, in its entirety, as follows:

2 Terms of Agreement between Legion Investments LLC (its Members)

3 And Jay Kvam (Initial Funding Member of Same)

4 RE:

5 7747 S. May Street, Chicago, Illinois

6 With Regards to acquisition of the aforementioned property [sic], it is
7 understood that the membership of Legion Investments LLC for this
8 acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties
9 are entitled to 33.33% of net profit, after all expenses are accounted for, to
10 include interest due on funds dispersed. Initial purchase is being funded by
11 Jay Kvam, who is there by [sic] assigned any remedies due should the
12 transaction fail in anyway. Initial funder [sic] will be due a 7% annual return
13 on any funds provided due from date of disbursement. There is expected
14 to be 3 renovation draws necessary on this project. First draw to be funded
15 by Mr. Kvam, [sic] Due to present and ongoing business dealings between
16 Jay and Michael, Michael has agreed to allot %50 [sic] of his 1/3 profit to
17 Mr. Kvam for both initial funding's [sic].

18 *Motion*, Ex. 2; *Opposition*, Ex. 11.⁶

19 11. Mr. Kvam admits the Terms of Agreement constitutes a binding legal
20 contract. DA ¶ 27.

21 12. All parties to the Terms of Agreement knew this was a high-risk
22 investment. DA ¶ 9.

23 13. The Property was located the south side of Chicago. DA ¶ 10.

24 14. Mr. Kvam acceded to Mr. Spinola's interest. SAC, ¶ 11; *Motion*, p. 4,
25 n. 1.⁷

26

⁶ The Terms of Agreement can cause confusion on the actual name of the joint
venture/partnership discussed herein. It does not change the legal conclusions and is referred
to herein generically rather than by name.

⁷ The specific interest Mr. Kvam acceded to is not a material fact as the remedy is the same.

1 15. On March 16, 2017, Colleen Burke, Legion's property manager in
2 Chicago, texted to Mr. Mineau stating, "I have the other contractor I told you about
3 going to May Street. I'm really liking this guy. He seems very fair and hard worker. I
4 would like to set up a conference call with him this weekend." *Motion*, Ex. 5;
5 *Opposition*, Ex. 13.

6 16. Ms. Burke identified the subject contractor as TNT Complete Facility Care
7 Inc. ("TNT"). *Motion*, Ex. 1, ¶ 11; *Opposition*, Ex. 1, ¶ 9.

8 17. On March 19, 2017, Ms. Burke emailed Mr. Mineau the contact
9 information for TNT's principals, Derek Cole and Todd Hartwell, along with TNT's
10 references and Certificate of Insurance. *Motion*, Ex. 6; *Opposition*, Ex. 14-15.

11 18. On March 23, 2017, Mr. Mineau, on behalf of Legion, entered into a
12 Contractor Agreement with TNT ("Contractor Agreement"). *Motion*, Ex. 7; *Opposition*,
13 Ex. 17-18.

14 19. Mr. Kvam paid TNT directly to fund the renovations. DA ¶ 7.

15 20. Mr. Kvam knew TNT was the contractor.

16 21. The Contractor Agreement identified Todd Hartwell as TNT's CEO and
17 Derek Cole as TNT's Field Operations VP. *Motion*, Ex. 7, p. LEG0012; *Opposition*, Ex.
18 17-18.

19 22. Pursuant to the Contractor Agreement, TNT agreed to fully renovate the
20 Property for a flat fee of \$80,000.00. *Motion*, Ex. 7, p. LEG0013; *Opposition*, Ex. 1, ¶
21 10, Ex. 24.

22 23. Progress payments were to be made pursuant to a defined schedule.
23 *Motion*, Ex. 7, p. LEG0013; *Opposition*, Ex. 1, ¶ 10.

1 24. TNT agreed to complete the project by June 1, 2017. *Motion*, Ex. 7, p.
2 LEG0013; *Opposition*, Ex. 1, ¶ 10.

3 25. On February 17, 2017, Mr. Kvam texted Mr. Mineau to ask for wiring
4 details to forward the first payment. *Opposition*, Ex. 12.

5 26. Mr. Mineau responded, “Not yet, he was getting the wiring info for a
6 separate account so he could keep May Street funds separate from other projects.”
7 *Opposition*, Ex. 1, ¶ 9, Ex. 12.

8 27. On March 23, 2017, Mr. Kvam wired \$20,000.00 directly to TNT with the
9 reference “7747 South May Street – Legion Investments – Jay Kvam.” *Motion*, Ex. 8;
10 *Opposition*, Ex. 18.

11 28. On April 9, 2017, TNT emailed proposed floor plans to Mr. Mineau, who
12 forwarded them to Mr. Kvam and Mr. Spinola for review and input. *Motion*, Ex. 9-10.

13 29. On April 14, 2017, Kvam emailed Todd Hartwell (TNT’s CEO) to inquire
14 whether Legion had an assigned account number with TNT and the preferred way for
15 Mr. Kvam to send TNT the next progress payment. *Motion*, Ex. 11.

16 30. Mr. Kvam wrote Todd Hartwell again, indicating that he had just spoken
17 with Mr. Hartwell and he was “heading to the bank now to set up the wire.” *Motion*, Ex.
18 11.
19

20 31. Mr. Kvam wired another \$20,000.00 directly to TNT with the reference
21 “Second Draw Legion Investments Jay Kvam.” *Motion*, Ex. 12; *Opposition*, Ex. 20.

22 32. On and around May 5, 2017, Derek Cole (TNT’s Field Operations VP)
23 came to Reno to visit with Mr. Mineau, Mr. Kvam, and others. *Motion*, Ex. 13.
24
25
26

1 33. Mr. Kvam's notes indicate Mr. Kvam and Mr. Cole specifically discussed
2 the renovation of the Property, and Mr. Cole represented to Mr. Kvam that the project
3 would be "done in early June." *Motion*, Ex. 13, p. KVAM0423.

4 34. On May 9, 2017, Mr. Mineau texted Mr. Kvam and Mr. Spinola
5 approximately nine (9) photographs of the Property which he had received from Mr.
6 Cole. *Motion*, Ex. 14.

7 35. Mr. Mineau informed Mr. Kvam and Mr. Spinola that he "just got this from
8 Derek [Cole] roof is all done at May street." *Motion*, Ex. 14.

9 36. On May 15, 2017, Mr. Kvam texted Derek Cole to check on him after an
10 apparent car accident and to give Mr. Kvam's mobile telephone number to Mr. Cole.
11 *Motion*, Ex. 15.

12 37. Mr. Cole responded by sending Mr. Kvam forty-six (46) photographs of
13 the interior and exterior of the Property, purportedly showing the work TNT had
14 completed to date and the current status of the project. *Motion*, Ex. 15.

15 38. Mr. Cole's pictures included the nine (9) pictures of the roof which Mr.
16 Mineau had forwarded to Mr. Kvam on May 9, 2017. Compare *Motion*, Ex. 14, with
17 *Motion*, Ex. 15.

18 39. On May 17, 2017, Mr. Kvam sent Mr. Cole a message on Slack
19 indicating, "first half of the third draw on May to go out tomorrow." *Motion*, Ex. 16.

20 40. On May 18, 2017, Mr. Kvam wired \$9,000.00 directly to TNT with the
21 reference "Half of Third Installment." *Motion*, Ex. 17; *Opposition*, Ex. 21.

22 41. On May 21, 2017, Mr. Cole informed Mr. Mineau that TNT would be
23 "installing floors this week and should be finishing very soon." *Motion*, Ex. 1, ¶ 24, Ex.
24 18; *Opposition*, Ex. 22.

1 42. Mr. Mineau forwarded this information on to Mr. Kvam. *Motion*, Ex. 18;
2 *Opposition*, Ex. 22.

3 43. On May 26, 2017, Criterion NV LLC, acting on Mr. Mineau's behalf, wired
4 \$20,000.00 directly to TNT with the reference "May Street." *Motion*, Ex. 1, ¶ 25, Ex. 19.

5 44. Over the course of the next month, Mr. Kvam and Mr. Cole texted
6 regularly concerning the Property. *Motion*, Ex. 20, Ex. 22.

7 45. Mr. Cole sent Mr. Kvam and Mr. Mineau dozens of pictures of the work
8 being performed at the Property. *Motion*, Ex. 22, p. KVAM0106-KVAM0123.

9 46. Mr. Cole also notified Mr. Kvam that "I got all the permits and paperwork
10 back from the city last week file from [sic] my inspections as soon as they come do
11 those I'm two weeks after that." *Motion*, Ex. 22, p. KVAM0129.

12 47. In response to Mr. Kvam's inquiry, Mr. Cole explained that the
13 inspections were "for the rough plumbing and electrical." *Motion*, Ex. 22, p.
14 KVAM0129.

15 48. Mr. Kvam had independent and direct communications with TNT. *Motion*,
16 Ex. 20, Ex. 22. 38.

17 49. Mr. Kvam acquired information directly from TNT and did not rely on Mr.
18 Mineau's representations.

19 50. After June 20, 2017, TNT started becoming increasingly unresponsive.
20 *Motion*, Ex. 1, ¶ 29.

21 51. Mr. Mineau stayed in contact with Mr. Cole and Mr. Hartwell in an effort to
22 compel TNT to finish the project. *Motion*, Ex. 1, ¶ 29.

1 52. TNT communicated inconsistently. TNT did respond with excuses for
2 delays and promised that the project would be completed within a matter of days or
3 weeks. *Motion*, Ex. 1, ¶ 29.

4 53. Mr. Hartwell confirmed that TNT was working to replace Mr. Cole and that
5 TNT would finish the project as soon as possible. *Motion*, Ex. 1, ¶ 29.

6 54. In late August 2017, TNT explained Mr. Cole had been absent because
7 he had suffered a heart attack but recovered and was returning to work. *Motion*, Ex.
8 1, ¶ 29.

9 55. In late September 2017, Mr. Cole informed Mr. Mineau the Property
10 needed a few more inspections but was nearly complete. *Motion*, Ex. 1, ¶ 29.

11 56. In mid-October 2017, Mr. Cole informed Mr. Mineau that TNT was “doing
12 the final touches” and would then be ready for occupancy inspections. *Motion*, Ex. 1, ¶
13 29.

14 57. In early November 2017, Mr. Cole advised some of the plumbing work did
15 not pass inspection and would need more work. *Motion*, Ex. 1, ¶ 29.

16 58. In mid-November 2017, Mr. Cole represented to Mr. Mineau that the
17 project would be done in 14-17 days and would cost an additional \$2,000.00, but that
18 TNT would “eat that cost” due to the delay. *Motion*, Ex. 1, ¶ 29.

19 59. Mr. Mineau relayed each status update from TNT to Mr. Kvam.
20
21 *Opposition*, Ex. 25-31.

22 60. By December 2017, Mr. Kvam had become frustrated with TNT’s excuses
23 and delays and indicated his fear that TNT had defrauded them. *Motion*, Ex. 24

24 61. Mr. Mineau notified Mr. Kvam that he had asked his attorney in Chicago
25 to draft a demand letter to TNT. *Motion*, Ex. 24
26

1 62. Alternatively, Mr. Mineau offered to “sign the property over.” *Motion*, Ex.
2 24.

3 63. On December 31, 2017, Mr. Kvam delivered a letter to Mr. Mineau
4 concerning the Property. *Motion*, Ex. 25

5 64. In his letter, Mr. Kvam expressly rejected Mr. Mineau’s offer to transfer
6 the Property, stating he did not want to assume the role of managing the project and
7 expressing concern that TNT had done little construction work for the money it had
8 been paid. *Motion*, Ex. 25

9 65. For reasons beyond any of the parties’ knowledge, control or expectation,
10 the contractor hired to perform the renovations did not or was not able to complete the
11 job. DA ¶ 11.

12 66. Mr. Kvam stated, “...I deem the project a failure....” *Motion*, Ex. 25.

13 67. On November 16, 2018, Legion sold the Property for \$41,000.00. *Motion*,
14 Ex. 30; *Opposition*, Ex. 35.

15 68. Legion’s share of prorated property taxes, closing costs, and the
16 commission owed to the real estate brokers equaled \$16,526.23. *Motion*, Ex. 30;
17 *Opposition*, Ex. 35.

18 69. The net proceeds from the closing were \$24,473.77. *Motion*, Ex. 30;
19 *Opposition*, Ex. 35.

20 70. On December 19, 2018, Legion received an additional \$1,864.14 from
21 the sale of the Property as a result of a refund on a tax bill and a water bill. *Motion*, Ex.
22 1. ¶ 39.

23 71. The total net proceeds from the sale of the Property are \$26,337.91.
24 *Motion*, Ex. 1. ¶ 39.

1 72. Mineau and Legion fulfilled all of their obligations under the Terms of
2 Agreement. DA ¶ 22.

3 73. The assets remaining after the project failed are claims against TNT and
4 \$26,337.91.

5 74. To the extent any of the contents in Sections I and II, supra, and/or the
6 following conclusions of law contain or constitute, or may be construed to contain or
7 constitute findings of fact, they are incorporated here.

8 **IV. CONCLUSIONS OF LAW.**

9
10 1. To the extent any of the contents of Sections I, II and III, supra, contain or
11 constitute, or may be construed to contain or constitute conclusions of law, they are
12 incorporated here.

13 **A. Declaratory Relief.**

14 2. The SAC's First Cause of Action is for Declaration of Joint Venture,
15 thereby seeking declaratory relief.

16 3. The FACC's Third Cause of Action is for Declaratory Relief.

17 4. The Court gave reasonable proper notice under NRCP 56 that it intended
18 to grant Declaratory Relief on Mineau/Legions FACC Third Cause of Action for
19 Declaratory Relief and was not granting summary judgment the SAC's First Cause of
20 Action is Declaration of Joint Venture.

21 5. "A statement in a pleading may be adopted by reference elsewhere in the
22 same pleading or in any other pleading or motion." NRCP 10(c). The FACC's Third
23 Claim for Relief for Declaratory Relief includes Paragraph 32, "Mineau and Legion
24 reallege the allegations contained in the other paragraphs of this Counterclaim and
25
26

1 incorporate them by reference as if fully set forth here.” *FACC*, p.4. The incorporation
2 of the allegations contained in other paragraphs was appropriate under applicable law.

3 6. Mr. Kvam failed to file an answer to the *FACC* Third Claim for Relief for
4 Declaratory Relief.

5 7. As stated, “*Effect of Failing to Deny*. An allegation—other than one
6 relating to the amount of damages – is admitted if a responsive pleading is required
7 and the allegation is not denied.” NRCP 8(b)(6). An answer to counterclaim is a
8 required responsive pleading. Bowers v. Edwards, 79 Nev 834, 389, 385 P.2d 783,
9 785 (1963).

10 8. The effect of Mr. Kvam’s failure to answer the allegations of the *FACC*
11 Third Claim for Relief for Declaratory relief is the allegations, including the incorporated
12 allegations, were admitted. Id. (citing NRCP 8(d) (NRCP 8(d), which, as enacted at the
13 time the *FACC*, was filed provided, “[a]verments in a pleading to which a responsive
14 pleading is required ... are admitted when not denied in the responsive pleading.”).
15 NRCP 8(d) was deleted by amendment effective March 1, 2019); Breliant v. Preferred
16 Equities Corp., 109 Nev. 842, 848–49, 858 P.2d 1258, 1262 (1993) (holding plaintiff
17 stated sufficient facts to assert a claim, in part, because defendant admitted to
18 allegations in complaint when it did not deny the allegations in plaintiff’s amended
19 complaint that made averments in its pleading where a responsive pleading was
20 required by defendant).

21 9. A party must meet four elements before declaratory relief can be granted:
22 (1) there must exist a justiciable controversy; that is to say, a controversy in which a
23 claim of right is asserted against one who has an interest in contesting it; (2) the
24 controversy must be between persons whose interests are adverse; (3) the party
25
26

1 seeking declaratory relief must have a legal interest in the controversy, that is to say, a
2 legally protectable interest; and (4) the issue involved in the controversy must be ripe
3 for judicial determination. MB Am., Inc. v. Alaska Pac. Leasing, 132 Nev. Adv. Op. 8,
4 367 P.3d 1286, 1291 (2016).

5 10. A justiciable controversy initially existed in this case regarding whether
6 there was a joint venture/partnership.

7 11. Any person whose rights, status, or other legal relations "are affected by
8 a statute . . . may have determined any question of construction" of that statute. NRS
9 30.040(1); Prudential Ins. Co. of Am. v. Ins. Comm'r, 82 Nev. 1, 5, 409 P.2d 248, 250
10 (1966) (declaratory relief is available when a controversy concerning the meaning of a
11 statute arises).

12 12. Formation of joint ventures is governed by NRS 87.4322 which states, in
13 part, "the association of two or more persons to carry on as co-owners of a business
14 for profit forms a partnership, whether or not the persons intend to form a partnership."

15 13. Mr. Kvam, Mr. Meneau and Mr. Spinola formed a joint
16 venture/partnership pursuant to NRS 87.4322. *Motion*, Ex. 2; *Opposition*, Ex. 11.

17 14. The justiciable controversy regarding creation of a joint
18 venture/partnership was resolved during the litigation and the parties agree a joint
19 venture/partnership was created.

20 15. A justiciable controversy exists regarding the parties' rights under the
21 Terms of Agreement.

22 16. Mr. Kvam's and Mineau/Legion's interests are adverse.

23 17. Mr. Kvam, Mr. Mineau and Legion have a legal interest in the
24 controversy.
25
26

1 18. For declaratory relief, "Person" is "construed to mean any person,
2 partnership . . . or other corporation of any character whatsoever." NRS 30.020.

3 19. "Whether a determination is proper in an action for declaratory relief is a
4 matter within the trial judge's discretion that will not be disturbed on appeal unless
5 abused." El Capitan Club v. Fireman's Fund Ins. Co., 89 Nev. 65, 68, 506 P.2d 426,
6 428 (1973).

7 20. Declaratory relief should be granted on Mineau/Legion's *FACC* Third
8 Claim for Relief for Declaratory Relief.

9 21. The Court should declare with respect to the parties' respective rights
10 and interests:

11 a. Mr. Kvam, Mr. Spinola, and Mr. Mineau were the member partners
12 for the acquisition of the Property, 7747 S. May Street, Chicago, Illinois.

13 b. Mr. Kvam was the initial funding member.

14 c. The parties formed a joint venture/partnership pursuant to NRS
15 87.4322.

16 d. The Terms of Agreement and NRS Chapter 87 governed the
17 partnership.

18 e. The Terms of Agreement did not constitute a loan agreement.

19 f. There was no meeting of the minds regarding any other provisions
20 to the Terms of the Agreement except those written and contained in the Terms
21 of Agreement.

22 g. Mr. Kvam acceded to Mr. Spinola's interest.

23 h. No party made any loans to the partnership.

24 i. Mr. Kvam acceded to Mr. Spinola interest.

1 j. Mr. Spinola's does not have an interest adverse to the interests of
2 Mr. Kvam and Mineau/Legion. Based on the accession of Mr. Spinola's interest
3 to Mr. Kvam and the remedy of assignment, Mr. Spinola has no legal interest in
4 the Terms of Agreement. Only those who enjoy a legal interest in the Terms of
5 Agreement should be joined in this action. Wells v. Bank of Nevada, 90 Nev.
6 192, 198, 522 P.2d 1014, 1018 (1974).

7 k. The project failed.

8 l. All remedies due to the partnership are assigned to Kvam because
9 the project failed.

10 m. The parties agreed all interests in the partnership and any
11 remedies due to the partnership, including the proceeds from the sale of the
12 Property in the amount of \$26,337.71, should be assigned to Mr. Kvam and the
13 partnership dissolved. *Motion*, Ex. 1, ¶ 38-39; *Opposition*, p. 20; *Stipulation to*
14 *Deposit Funds*, December 12, 2018.

15 22. Based on the Court's findings and conclusions on Mineau/Legion's *FACC*
16 Third Claim for Relief and its findings and conclusions on the SAC's remaining claims
17 for relief, *infra*, summary judgment is denied on the SAC's First Claim for Declaration of
18 Joint Venture.

19 **B. Rescission or Reformation of Agreement.**

20 23. The SAC's Second Cause of Action is for Recission or Reformation of
21 Agreement.

22 24. "A contract may be rescinded on the basis of mutual mistake when both
23 parties, at the time of contracting, share a misconception about a vital fact upon which
24 they based their bargain." Land Baron Inv. v. Bonnie Springs Family LP, 131 Nev. 686,
25
26

694, 356 P.3d 511, 517 (2015) (internal citations omitted). “However, mutual mistake will not provide grounds for rescission where a party bears the risk of mistake.” Id. (citing Restatement (Second) of Contracts §§ 152(1), 154(b), (c) (1981)). “[I]f the risk is reasonably foreseeable and yet the contract fails to account for that risk, a court may infer that the party assumed that risk.” Id.

25. Alternatively, “courts in this state will reform contracts ... in accordance with the true intention of the parties when their intentions have been frustrated by a mutual mistake.” Seyden v. Frade, 88 Nev. 174, 178, 494 P.2d 1281, 1284 (1972).

26. “Reformation is based upon equitable principles, applied when a written instrument fails to conform to the parties’ previous understanding or agreement.” Grappo v. Mauch, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994).

27. The parties accounted for the risks inherent in the investment by agreeing all remedies in the partnership would be assigned to Mr. Kvam if the joint venture failed in any way. *Motion*, Ex. 2; *Opposition*, Ex. 11.

28. Even viewing all evidence raised by Mineau/Legion in a light most favorable to Mr. Kvam, Mr. Kvam has failed to bring forth specific evidence that the parties, at the time of contracting, shared a misconception about a vital fact upon which they based their bargain, or that the Terms of Agreement fail to conform to the true intention of the parties or the parties’ previous understanding or agreement.

29. Mr. Kvam fails to make a showing sufficient to establish an element essential to his claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on this claim.

1 **C. Breach of Contract - Loan.**

2 30. Mr. Kvam's Third Cause of Action in his SAC is for Breach of Contract –
3 Loan (breach of the Terms of Agreement's loan agreement).

4 31. The elements of a breach of contract claim are (1) existence of a valid
5 contract, (2) breach, and (3) damages. See Contrearras v. Am. Family Mut. Ins. Co.,
6 135 F.Supp.3dc 1208, 1227 (D. Nev. 2015)

7 32. Generally, when a contract is clear on its face, it will be construed from
8 the written language and enforced as written. Canfora v. Coast Hotels & Casinos, Inc.,
9 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). The court has no authority to alter the
10 terms of an unambiguous contract. Id. Furthermore, the court cannot force upon
11 parties contractual obligations, terms or conditions which are not contained in the
12 contract. McCall v. Carlson, 63 Nev. 390, 424, 172 P.2d 171, 187 (1946); Harrison v.
13 Harrison, 132 Nev. 564, 376 P.3d 173 (2016); Golden Rd. Motor Inn, Inc. v. Islam, 132
14 Nev. 476, 376 P.3d 151 (2016); Reno Club, Inc. v. Young Inv. Co., 64 Nev. 312, 323,
15 182 P.2d 1011, 1016 (1947).

16 33. A loan is the delivery of a sum of money to another under a contract to
17 return at some future time an equivalent amount with or without an additional sum
18 agreed upon for its use; and if such be the intent of the parties the transaction will be
19 deemed a loan regardless of its form. Kline v. Robinson, 83 Nev. 244, 249, 428 P.2d
20 190, 194 (1967), *overruled in part by* Pease v. Taylor, 88 Nev. 287, 496 P.2d 757
21 (1972).

22 34. Kvam has not identified any evidence of a loan agreement and thus
23 cannot establish a breach.
24
25
26

1 35. The Terms of Agreement provide Mr. Kvam will receive 7% annual return
2 on any funds provided if the project was profitable. The project failed. Mr. Kvam's
3 remedy is assignment of all interests and remedies of the partnership to him. *Motion*,
4 Ex. 2; *Opposition*, Ex. 11.

5 36. Based on the Court's findings and conclusions on the *FACC's* Third
6 Claim for Relief for Declaratory Relief, even viewing all evidence raised by
7 Mineau/Legion in a light most favorable to Mr. Kvam, Mr. Kvam has not established
8 that a loan agreement existed and cannot establish a breach.

9 37. Mr. Kvam has not identified with specificity evidence to establish all
10 elements of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge
11 Capital, 2020 WL1446700, Slip Copy, March 25, 2020. Accordingly, Mineau/Legion
12 are entitled to judgment as a matter of law on the *SAC's* Third Cause of Action for
13 Breach of Contract -Loan.

14
15 **D. Breach of Contract and Tortious Breach of Implied Covenant of**
16 **Good Faith and Fair Dealing.**

17 37. The *SAC's* Fourth Cause of Action is for Breach of Contract and Tortious
18 Breach of Implied Covenant of Good Faith and Fair Dealing.

19 38. Every contract imposes upon the contracting parties the duty of good faith
20 and fair dealing. See A.C. Shaw Construction v. Washoe County, 105 Nev. 913, 914,
21 784 P.2d 9, 9-10 (1984).

22 39. The remedy for breach of the implied covenant of good faith and fair
23 dealing generally is on the contract itself. In certain circumstances breach of contract,
24 including breach of the covenant of good faith and fair dealing, may provide the basis
25 for a tort claim. Hilton Hotels Corp. v. Butch Lewis Productions, Inc., 109 Nev. 1043,
26 1046-47, 862 P.2d 1207, 1209 (1993) (citations omitted).

1 40. To prevail upon a claim for tortious breach of the covenant of good faith
2 and fair dealing, the plaintiff must prove that: (1) plaintiff and defendant entered into a
3 contract; (2) defendant owed a duty of good faith to plaintiff arising from the contract;
4 (3) a special element of reliance or fiduciary duty existed between plaintiff and
5 defendant where defendant was in a superior or entrusted position; (4) defendant
6 breached the duty of good faith by engaging in grievous and perfidious misconduct;
7 and (5) plaintiff suffered damages as a result of the breach. Great Amer. Ins. Co. v.
8 Gen. Builders, Inc., 113 Nev. 346, 355, 934 P.2d 257, 263 (1997); see also State, Univ.
9 & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 989, 103 P.3d 8, 19 (2004).

11 41. Summary judgment has been affirmed on claims involving a partnership
12 and claims for breach of contract and breach of the implied covenant of good faith and
13 fair dealing. See e.g. Phelps v. Frampton, 170 P.3d 474 (Mont. 2007) (not tortious
14 claim).

15 42. “The only fiduciary duties a partner owes to the partnership and the other
16 partners are the duty of loyalty and the duty of care.” NRS 87.4336(1).

17 43. The statutory duty of loyalty requires each partner to, *inter alia*, “to
18 account to the partnership and hold as trustee for it any property, profit or benefit
19 derived by the partner in the conduct and winding up of the partnership business or
20 derived from a use by the partner of partnership property, including the appropriation of
21 a partnership opportunity.” NRS 87.4336(2)(a).

23 44. The statutory duty of care is limited to “refraining from engaging in grossly
24 negligent or reckless conduct, egregious or perfidious conduct, intentional misconduct
25 or a knowing violation of law by Mr. Mineau or Mr. Mineau on behalf of Legion. To the
26 contrary, the evidence supports that the contractor delayed the work, Mr. Kvam

1 conveyed information he received about the progress of the project and/or Mr. Kvam
2 communicated about the project.

3 45. Mineau/Legion kept Mr. Kvam reasonably informed of the Project with the
4 information available to Mineau/Legion and Mr. Kvam had independent
5 communications with the contractor, thereby negating the fourth element required to
6 establish summary judgment on this claim. *Motion*, Ex. 1, ¶ 29, Ex. 14, Ex. 18, Ex. 24.

7 46. Even viewing all evidence raised by Mineau/Legion in a light most
8 favorable to Mr. Kvam, Mr. Kvam has failed to set forth evidence supporting each
9 element of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge
10 Capital, 2020 WL1446700, Slip Copy, March 25, 2020.

11 47. Accordingly , Mineau/Legion are entitled to judgment as a matter of law
12 on the SAC's Fourth Cause of Action for Breach of Contract and Tortious Breach of
13 Implied Covenant of Good Faith and Fair Dealing.

14
15 **E. Accounting.**

16 48. The SAC's Fifth Cause of Action is for Accounting.

17 49. As state, pursuant to NRS 87.4336(2)(a), a partner must account to the
18 partnership for any property, profit or benefit derived by the partner from a use by the
19 partner of partnership property, including the appropriation of a partnership opportunity.

20 50. The only partnership property over which Mineau/Legion had custody
21 was the Property itself, and the proceeds from the sale of the Property. *Motion*, Ex. 1,
22 ¶ 10, ¶ 37-40, Ex. 2; *Opposition*, Ex. 10, Ex. 11.

23 51. Mineau/Legion contends they provided Mr. Kvam with all information
24 necessary for an accounting.
25
26

1 52. Mr. Kvam asserts Mineau/Legon have not provided a complete
2 accounting.

3 53. An accounting will verify the accuracy of the amount net proceeds.

4 54. A genuine issue of material fact exists regarding whether the accounting
5 provided by Mineau/Legion is factually and legally sufficient under applicable law.

6 55. Accordingly, summary judgment on the SAC's Fifth Cause of Action is not
7 warranted under NRCP 56.

8 **F. Court Supervision of Dissolution and Winding Up, and Appointment**
9 **of Receiver.**

10 56. The SAC's Sixth Cause of Action is for Court Supervision of Dissolution
11 and Winding up, and Appointment of Receiver.

12 57. A partnership continues after dissolution only for the purpose of winding
13 up its business. The partnership is terminated when the winding up of its business is
14 completed. NRS 87.4352(1).

15 58. A receiver may be appointed by the court in which an action is pending,
16 or by the judge thereof between partners or others jointly owning or interested in any
17 property or fund. NRS 32.010.

18 59. The winding up by the partners themselves or by a receiver does not
19 affect the personal liability of the partners for unsatisfied claims, absent specific
20 agreement. NRS 87.360.

21 60. The parties agreed all interests in the partnership and any remedies due
22 to the partnership, including the proceeds from the sale of the Property in the amount
23 of \$26,337.71, should be assigned to Mr. Kvam and the partnership dissolved. *Motion*,
24 Ex. 1, ¶ 38-39; *Opposition*, p. 20; *Stipulation to Deposit Funds*, Dec. 12, 2018.
25
26

1 61. A ruling on this claim is held in abeyance pending resolution of the SAC's
2 Fifth Cause of Action for Accounting.

3 62. **Temporary and Permanent Injunction.**

4 63. The SAC's Seventh Cause of Action is for Temporary and Permanent
5 Injunction.

6 64. Based on the findings and conclusions on the SAC's Second, Third,
7 Fourth, Fifth and Sixth Causes of Action, and on the FACC's Third Claim for Relief for
8 Declaratory Relief, and the deposit of the funds with the Court, the SAC's Seventh
9 Cause of Action for Temporary and Permanent Injunction is legally ineffectual and
10 summary judgment should be denied.
11

12 **H. Fraud, Fraudulent Inducement, and Fraudulent Concealment.**

13 65. The SAC's Eighth Cause of Action is for Fraud, Fraudulent Inducement,
14 and Fraudulent Concealment.

15 **i. Fraud.**

16 66. Under Nevada law, the elements of a fraud claim are as follows: (1) a
17 false representation made by the defendant; (2) defendant's knowledge or belief that
18 the representation is false or insufficient basis for making the representation; (3)
19 defendant's intention to induce the plaintiff to act or to refrain from acting in reliance
20 upon the misrepresentation; (4) plaintiff's justifiable reliance upon the
21 misrepresentation; and (5) damage to the plaintiff resulting from such reliance. Starr
22 Indem. & Liab. Co. v. Young, 379 F. Supp. 3d 1103, 1110 (D. Nev. 2019) (citing
23 Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 825 P.2d 588, 592 (1992)).
24

25 67. To establish a claim for intentional misrepresentation, a plaintiff must
26 show that the defendant supplied plaintiff with false information, and summary

1 judgment is appropriate if plaintiff has not provided evidence of this essential element.

2 Land Baron Inv. v. Bonnie Springs Family LP, 131 Nev. 686, 695-96, 356 P.3d 511,
3 518 (2015); Moore v. Prudential Residential Services Ltd. Partnership, 849 So.2d
4 914, 926 (Ala. 2002) (affirming summary judgment in favor of defendants because
5 plaintiffs presented no evidence indicating that defendants knew real estate had any
6 defects, or evidence demonstrating reliance on misrepresentations.)

7
8 **ii. Fraudulent Inducement.**

9 68. To prove fraudulent inducement, plaintiff must show: (1) defendant's false
10 representation; (2) that defendant knew or believed statement was false, or defendant
11 had an insufficient basis for making statement; (3) defendant intended to induce
12 plaintiff to act or refrain from acting upon the misrepresentation; and (4) plaintiff was
13 damaged as a result of relying on the misrepresentation. Hernandez v. Creative
14 Concepts, Inc., 862 F. Supp. 2d 1073, 1092–93 (D. Nev. 2012).

15 69. Where a plaintiff fails to provide any evidence of defendant's intent when
16 defendant entered into agreement, summary judgment is appropriate. Argonaut
17 Development Group, Inc. v. SWH Funding Corp., 150 F.Supp.2d 1357, 1364 (S.D. Fla.
18 2001).

19
20 **iii. Fraudulent Concealment.**

21 70. To establish fraudulent concealment, a plaintiff must prove five elements:
22 (1) the defendant concealed or suppressed a material fact; (2) the defendant was
23 under a duty to disclose the fact to the plaintiff; (3) the defendant intentionally
24 concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff
25 was unaware of the fact and would have acted differently if she had known of the
26 concealed or suppressed fact; and (5) the plaintiff sustained damages as a result of the

1 concealment or suppression. Nevada Power Co. v. Monsanto Co., 891 F. Supp. 1406,
2 1415 (D. Nev. 1995).

3 71. Mr. Mineau conveyed the information he was provided and kept Mr.
4 Kvam reasonably informed of the Project with the information available to
5 Mineau/Legion. *Motion*, Ex. 1, ¶ 29, Ex. 14, Ex. 18, Ex. 24.

6 72. Mr. Kvam had independent and direct communications with the
7 contractor and therefore was aware of the progress on the project.

8 73. Mr. Kvam did not rely upon Mineau/Legion's representations as Mr. Kvam
9 communicated directly with TNT concerning the status of the project. *Motion*, Ex. 9-11,
10 Ex. 13-16, Ex. 20.

11 74. Mr. Kvam identifies no specific evidence that Mr. Mineau made any
12 affirmative misrepresentations during the Project.

13 75. Mr. Kvam cites not evidence that Mr. Mineau supplied false information to
14 him.

15 76. Mr. Kvam has not established that he relied on any false information to his
16 detriment.

17 77. Even viewing all evidence raised by Mineau/Legion in a light most
18 favorable to Mr. Kvam, Mineau/Legion have demonstrated that Mr. Kvam has failed to
19 identify specific evidence for all of the elements of this claim. Cuzze, 123 Nev. at 602,
20 172 P.3d at 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25,
21 2020.

22 78. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on
23 the SAC's Eighth Cause of Action for Fraud, Fraudulent Inducement, and Fraudulent
24 Concealment.
25
26

1 **I. Conversion.**

2 79. The SAC's Ninth Cause of Action is for Conversion.

3 80. "Conversion is a distinct act of dominion wrongfully exerted over
4 another's personal property in denial of, or inconsistent with his title or rights therein or
5 in derogation, exclusion, or defiance of such title or rights." M.C. Multi-Family Dev.,
6 L.L.C. v. Crestdale Assocs., Ltd., 124 Nev. 901, 910, 193 P.3d 536, 542 (2008).

7 81. "Conversion generally is limited to those severe, major, and important
8 interferences with the right to control personal property that justify requiring the actor to
9 pay the property's full value." Edwards v. Emperor's Garden Rest., 122 Nev. 317, 328–
10 29, 130 P.3d 1280, 1287 (2006).

11 82. Mr. Kvam has not identified disputed facts regarding any distinct act of
12 dominion that Mineau or Legion wrongfully exerted over Kvam's personal property, or
13 the funds delivered to the title company and TNT.

14 83. Mr. Kvam delivered all project funds either directly to the title company to
15 purchase the Property or directly to TNT to fund the renovation. *Motion*, Ex. 3-4, Ex. 8,
16 Ex. 12; *Opposition*, Ex. 7-8, Ex. 18, Ex. 20.

17 84. Even viewing all evidence raised by Mineau/Legion in a light most
18 favorable to Mr. Kvam, Mineau/Legion have demonstrated Mr. Kvam has failed to
19 identify evidence for each element of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at
20 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020.

21 85. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on
22 the SAC's Ninth Cause of Action for Conversion.
23
24
25
26

1 **J. RICO.**

2 86. The SAC's Tenth Cause of Action SAC is for civil RICO.

3 87. In Nevada, the elements for a claim of civil RICO violations (Racketeering
4 Influenced and Corrupt Organizations Act) are: (a) defendants engaged in racketeering
5 activities as defined in NRS 207.390 and a racketeering enterprise as is defined in
6 NRS 207.380; (b) defendants acting directly, and in conspiracy with one another or
7 through their syndicate, participated directly in racketeering activity by engaging in at
8 least two crimes related to racketeering; (c) defendants' activities have the same or
9 similar pattern, intent, results, accomplices, victims, or methods of commission, or
10 otherwise interrelated by distinguishing characteristics and are not isolated events; (d)
11 defendants acquired or maintained directly or indirectly an interest in, or control of, any
12 enterprise, or defendants are employed by or associated with any enterprise to conduct
13 or participate directly or indirectly in the affairs of the enterprise through a racketeering
14 activity; (e) plaintiff's injuries flow from the defendants' violation of a predicate Nevada
15 RICO act; (f) plaintiff's injury was be proximately caused by the defendants' violation of
16 the predicate act; (g) plaintiff did not participate in the commission of the predicate act;
17 and, plaintiff is entitled to institute a civil action for recovery of treble damages
18 proximately caused by the RICO violations. NRS 207.470(1). NRS 207.470; Stoddart
19 v. Miller, 2008 WL 6070835 (Nev. 2008); Siragusa v. Brown, 114 Nev. 1384, 971 P.2d
20 801 (1999); Gordon v. Eighth Judicial Dist. Ct., 12 Nev. 216, 231, 913 P.2d 240, 250-
21 51 (1996); Cummings v. Charter Hosp. of Las Vegas, Inc., 111 Nev. 639, 896 P.2d
22 1137 (1995); Allum v. Valley Bank of Nevada, 109 Nev. 280, 849 P.2d 297
23 (1993); Hale v. Burkhardt, 104 Nev. 632, 634, 764 P.2d 866, 867 (1988).

1 88. Any person who is injured in his business or property by reason of any
2 violation of NRS 207.400 has a cause of action against a person causing such injury for
3 three times the actual damages sustained. NRS 207.470

4 89. "'Racketeering activity' means engaging in at least two crimes related to
5 racketeering that have the same or similar pattern, intents, results, accomplices,
6 victims, or methods of commission, or are otherwise interrelated by distinguishing
7 characteristics and are not isolated incidents...." NRS 207.390.

8 90. Criminal syndicate means any combination of persons, so structured that
9 the organization will continue its operation even if individual members enter or leave
10 the organization, which engages in or has the purpose of engaging in racketeering
11 activity. NRS 207.370.

12 91. Mr. Kvam has not identified specific evidence of racketeering activity, or
13 any activities between Mineau/Legion that resemble the type of activities required to
14 support the elements of this claim.

15 92. Summary judgment has been affirmed on civil RICO claims. See e.g.,
16 Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143, 107 S.Ct. 2759
17 (1987); In re Southwest Exchange, Inc., 128 Nev. 907, 381 P.3d 626 (2012).

18 93. Even viewing the evidence in a light most favorable to Mr. Kvam, Mr.
19 Kvam has not identified with specificity evidence to establish any of the elements of a
20 civil RICO claim which warrants entry of summary judgment on this claim. Cuzze, 123
21 Nev. at 602, 172 P.3d at 134; Knutson v. County of Barnes, 642 N.W.2d 910 (N.D.
22 2002) (holding defendants were entitled to summary judgment on RICO claim because
23 plaintiffs failed to plead with specificity as required, and failed to present any evidence
24 to support their claim).

1 94. Mineau/Legion are entitled to judgment as a matter of law on the SAC's
2 Tenth Cause of Action for RICO.

3 **K. Derivative Claim.**

4 95. The SAC's Eleventh Cause of Action is a Derivative claim on behalf of
5 the joint venture.

6 96. Mr. Kvam conceded the partnership does not hold any independent
7 claims for relief against Mineau/Legion.

8 97. Based on the Courts findings and conclusions on the SAC's Second,
9 Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action, and Mr.
10 Kvam's concession, the Court finds and concludes no genuine issue of material fact
11 exists for trial on the SAC's Eleventh Cause of Action for a Derivative Claim and
12 Mineau/Legion are entitled to judgment as a matter of law.

13
14 **V. ORDER.**

15 Based on the foregoing findings of undisputed facts and conclusions of law, and
16 good cause appearing therefor,

17 **IT IS HEREBY ORDERED SUMMARY ADJUDICATION IS GRANTED,**
18 **DENIED, AND HELD IN ABEYANCE AS FOLLOWS:**

19 1. Notice was reasonably given to the parties of the Court's intent to grant
20 summary judgment on Mineau/Legion's *FACC* Third Cause of Action for Declaratory
21 Relief.

22 2. Summary adjudication is granted on Mineau/Legion's *FACC* Third Cause
23 of Action for Declaratory Relief and the Court declares:

24 a. Mr. Kvam, Mr. Spinola, and Mr. Mineau were the member partners
25 in Legion for the acquisition of 7747 S. May Street, Chicago, Illinois.
26

- 1 b. Mr. Kvam was the initial funding member.
- 2 c. The parties formed a joint venture/partnership pursuant to NRS
- 3 87.4322.
- 4 d. The Terms of Agreement and NRS Chapter 87 governed the
- 5 partnership.
- 6 e. The Terms of Agreement did not constitute a loan agreement.
- 7 f. There was no meeting of the minds regarding any other provisions
- 8 to the Terms of the Agreement except those written and contained in the
- 9 Terms of Agreement.
- 10 g. Mr. Kvam acceded to Mr. Spinola's interest.
- 11 h. No party made any loans to the partnership.
- 12 i. Mr. Kvam acceded to Mr. Spinola interest.
- 13 j. Mr. Spinola's does not have an interest adverse to the interests of
- 14 Mr. Kvam and Mineau/Legion. Based on the accession of Mr. Spinola's
- 15 interest to Mr. Kvam and the remedy of assignment, Mr. Spinola has no
- 16 legal interest in the Terms of Agreement.
- 17 k. The project failed.
- 18 l. All remedies due to the partnership are assigned to Kvam because
- 19 the project failed.
- 20 m. The parties stipulated all interests in the partnership and any
- 21 remedies due to the partnership, including the proceeds from the
- 22 sale of the Property in the amount of \$26,337.71, should be
- 23 assigned to Mr. Kvam and the partnership dissolved.
- 24
- 25
- 26

1 3. Summary adjudication is GRANTED in favor of Mineau/Legion and
2 against Mr. Kvam on the SAC's Second Cause of Action for Recission or Reformation
3 of Agreement.

4 4. Summary adjudication is GRANTED in favor of Mineau/Legion and
5 against Mr. Kvam on the SAC's Third Cause of Action for Breach of Contract - Loan.

6 5. Summary adjudication is GRANTED in favor of Mineau/Legion and
7 against Mr. Kvam on the SAC's Fourth Cause of Action for Breach of Contract and
8 Tortious Breach of Implied Covenant of Good Faith and Fair Dealing.

9 6. Summary adjudication is DENIED on the SAC's Fifth Cause of Action for
10 Accounting.

11 7. The Court's ruling on Motion is held in abeyance on the SAC's Sixth
12 Cause of Action for Court Supervision of Dissolution and Winding up, and Appointment
13 of Receiver until resolution of Mr. Kvam's Fifth Cause of Action
14

15 8. Based on the Court's foregoing findings of fact and conclusions of law,
16 summary adjudication is DENIED on the SAC's Seventh Cause of Action for
17 Temporary and Permanent Injunction as the claim is legally ineffectual based on the
18 deposit of the funds.

19 9. Summary adjudication is GRANTED in favor of Mineau/Legion and
20 against Mr. Kvam on the SAC's Eighth Cause of Action for Fraud, Fraudulent
21 Inducement, and Fraudulent Concealment.

22 10. Summary adjudication is GRANTED in favor of Mineau/Legion and
23 against Mr. Kvam on the SAC's Ninth Cause of Action for Conversion.

24 11. Summary adjudication is GRANTED in favor of Mineau/Legion and
25 against Mr. Kvam on the SAC's Tenth Cause of Action for civil RICO.
26

12. Summary adjudication is GRANTED in favor of Mineau/Legion and against Mr. Kvam on the SAC's Eleventh Cause of Action for Derivative Claim.

13. Based on the Court's foregoing findings of fact and conclusions of law, summary adjudication is DENIED on the SAC's First Claim for Relief for Declaration of Joint Venture.

14. The claims remaining at issue in this action for is Mr. Kvam's Fifth Cause of Action and Sixth Cause of Action, and any declaratory relief requested under Mr. Kvam's First Cause of Action which was not resolved by the declarations or findings of fact and conclusions of law made herein, and claims remaining against Defendant 7747 S. May Street, if any.

15. The parties are directed to contact the Judicial Assistant in Department 6 within thirty (30) days to set this matter for trial on these claims.

16. The parties are further directed to resubmit any motions previously submitted which are not made moot by reason of this Order.

DATED this 4th day of June, 2020.

LYNNE K. SIMONS
DISTRICT JUDGE

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

MICHAEL MATUSKA, ESQ.
AUSTIN SWEET, ESQ.
MARK GUNDESON, ESQ.

Hadi Bre

Exhibit 3

**NOTICE OF ENTRY OF ORDER - ORDER GRANTING, IN PART, AND
DENYING, IN PART DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT; ORDER GRANTING SUMMARY JUDGMENT ON CLAIM
PURSUANT TO COURT'S NRCP 56 NOTICE
(Docketing Statement Civil Appeals)**

Exhibit 3

**NOTICE OF ENTRY OF ORDER - ORDER GRANTING, IN PART, AND
DENYING, IN PART DEFENDANT'S MOTION FOR SUMMARY
JUDGMENT; ORDER GRANTING SUMMARY JUDGMENT ON CLAIM
PURSUANT TO COURT'S NRCP 56 NOTICE
(Docketing Statement Civil Appeals)**

1 **CODE 2540**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 asweet@gundersonlaw.com

6 Mark H. Gunderson, Esq.

7 Nevada State Bar No. 2134

8 mgunderson@gundersonlaw.com

9 3895 Warren Way

10 Reno, Nevada 89509

11 Telephone: 775.829.1222

12 *Attorneys for Brian Mineau and Legion Investments*

13
14 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
15 **IN AND FOR THE COUNTY OF WASHOE**

16 JAY KVAM,

Case No. CV18-00764

17 Plaintiff / Counterdefendant,

Dept. No. 6

18 vs.

19 BRIAN MINEAU; LEGION INVESTMENTS,
20 LLC; 7747 S. May Street, an Unincorporated
21 Joint Venture; and DOES I-X, inclusive,

22 Defendants / Counterclaimants.
23 _____/

24 **NOTICE OF ENTRY OF ORDER**

25 PLEASE TAKE NOTICE that an *Order Granting, in Part, and Denying, in Part Defendants'*
26 *Motion for Summary Judgment; Order Granting Summary Judgment in Claim Pursuant to Court's*
27 *NRCP 56 Notice*, was entered on June 5, 2020, a copy of which is attached as Exhibit "1."

28 ///

///

///

///

///

///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AFFIRMATION

The undersigned does hereby affirm that the preceding document, **NOTICE OF ENTRY OF ORDER**, filed in the Second Judicial District Court of the State of Nevada, County of Washoe, does not contain the social security number of any person.

DATED this 5th day of June, 2020.

GUNDERSON LAW FIRM

By: /s/ Austin Sweet
Austin K. Sweet, Esq.
Nevada State Bar No. 11725
Mark H. Gunderson, Esq.
Nevada State Bar No. 2134
3895 Warren Way
Reno, Nevada 89509
Telephone: 775.829.1222
Attorneys for Brian Mineau and Legion Investments

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Michael Matuska, Esq.
Matuska Law Offices, Ltd.
2310 South Carson Street, Suite 6
Carson City, Nevada 89701
Attorney for Jay Kvam

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Order Granting, in Part, and Denying, in Part Defendants' Motion for Summary Judgment; Order Granting Summary Judgment in Claim Pursuant to Court's NRCP 56 Notice	45

FILED
Electronically
CV18-00764
2020-06-05 01:59:32 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7911496

Exhibit “1”

Exhibit “1”

1 Code:

2
3
4
5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8
9 JAY KVAM,

10 Plaintiff,

Case No.: CV18-00764

11 vs.

Dept. No: 6

12 BRIAN MINEAU; LEGION INVESTMENTS,
13 LLC; 7747 S. May Street, an Unincorporated
Joint Venture; and DOES I-X, inclusive,

14 Defendants.
15 _____/

16 BRIAN MINEAU and LEGION
INVESTMENTS, LLC,

17 Counterclaimant,

18 vs,
19

20 JAY KVAM,

21 Counterdefendant
22 _____/

23 **ORDER GRANTING, IN PART, AND DENYING, IN PART**
24 **DEFENDANTS' MOTION FOR SUMMARY JUDGMENT;**
ORDER GRANTING SUMMARY JUDGMENT
ON CLAIM PURSUANT TO COURT'S NRCP 56 NOTICE

25 Before this Court is a *Motion for Summary Judgment* ("Motion") filed by
26 Defendants/Counterclaimants BRIAN MINEAU ("Mr. Mineau") and LEGION

1 INVESTMENTS, LLC ("Legion") (hereinafter "Mineau/Legion" unless individually
2 referenced), by and through their attorney of record, Gunderson Law Firm.
3 Plaintiff/Counterdefendant JAY KVAM ("Mr. Kvam") filed his *Opposition to Defendants'*
4 *Motion for Summary Judgment; and Cross Motion for Partial Summary Judgment*¹
5 ("Opposition"), by and through his attorney of record, Matuska Law Offices. Mineau and
6 Legion filed a *Reply in Support of Motion for Summary Judgment* ("Reply"). The *Reply*
7 does not address the merits of the countermotion portion of the *Opposition* but does
8 request that the Court strike it. Thereafter, the matter was submitted for decision.
9

10 The Court heard oral arguments on the *Motion* ("Hearing"), requested counsel to
11 provide proposed orders, and the matter was taken under advisement. As a result of oral
12 arguments, this Court conducted further review of the pleadings and papers filed,
13 conducted additional research and gave notice under NRCP 56 of its intention to grant
14 summary judgment on one of Mineau/Legion's claims that was not subject of their *Motion*.
15 The Court heard additional argument in this regard. This Order follows.

16 **I. FACTUAL AND PROCEDURAL BACKGROUND.**

17 This action involves an agreement to purchase, restore, and resell a house in
18 Chicago ("the Property"). *Second Amended Verified Complaint* ("SAC"), ¶ 8. Mr. Kvam
19 provided funding for the Property. SAC, ¶ 8a. Mineau/Legion were designated to manage
20 the operation. SAC, ¶ 8c.
21

22 Mr. Kvam asserts he demanded his money back because he did not receive any
23 interest payments and because renovation activity on the Property ceased. SAC, ¶¶
24

25 ¹The Court admonished counsel in a pretrial conference on January 14, 2020, that cross motions
26 are not allowed under applicable court rules. WDCR 10(3) ("Any motion, opposition, reply, etc.,
must be filed as a separate document . . ."). It appears Mr. Kvam has disregarded the Court's
admonishment. At the February 11, 2010, hearing on the *Motion* and *Opposition*, the Court
again admonished counsel of the same.

1 8a,17. Mr. Kvam also asserts that he is entitled to receive a return of his investment, plus
2 interest, prior to the sale of the Property. SAC, ¶¶ 12-17. In addition, Mr. Kvam alleges
3 Mineau/Legion sold the Property at a loss and concealed the sale. SAC, ¶ 16.

4 Terms were provided for return on Mr. Kvam's investment if investment was
5 profitable and in the event if was not. Mr. Kvam anticipated an approximate \$13,000
6 profit. When the project failed, Mr. Kvam filed an action.

7
8 The original *Complaint* was filed by Mr. Kvam on April, 2018, asserting claims of
9 relief for: (1) Declaration of Joint Venture; (2) Rescission or Reformation of Agreement;
10 (3) Breach of Contract - Loan; (4) Breach of Contract and Tortious Breach of Implied
11 Covenant of Good Faith and Fair Dealing; (5) Accounting; (6) Court Supervision of
12 Dissolution and Winding Up, and Appointment of Receiver; (7) Temporary and Permanent
13 Injunction; and, (11) Derivative Claim. *Complaint*.

14 The original *Answer and Counterclaim* (filed as one document) was filed on June
15 5, 2018 and alleges eleven claims for relief for: (1) Breach of Contract; (2) Breach of the
16 Covenant of Good Faith and Fair Dealing; (3) Declaratory Relief; (4) Intentional
17 Interference with Prospective Economic Advantage; (5) Deceptive Trade Practices; (6)
18 Abuse of Process; (7) Trespass; (8) Trespass to Chattels; (9) Conversion; (10) Fraud;
19 and (11) Negligence.²

20
21 On September 4, 2018, the Court³ entered its *Order* on Mr. Kvam's *Motion for*
22 *Dissolution*. The Court declined to enter the order requested, finding the record did not

23
24
25 ² The Tenth Claim for Relief (Fraud) and the Eleventh Claim for Relief (Negligence) are
26 identified as "Tenth Claim for Relief."

³ This matter was proceeding in Department 3 before Judge Jerome M. Polaha until June 6, 2019.

1 support an adjudication of the issues at that time and was premature due to lack of
2 discovery. *Order*, p. 2.

3 On September 5, 2018, the Court dismissed Mineau/Legion's claims: (8) Trespass
4 to Chattels and (9) Conversion. The Court granted Mr. Kvam's *Motion for a More Definite*
5 *Statement* on claims: (5) Deceptive Trade Practices; (10) Fraud; and (11) Negligence.

6 Mineau/Legion filed their *First Amended Counterclaim* ("FACC") on October 5,
7 2018 (The *Answer* was not restate; the FACC was filed as a separate document)
8 asserting the same claims for relief set forth in the original *Answer and Counterclaim* for:
9 (1) Breach of Contract; (2) Breach of the Covenant of Good Faith and Fair Dealing; (3)
10 Declaratory Relief; (4) Intentional Interference with Prospective Economic Advantage; (5)
11 Deceptive Trade Practices; (6) Abuse of Process; (7) Trespass; (8) Trespass to Chattels;
12 (9) Conversion; (10) Fraud; and (11) Negligence.

13 In response, Mr. Kvam filed his *Motion to Dismiss and for Summary Judgment* on
14 October 25, 2018. Mr. Kvam requested that the Court dismiss the FACC's Fifth
15 (Deceptive Trade Practices), Tenth (Fraud), and Eleventh Claims for Relief (Negligence),
16 dismiss any remaining claims dependent on allegations regarding the Atlas Investors
17 Southside LLC, and grant summary judgment on all FACC claims for relief. *Motion to*
18 *Dismiss and for Summary Judgment*, p. 1.

19 On January 9, 2019, the Court entered summary judgment in favor of Mr. Kvam on
20 Mineau/Legion's counterclaims for: (1) Breach of Contract; (2) Breach of Covenant of
21 Good Faith and Fair Dealing; (4) Intentional Interference with Prospective Economic
22 Advantage; (5) Deceptive Trade Practice (indicated as dismissed); (6) Abuse of Process;
23 (7) Trespass; (10) Fraud; and (11) Negligence (indicated as dismissed). Mineau/Legion's
24 FACC Third Claim for Relief for Declaratory Relief remained viable.
25
26

1 Mr. Kvam did not file an answer to the *FACC* Third Claim for Relief for Declaratory
2 Relief and has not done so to date.

3 On January 31, 2019, Mr. Kvam filed his *First Amended Verified Complaint*
4 (*"FAC"*), asserting: (1) Declaration of Joint Venture; (2) Rescission or Reformation of
5 Agreement; (3) Breach of Contract - Loan; (4) Breach of Contract and Tortious Breach of
6 Implied Covenant of Good Faith and Fair Dealing; (5) Accounting; (6) Court Supervision
7 of Dissolution and Winding Up, and Appointment of Receiver; (7) Temporary and
8 Permanent Injunction; (8) Fraud, Fraudulent Inducement and Fraudulent Concealment;
9 and, (9) Derivative Claim.

10
11 On February 19, 2019, Mineau/Legion filed their *Answer to First Amended Verified*
12 *Complaint*.

13 On September 11, 2019, Mr. Kvam filed his *SAC* asserting claims of relief for: (1)
14 Declaration of Joint Venture; (2) Rescission or Reformation of Agreement; (3) Breach of
15 Contract - Loan; (4) Breach of Contract and Tortious Breach of Implied Covenant of Good
16 Faith and Fair Dealing; (5) Accounting; (6) Court Supervision of Dissolution and Winding
17 Up, and Appointment of Receiver; (7) Temporary and Permanent Injunction; (8) Fraud,
18 Fraudulent Inducement and Fraudulent Concealment; (9) Conversion; (10) RICO; and,
19 (11) Derivative Claim. *SAC*, p. 4-10. The *SAC* is the operative complaint.

20
21 On September 25, 2019, Mineau/Legion filed their *Answer to Second Amended*
22 *Verified Complaint*.

23 The claims that remain viable at this time are Mr. Kvam's First through Eleventh
24 Causes of Action set forth in the *SAC* and Mineau/Legion's *FACC* Third Claim for Relief
25 for Declaratory Relief.

1 The SAC's First Cause of Action for Declaration of Joint Venture and
2 Mineau/Legion's Third Claim for Relief for Declaratory Relief in the *FACC* compare as
3 follows:

MR. KVAM'S FIRST CAUSE OF ACTION (Declaration of Joint Venture)	MINEAU/LEGION'S THIRD CLAIM FOR RELIEF (Declaratory Relief)
20. Plaintiff hereby incorporates by reference all of the paragraphs above as though fully set forth herein.	32. Mineau and Legion reallege the allegations contained in the other paragraphs of this Counterclaim and incorporate them by reference as if fully set forth here.
21. There is an actual, justifiable, present controversy between KVAM, MINEAU, and LEGION on the question of whether the Agreement identified in Par. 8 constitutes a joint venture agreement, an agreement for MINEAU to transfer his membership interest in LEGION, or some other type of agreement.	33. A justiciable controversy has arisen between the parties regarding their respective rights, restriction, duties, and obligations pursuant to the Agreement and the House.
22. KVAM therefore requests a declaration on the legal rights created by the Agreement, the status of the unincorporated joint venture referred to herein as 7747 and the respective interests of the joint venturers.	34. Mineau's and Legion's interests in the controversy are adverse to Kvam's.
23. KVAM further requests a declaration on the amount of loans and contributions made to the 7747 by each of the joint venturers.	35. Mineau's and Legion's interests in the controversy are legally protectable.
24. KVAM further requests a declaration that 7747, MINEAU, and LEGION were required to assign the entire interest in the 7747 to KVAM in the event it failed in any way.	36. The controversy is ripe for judicial determination.

25 SAC, generally; *FACC*, generally. During argument, Mineau/Legion concurred the
26 legal entity was a joint venture. *Transcript of Proceedings, Oral Arguments (Motion for*

1 *Summary Judgment*), February 11, 2020 (“*TOP, MSJ*”). The joint venture/partnership
2 was created for acquisition of the Property.

3 At the Pre-trial Conference and Pre-trial Motions hearing, the Court rendered its
4 oral ruling on the *MSJ*, including giving NRCP 56(f) notice that it intended to grant
5 summary judgment on Mineau/Legion’s *FACC* Third Claim for Relief for Declaratory
6 Relief. The Court further rendered its oral ruling on the claims on which it was denying
7 summary judgment, such as SAC’s Fifth Claim for Relief for Accounting and the claims
8 it was holding a ruling in abeyance, i.e. the dissolution claim and request for
9 appointment of a receiver. *Transcript of Proceedings, Pre-trial Conference & Pretrial*
10 *Motions, 2/27/2020 (“Tr.”)*, p. 9-13.

12 **A. Motion for Summary Judgment**

13 In their *Motion*, Mineau/Legion seek summary judgment on the SAC’s eleven (11)
14 causes of action. *Motion*, p. 11. Mineau/Legion did not seek summary judgment on
15 *FACC*’s Third Claim for Relief for Declaratory Relief. *Motion*, p. 11.

16 On the SAC’s first claim (Declaration of Joint Venture), Mineau/Legion request a
17 judicial declaration in Mineau/Legion’s favor regarding the parties’ respective rights and
18 interests as there are no genuine dispute of material facts. *Motion*, p. 11-13.

19 On the SAC’s Mr. Kvam’s second claim (Rescission or Reformation of Agreement)
20 Mineau/Legion seek summary judgment on the grounds Mr. Kvam has not produced any
21 evidence to establish that the parties, at the time of contracting, shared a misconception
22 about a vital fact upon which they based their bargain. *Motion*, p. 13-14.

24 On the SAC’s third claim (Breach of Contract – Loan), Mineau/Legion contend the
25 Terms of Agreement establish the terms of a joint venture which lacks critical elements of
26 a loan, including a defined borrower or a maturity date. *Motion*, p. 14-15.

1 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
2 Covenant of Good Faith and Fair Dealing), Mineau/Legion assert they owed Mr. Kvam no
3 affirmative duty to properly manage and complete the renovation, and the duty of loyalty
4 only requires a partner to account to the partnership for any partnership property held by
5 that partner. *Motion*, p. 16-19.

6 On the SAC's fifth claim, (Accounting), Mineau/Legion claim Nevada law only
7 requires a partner to account to the partnership for any partnership property held by that
8 partner which, in this case, was the Property itself, the proceeds from its sale of the
9 Property, and the disposition of those assets which are entirely accounted for and not
10 subject to genuine dispute. *Motion*, 19-20.

11 On the SAC's sixth claim (Court Supervision of Dissolution and Winding Up, and
12 Appointment of Receiver), Mineau/Legion maintain the partnership only has two
13 remaining assets: (1) its claims against TNT and (2) the proceeds from the sale of the
14 Property in the amount of \$26,337.91 which are to be assigned to Mr. Kvam pursuant to
15 the Terms of the Agreement. *Motion*, p. 20.

16 On the SAC's seventh claim (Temporary and Permanent Injunction),
17 Mineau/Legion claim upon dissolution of the partnership and assignment of its assets to
18 Mr. Kvam, the partnership will cease to exist thereby rendering this cause of action moot.
19 *Motion*, p. 20.

20 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
21 Concealment), Mineau/Legion posit Mr. Kvam has not produced any admissible evidence
22 to establish any of the elements of fraud because Mr. Mineau's statements, either
23 personally or on behalf of Legion, were made in good faith and were true to the best of
24 Mr. Mineau's knowledge. *Motion*, p. 21-22.

1 On the SAC's ninth claim, (Conversion), Mineau/Legion assert conversion only
2 applies to personal property, and Mr. Kvam has not produced any admissible evidence to
3 establish any of the other elements of conversion regarding the Property. *Motion*, p. 22.

4 On the SAC's tenth claim (RICO), Mineau/Legion argue Mr. Kvam has not
5 produced any admissible evidence, and none exists, to establish any of the elements of a
6 RICO claim. *Motion*, p. 23.

7 Finally, on the SAC's eleventh claim (Derivative Claim), Mineau/Legion state Mr.
8 Kvam has not produced any admissible evidence to establish the partnership holds any
9 independent claim for relief against Mineau/Legion. *Motion*, p. 24.

11 **A. Opposition to Mineau/Legion's Motion for Summary Judgment;
12 and Cross Motion for Partial Summary Judgment⁴.**

13 In his *Opposition*, Mr. Kvam claims, regarding his first claim (Declaration of Joint
14 Venture), Mineau/Legion have changed their position, and conceded the parties formed a
15 partnership pursuant to NRS 87.4322. *Opposition*, p. 16-19.

16 On the SAC's second claim (Rescission or Reformation of Agreement), Mr. Kvam
17 asserts the Terms of Agreement does not purport to be a complete integration of the
18 entire agreement between the parties, and it is not the entire agreement because Mr.
19 Mineau induced Mr. Kvam to believe he was in charge of project, and he proceeded to
20 sign the purchase agreement and escrow papers, procure the contractor, prepare and
21 sign the Contractor Agreement, and instruct Mr. Kvam when to make payments.
22 *Opposition*, p. 19-20.

26 ⁴It is notable that, although improperly filed, the cross motion contained in the *Opposition*, must
assert there are no genuine issues of material fact on the SAC's claims. *Opposition*, generally.

1 On the SAC's third claim (Breach of Contract – Loan), Mr. Kvam contends the
2 Terms of Agreement contain both a profit-sharing agreement and a loan agreement.
3 *Opposition*, p. 20-21.

4 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
5 Covenant of Good Faith and Fair Dealing), Mr. Kvam states Mr. Mineau was in a superior
6 and entrusted position in which Mr. Kvam imposed a special element of reliance due to
7 Mr. Mineau's extensive handling of the Property project. *Opposition*, p. 21-23.

8 On the SAC's fifth claim (Accounting), Mr. Kvam argues Mr. Mineau failed to
9 account, for the loans, capital contributions, and expenses despite holding title to the
10 Property "as trustee." *Opposition*, p. 23-24.

11 On the SAC's sixth claim (Court Supervision of Dissolution and Winding Up, and
12 Appointment of Receiver), Mr. Kvam posits winding up is incomplete because Mr. Mineau
13 refuses to release funds to Mr. Kvam due to other claims to the funds. *Opposition*, p. 24.

14 On the SAC's seventh claim (Temporary and Permanent Injunction), Mr. Kvam
15 maintains once the remaining funds are distributed and the joint venture finally wound up,
16 this cause of action will be complete. *Opposition*, p. 25.

17 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
18 Concealment), Mr. Kvam incorporates broad arguments, but does not identify specific
19 facts, regarding various types of fraud and deceit at issue: (1) fraudulent or intentional
20 misrepresentation; (2) false promise; (3) Concealment; (4) Fraud by Nondisclosure
21 (Silence); (5) Negligent Misrepresentation; and, (6) Constructive Fraud. *Opposition*, p.
22 25-29.

23 On the SAC's ninth claim (Conversion), Mr. Kvam contends the conversion was
24 diverting project funds and holding the proceeds of sale. *Opposition*, p. 29-31.

1 On the SAC's tenth claim (RICO), Mr. Kvam asserts the predicate act, for example,
2 to establish a RICO claim derives from Mr. Mineau obtaining a signature from Mr. Kvam
3 to obtain his money under false pretenses including the misrepresentation the money
4 would be placed in a separate account. *Opposition*, p. 31-34.

5 Lastly, on the SAC's eleventh claim (Derivative Claim), Mr. Kvam stresses all of his
6 claims are asserted on his own behalf and on behalf of the joint venture, which is
7 permissible under applicable law. *Opposition*, p. 34.

8 **A. Reply in Support of Motion for Summary Judgment**

9
10 In their *Reply* on the SAC's first claim (Declaration of Joint Venture),
11 Mineau/Legion assert all parties agree the Court should enter a judicial declaration the
12 parties formed a partnership pursuant to NRS 87.4322; however, Mineau/Legion maintain
13 there is simply no legal or factual basis upon which a jury could decide Mr. Kvam's
14 investment of \$93,784.31 was a loan. *Reply*, p. 5-6.

15 On the SAC's second claim (Rescission or Reformation of Agreement),
16 Mineau/Legion contend Mr. Kvam fails to offer any admissible evidence to establish he
17 believed Mr. Mineau agreed to be "in charge of the project," or that the parties ever
18 agreed upon any terms other than those set forth in the Terms of Agreement. *Reply*, p. 6-
19 7.

20
21 On the SAC's third claim (Breach of Contract – Loan), Mineau/Legion claim Mr.
22 Kvam argues the Property was purchased not with a loan or borrowed funds, but with
23 joint venture funding, which is consistent with the terms of a joint venture, not a loan.
24 *Reply*, p. 7-8.

25 On the SAC's fourth claim (Breach of Contract and Tortious Breach of Implied
26 Covenant of Good Faith and Fair Dealing), Mineau/Legion maintain Mr. Kvam's

1 allegations fall well short of the "grievous and perfidious misconduct" standard as a matter
2 of law. *Reply*, p. 8.

3 On the SAC's fifth claim (Accounting), Mineau/Legion state they prepared
4 spreadsheets and delivered them to Mr. Kvam to provide the requested accounting.
5 *Reply*, p. 9.

6 On the SAC's sixth and seventh claims (Court Supervision of Dissolution and
7 Winding Up, and Appointment of Receiver and Temporary and Permanent Injunction),
8 Mineau/Legion note Mr. Kvam does not appear to dispute the relief sought by
9 Mineau/Legion. *Reply*, p. 9.

10 On the SAC's eighth claim (Fraud, Fraudulent Inducement and Fraudulent
11 Concealment), Mineau/Legion posit Mr. Kvam's incorporated claims are very broadly pled
12 and fail to contain any specific allegations. *Reply*, p. 9-12.

13 On the SAC's ninth claim (Conversion), Mineau/Legion assert Mr. Kvam has not
14 presented evidence they exerted a distinct act of dominion over Mr. Kvam's personal
15 property, rather Mr. Kvam merely alleges Mr. Mineau allowed TNT to commingle project
16 funds with TNT's other funds. *Reply*, p. 12-13.

17 On the SAC's tenth claim (RICO), Mineau/Legion note Mr. Kvam fails his burden of
18 establishing Mineau/Legion violated Nevada's RICO Act. *Reply*, p. 13-14.

19 On the SAC's eleventh claim (Derivative Claim), Mineau/Legion claim Mr. Kvam
20 has conceded the partnership does not hold any independent claim for relief against
21 Mineau/Legion other than the claims discussed above. *Reply*, p. 14.

22 Finally, Mineau/Legion request this Court strike Mr. Kvam's cross-motion contained
23 within his *Opposition*. *Reply*, p. 15.

1 The Court finds it appropriate to strike the relief requested in the cross-motion and
2 considers the document filed as an opposition only.

3 **II. STANDARD OF REVIEW.**

4 Summary judgment is appropriate under Rule 56 of the Nevada Rules of Civil
5 Procedure "when the pleadings, depositions, answers to interrogatories, admissions, and
6 affidavits, if any, that are properly before the court demonstrate that no genuine issue of
7 material fact exists, and the moving party is entitled to judgment as a matter of law."
8 Cuzze v. Univ. & Cmty. Coll. Sys. of Nevada, 123 Nev. 598, 602, 172 P.3d 131, 134
9 (2007). A factual dispute is genuine when the evidence is such that a rational trier of fact
10 could return a verdict for the nonmoving party. Wood v. Safeway, Inc., 121 Nev. 724,
11 731, 121 P.3d 1026, 1031 (2005). Further, a fact is material if the fact "might affect the
12 outcome of the suit under the governing law." Anderson v. Liberty Lobby, Inc., 477 U.S.
13 242, 248, 106 S.Ct. 2505, 2510 (1986). The pleadings and other proof "must be
14 construed in a light most favorable to the nonmoving party," who bears the burden to "do
15 more than simply show that there is some metaphysical doubt as to the operative facts in
16 order to avoid summary judgment" in favor of the moving party. Id., 121 Nev. at 732, 121
17 P.3d at 1031. The substantive law controls which factual disputes are material and will
18 preclude summary judgment; other factual disputes are irrelevant. Id., 121 Nev. at 731,
19 121 P.3d at 1031.

20
21
22 The manner in which each party may satisfy its burden of production depends on
23 which party will bear the burden of persuasion on the challenged claim at trial. Cuzze,
24 123 Nev. at 602, 172 P.3d at 134. If the moving party will bear the burden of persuasion
25 (Mineau/Legion on *FACC*), that party must present evidence that would entitle it to a
26 judgment as a matter of law in the absence of contrary evidence. Id. If the nonmoving

1 party will bear the burden of persuasion at trial (Mr. Kvam on SAC), the party moving for
2 summary judgment (Mineau/Legion) may satisfy the burden of production in two ways: (1)
3 the moving party may submit evidence which negates an essential element of the
4 nonmoving party's claim, or (2) the moving party may merely point out the absence of
5 evidence to support the nonmoving party's case. Id. Therefore, in such instances, in
6 order to defeat summary judgment, the nonmoving party must transcend the pleadings
7 and, by affidavit or other admissible evidence, **introduce specific facts** that show a
8 genuine issue of material fact. Id. "The non-moving party must not simply rely on the
9 pleadings and must do more than make 'conclusory allegations [in] an affidavit.'" Choi v.
10 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020 (C.D. Cal.), citing, Lujan
11 v. Nat'l Wildlife Fed'n, 497 U.S. 871, 888, 110 S.Ct. 3177, 3188 (1990); see also, Celotex
12 Corp. v. Catreet, 477 U.S. 317, 324, 106 S.Ct. 2548, 2553 (1986). "Summary judgment
13 must be granted for the moving party if the nonmoving party 'fails to make showing
14 sufficient to establish an element essential to that party's case, and on which that party
15 bears the burden of proof at trial.'" Choi v. 8th Bridge Capital, 2020 WL1446700, Slip
16 Copy, March 25, 2020 (citing same).

17
18 "Effect of Failing to Deny. An allegation—other than one relating to the amount
19 of damages – is admitted if a responsive pleading is required and the allegation is not
20 denied." NRCP 8(b)(6). An answer to counterclaim is a required responsive pleading.
21 Bowers v. Edwards, 79 Nev 834, 389, 385 P.2d 783, 785 (1963).

22
23 By way of the stricken cross-motion relief, Mr. Kvam on the one hand asserts
24 there is no genuine issue of fact but in argument contends there is. The *Opposition*
25 without citation to specific facts and after admitting facts by failing to file an answer to
26 the FACC. He also attaches forty (48) exhibits without pointing to specific facts even

1 upon inquiry at the hearing. *TOP, MSJ*, passim. Even Mr. Kvam's Declaration offered in
2 support of the *Opposition* and his purported cross motion includes conclusionary facts
3 with regard to material facts asserted by Mineau/Legion as not in dispute or claims for
4 which Mineau/Legion assert there is no evidence.

5 This Court is not obligated to search for facts. "[A] district court is not obligated
6 to wade through and search the entire record for some facts which might support the
7 nonmoving party's claim." Jaurequi v. Carter Mfg. Co., Inc., 173 F.3d 1076, 1084 (8th
8 Cir. 1999) (quotation omitted). "[R]equiring the district court to search the entire record,
9 even though the adverse party's response does not set out the specific facts or disclose
10 where in the record the evidence for them can be found, is unfair. Carmen v. San
11 Francisco Unified School Dist., 237 F. 3d 1026, 1031 (9th Cir. 2001). "We refuse to do
12 this work for it. See Indep. Towers of Wash. v. Washington, 350 F.3d 925, 929 (9th Cir.
13 2003) ('[J]udges are not like pigs, hunting for truffles.') (quoting United States v. Dunkel,
14 927 F.2d 955, 956 (7th Cir. 1991))." Freeman Inv. Mgmt. Co., LLC v. Frank Russell
15 Co., 729 F. App'x 590, 591 (9th Cir. 2018) (considering summary judgment).

16 This Court has considered the properly filed papers and the other papers and
17 pleadings on file and makes the following findings of undisputed material facts and
18 conclusions of law.
19

20 **III. STATEMENT OF UNDISPUTED MATERIAL FACTS.**

21 The Court finds the following material facts are undisputed:
22

23 1. In early 2017, Mr. Mineau, Mr. Kvam, and Michael J. Spinola ("Mr.
24 Spinola") began formulating a plan to purchase the property located at 7747 S. May
25 Street, Chicago, Illinois ("Property"), renovate it, and sell it for a profit. *Motion*, Ex. 1,
26

1 ¶ 5; *Opposition*, Ex. 1, ¶ 2; *FACC* allegations deemed admitted due to failure to
2 answer⁵ ("DA").

3 2. Mr. Mineau serves as sole member/manager of Legion Investments, LLC
4 ("Legion"), a Nevada limited liability company. *SAC*, ¶ 2, ¶ 13; *Answer to SAC*, ¶ 1, ¶
5 8.

6 3. On January 3, 2017, Legion entered into a *Residential Real Estate*
7 *Purchase and Sale Contract* to purchase the Property for \$44,000.00. *Motion*, Ex. 1, ¶
8 6; *DA* ¶ 4.

9 4. On February 13, 2017, Mr. Kvam wired \$44,000.00 to Citywide Title
10 Corp, Escrow No. 719630, for the purchase of the Property. *Motion*, Ex. 3; *Opposition*,
11 Ex. 7; *DA* ¶ 5 ("paid the seller directly").

12 5. Mr. Kvam later wired an additional \$784.31 to the title company to cover
13 the buyer's portions of the closing costs. *Motion*, Ex. 4; *Opposition*, Ex. 8.

14 6. Legion took title to the Property on February 13, 2017. *Motion*, Ex. 1, ¶
15 10; *Opposition*, Ex. 10.

16 7. On February 13, 2017, Mr. Mineau, and Mr. Spinola executed a
17 document entitled "*Terms of Agreement between Legion Investments LLC (its*
18 *Members) And Jay Kvam (Initial Funding Member of Same) RE: 7747 S. May Street,*
19 *Chicago Illinois*" ("Terms of Agreement"). *Motion*, Ex. 2; *Opposition*, Ex. 11; *DA*, ¶ 2.

20 8. Mr. Kvam drafted the Terms of Agreement. *DA*, ¶ 3.

21 9. On February 14, 2017, Mr. Kvam executed the Terms of Agreement with
22 Mr. Mineau and Mr. Spinola. *Motion*, Ex. 2; *Opposition*, Ex. 11; *DA* ¶ 2.

23
24
25
26 ⁵ As discussed herein, Mr. Kvam did not file an answer to the *FACC*. The Court identifies the
allegations deemed admitted as "DA" in addition to its other citations to the record.

1 10. The Terms of Agreement reads, in its entirety, as follows:

2 Terms of Agreement between Legion Investments LLC (its Members)

3 And Jay Kvam (Initial Funding Member of Same)

4 RE:

5 7747 S. May Street, Chicago, Illinois

6 With Regards to acquisition of the aforementioned property [sic], it is
7 understood that the membership of Legion Investments LLC for this
8 acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties
9 are entitled to 33.33% of net profit, after all expenses are accounted for, to
10 include interest due on funds dispersed. Initial purchase is being funded by
11 Jay Kvam, who is there by [sic] assigned any remedies due should the
12 transaction fail in anyway. Initial funder [sic] will be due a 7% annual return
13 on any funds provided due from date of disbursement. There is expected
14 to be 3 renovation draws necessary on this project. First draw to be funded
15 by Mr. Kvam, [sic] Due to present and ongoing business dealings between
16 Jay and Michael, Michael has agreed to allot %50 [sic] of his 1/3 profit to
17 Mr. Kvam for both initial funding's [sic].

18 *Motion, Ex. 2; Opposition, Ex. 11.*⁶

19 11. Mr. Kvam admits the Terms of Agreement constitutes a binding legal
20 contract. DA ¶ 27.

21 12. All parties to the Terms of Agreement knew this was a high-risk
22 investment. DA ¶ 9.

23 13. The Property was located the south side of Chicago. DA ¶ 10.

24 14. Mr. Kvam acceded to Mr. Spinola's interest. SAC, ¶ 11; *Motion*, p. 4,
25 n. 1.⁷

26 ⁶ The Terms of Agreement can cause confusion on the actual name of the joint
 venture/partnership discussed herein. It does not change the legal conclusions and is referred
 to herein generically rather than by name.

⁷ The specific interest Mr. Kvam acceded to is not a material fact as the remedy is the same.

1 15. On March 16, 2017, Colleen Burke, Legion's property manager in
2 Chicago, texted to Mr. Mineau stating, "I have the other contractor I told you about
3 going to May Street. I'm really liking this guy. He seems very fair and hard worker. I
4 would like to set up a conference call with him this weekend." *Motion*, Ex. 5;
5 *Opposition*, Ex. 13.

6 16. Ms. Burke identified the subject contractor as TNT Complete Facility Care
7 Inc. ("TNT"). *Motion*, Ex. 1, ¶ 11; *Opposition*, Ex. 1, ¶ 9.

8 17. On March 19, 2017, Ms. Burke emailed Mr. Mineau the contact
9 information for TNT's principals, Derek Cole and Todd Hartwell, along with TNT's
10 references and Certificate of Insurance. *Motion*, Ex. 6; *Opposition*, Ex. 14-15.

11 18. On March 23, 2017, Mr. Mineau, on behalf of Legion, entered into a
12 Contractor Agreement with TNT ("Contractor Agreement"). *Motion*, Ex. 7; *Opposition*,
13 Ex. 17-18.

14 19. Mr. Kvam paid TNT directly to fund the renovations. DA ¶ 7.

15 20. Mr. Kvam knew TNT was the contractor.

16 21. The Contractor Agreement identified Todd Hartwell as TNT's CEO and
17 Derek Cole as TNT's Field Operations VP. *Motion*, Ex. 7, p. LEG0012; *Opposition*, Ex.
18 17-18.

19 22. Pursuant to the Contractor Agreement, TNT agreed to fully renovate the
20 Property for a flat fee of \$80,000.00. *Motion*, Ex. 7, p. LEG0013; *Opposition*, Ex. 1, ¶
21 10, Ex. 24.

22 23. Progress payments were to be made pursuant to a defined schedule.
23 *Motion*, Ex. 7, p. LEG0013; *Opposition*, Ex. 1, ¶ 10.

1 24. TNT agreed to complete the project by June 1, 2017. *Motion*, Ex. 7, p.
2 LEG0013; *Opposition*, Ex. 1, ¶ 10.

3 25. On February 17, 2017, Mr. Kvam texted Mr. Mineau to ask for wiring
4 details to forward the first payment. *Opposition*, Ex. 12.

5 26. Mr. Mineau responded, "Not yet, he was getting the wiring info for a
6 separate account so he could keep May Street funds separate from other projects."
7 *Opposition*, Ex. 1, ¶ 9, Ex. 12.

8 27. On March 23, 2017, Mr. Kvam wired \$20,000.00 directly to TNT with the
9 reference "7747 South May Street – Legion Investments – Jay Kvam." *Motion*, Ex. 8;
10 *Opposition*, Ex. 18.

11 28. On April 9, 2017, TNT emailed proposed floor plans to Mr. Mineau, who
12 forwarded them to Mr. Kvam and Mr. Spinola for review and input. *Motion*, Ex. 9-10.

13 29. On April 14, 2017, Kvam emailed Todd Hartwell (TNT's CEO) to inquire
14 whether Legion had an assigned account number with TNT and the preferred way for
15 Mr. Kvam to send TNT the next progress payment. *Motion*, Ex. 11.

16 30. Mr. Kvam wrote Todd Hartwell again, indicating that he had just spoken
17 with Mr. Hartwell and he was "heading to the bank now to set up the wire." *Motion*, Ex.
18 11.

19 31. Mr. Kvam wired another \$20,000.00 directly to TNT with the reference
20 "Second Draw Legion Investments Jay Kvam." *Motion*, Ex. 12; *Opposition*, Ex. 20.

21 32. On and around May 5, 2017, Derek Cole (TNT's Field Operations VP)
22 came to Reno to visit with Mr. Mineau, Mr. Kvam, and others. *Motion*, Ex. 13.

1 33. Mr. Kvam's notes indicate Mr. Kvam and Mr. Cole specifically discussed
2 the renovation of the Property, and Mr. Cole represented to Mr. Kvam that the project
3 would be "done in early June." *Motion*, Ex. 13, p. KVAM0423.

4 34. On May 9, 2017, Mr. Mineau texted Mr. Kvam and Mr. Spinola
5 approximately nine (9) photographs of the Property which he had received from Mr.
6 Cole. *Motion*, Ex. 14.

7 35. Mr. Mineau informed Mr. Kvam and Mr. Spinola that he "just got this from
8 Derek [Cole] roof is all done at May street." *Motion*, Ex. 14.

9 36. On May 15, 2017, Mr. Kvam texted Derek Cole to check on him after an
10 apparent car accident and to give Mr. Kvam's mobile telephone number to Mr. Cole.
11 *Motion*, Ex. 15.

12 37. Mr. Cole responded by sending Mr. Kvam forty-six (46) photographs of
13 the interior and exterior of the Property, purportedly showing the work TNT had
14 completed to date and the current status of the project. *Motion*, Ex. 15.

15 38. Mr. Cole's pictures included the nine (9) pictures of the roof which Mr.
16 Mineau had forwarded to Mr. Kvam on May 9, 2017. Compare *Motion*, Ex. 14, with
17 *Motion*, Ex. 15.

18 39. On May 17, 2017, Mr. Kvam sent Mr. Cole a message on Slack
19 indicating, "first half of the third draw on May to go out tomorrow." *Motion*, Ex. 16.

20 40. On May 18, 2017, Mr. Kvam wired \$9,000.00 directly to TNT with the
21 reference "Half of Third Installment." *Motion*, Ex. 17; *Opposition*, Ex. 21.

22 41. On May 21, 2017, Mr. Cole informed Mr. Mineau that TNT would be
23 "installing floors this week and should be finishing very soon." *Motion*, Ex. 1, ¶ 24, Ex.
24 18; *Opposition*, Ex. 22.

1 42. Mr. Mineau forwarded this information on to Mr. Kvam. *Motion*, Ex. 18;
2 *Opposition*, Ex. 22.

3 43. On May 26, 2017, Criterion NV LLC, acting on Mr. Mineau's behalf, wired
4 \$20,000.00 directly to TNT with the reference "May Street." *Motion*, Ex. 1, ¶ 25, Ex. 19.

5 44. Over the course of the next month, Mr. Kvam and Mr. Cole texted
6 regularly concerning the Property. *Motion*, Ex. 20, Ex. 22.

7 45. Mr. Cole sent Mr. Kvam and Mr. Mineau dozens of pictures of the work
8 being performed at the Property. *Motion*, Ex. 22, p. KHAM0106-KHAM0123.

9 46. Mr. Cole also notified Mr. Kvam that "I got all the permits and paperwork
10 back from the city last week file from [sic] my inspections as soon as they come do
11 those I'm two weeks after that." *Motion*, Ex. 22, p. KHAM0129.

12 47. In response to Mr. Kvam's inquiry, Mr. Cole explained that the
13 inspections were "for the rough plumbing and electrical." *Motion*, Ex. 22, p.
14 KHAM0129.

15 48. Mr. Kvam had independent and direct communications with TNT. *Motion*,
16 Ex. 20, Ex. 22. 38.

17 49. Mr. Kvam acquired information directly from TNT and did not rely on Mr.
18 Mineau's representations.

19 50. After June 20, 2017, TNT started becoming increasingly unresponsive.
20 *Motion*, Ex. 1, ¶ 29.

21 51. Mr. Mineau stayed in contact with Mr. Cole and Mr. Hartwell in an effort to
22 compel TNT to finish the project. *Motion*, Ex. 1, ¶ 29.

1 52. TNT communicated inconsistently. TNT did respond with excuses for
2 delays and promised that the project would be completed within a matter of days or
3 weeks. *Motion*, Ex. 1, ¶ 29.

4 53. Mr. Hartwell confirmed that TNT was working to replace Mr. Cole and that
5 TNT would finish the project as soon as possible. *Motion*, Ex. 1, ¶ 29.

6 54. In late August 2017, TNT explained Mr. Cole had been absent because
7 he had suffered a heart attack but recovered and was returning to work. *Motion*, Ex.
8 1, ¶ 29.

9 55. In late September 2017, Mr. Cole informed Mr. Mineau the Property
10 needed a few more inspections but was nearly complete. *Motion*, Ex. 1, ¶ 29.

11 56. In mid-October 2017, Mr. Cole informed Mr. Mineau that TNT was “doing
12 the final touches” and would then be ready for occupancy inspections. *Motion*, Ex. 1, ¶
13 29.

14 57. In early November 2017, Mr. Cole advised some of the plumbing work did
15 not pass inspection and would need more work. *Motion*, Ex. 1, ¶ 29.

16 58. In mid-November 2017, Mr. Cole represented to Mr. Mineau that the
17 project would be done in 14-17 days and would cost an additional \$2,000.00, but that
18 TNT would “eat that cost” due to the delay. *Motion*, Ex. 1, ¶ 29.

19 59. Mr. Mineau relayed each status update from TNT to Mr. Kvam.
20 *Opposition*, Ex. 25-31.

21 60. By December 2017, Mr. Kvam had become frustrated with TNT’s excuses
22 and delays and indicated his fear that TNT had defrauded them. *Motion*, Ex. 24

23 61. Mr. Mineau notified Mr. Kvam that he had asked his attorney in Chicago
24 to draft a demand letter to TNT. *Motion*, Ex. 24

1 62. Alternatively, Mr. Mineau offered to “sign the property over.” *Motion*, Ex.
2 24.

3 63. On December 31, 2017, Mr. Kvam delivered a letter to Mr. Mineau
4 concerning the Property. *Motion*, Ex. 25

5 64. In his letter, Mr. Kvam expressly rejected Mr. Mineau's offer to transfer
6 the Property, stating he did not want to assume the role of managing the project and
7 expressing concern that TNT had done little construction work for the money it had
8 been paid. *Motion*, Ex. 25

9
10 65. For reasons beyond any of the parties' knowledge, control or expectation,
11 the contractor hired to perform the renovations did not or was not able to complete the
12 job. DA ¶ 11.

13 66. Mr. Kvam stated, “...I deem the project a failure...” *Motion*, Ex. 25.

14 67. On November 16, 2018, Legion sold the Property for \$41,000.00. *Motion*,
15 Ex. 30; *Opposition*, Ex. 35.

16 68. Legion's share of prorated property taxes, closing costs, and the
17 commission owed to the real estate brokers equaled \$16,526.23. *Motion*, Ex. 30;
18 *Opposition*, Ex. 35.

19 69. The net proceeds from the closing were \$24,473.77. *Motion*, Ex. 30;
20 *Opposition*, Ex. 35.

21
22 70. On December 19, 2018, Legion received an additional \$1,864.14 from
23 the sale of the Property as a result of a refund on a tax bill and a water bill. *Motion*, Ex.
24 1. ¶ 39.

25 71. The total net proceeds from the sale of the Property are \$26,337.91.
26 *Motion*, Ex. 1. ¶ 39.

1 72. Mineau and Legion fulfilled all of their obligations under the Terms of
2 Agreement. DA ¶ 22.

3 73. The assets remaining after the project failed are claims against TNT and
4 \$26,337.91.

5 74. To the extent any of the contents in Sections I and II, *supra*, and/or the
6 following conclusions of law contain or constitute, or may be construed to contain or
7 constitute findings of fact, they are incorporated here.

8
9 **IV. CONCLUSIONS OF LAW.**

10 1. To the extent any of the contents of Sections I, II and III, *supra*, contain or
11 constitute, or may be construed to contain or constitute conclusions of law, they are
12 incorporated here.

13 **A. Declaratory Relief.**

14 2. The SAC's First Cause of Action is for Declaration of Joint Venture,
15 thereby seeking declaratory relief.

16 3. The FACC's Third Cause of Action is for Declaratory Relief.

17 4. The Court gave reasonable proper notice under NRCP 56 that it intended
18 to grant Declaratory Relief on Mineau/Legions FACC Third Cause of Action for
19 Declaratory Relief and was not granting summary judgment the SAC's First Cause of
20 Action is Declaration of Joint Venture.

21
22 5. "A statement in a pleading may be adopted by reference elsewhere in the
23 same pleading or in any other pleading or motion." NRCP 10(c). The FACC's Third
24 Claim for Relief for Declaratory Relief includes Paragraph 32, "Mineau and Legion
25 reallege the allegations contained in the other paragraphs of this Counterclaim and
26

1 incorporate them by reference as if fully set forth here.” *FACC*, p.4. The incorporation
2 of the allegations contained in other paragraphs was appropriate under applicable law.

3 6. Mr. Kvam failed to file an answer to the *FACC* Third Claim for Relief for
4 Declaratory Relief.

5 7. As stated, “*Effect of Failing to Deny*. An allegation—other than one
6 relating to the amount of damages – is admitted if a responsive pleading is required
7 and the allegation is not denied.” NRCP 8(b)(6). An answer to counterclaim is a
8 required responsive pleading. Bowers v. Edwards, 79 Nev 834, 389, 385 P.2d 783,
9 785 (1963).

10 8. The effect of Mr. Kvam’s failure to answer the allegations of the *FACC*
11 Third Claim for Relief for Declaratory relief is the allegations, including the incorporated
12 allegations, were admitted. Id. (citing NRCP 8(d) (NRCP 8(d), which, as enacted at the
13 time the *FACC*, was filed provided, “[a]verments in a pleading to which a responsive
14 pleading is required ... are admitted when not denied in the responsive pleading.”).
15 NRCP 8(d) was deleted by amendment effective March 1, 2019); Breliant v. Preferred
16 Equities Corp., 109 Nev. 842, 848–49, 858 P.2d 1258, 1262 (1993) (holding plaintiff
17 stated sufficient facts to assert a claim, in part, because defendant admitted to
18 allegations in complaint when it did not deny the allegations in plaintiff’s amended
19 complaint that made averments in its pleading where a responsive pleading was
20 required by defendant).

21 9. A party must meet four elements before declaratory relief can be granted:
22 (1) there must exist a justiciable controversy; that is to say, a controversy in which a
23 claim of right is asserted against one who has an interest in contesting it; (2) the
24 controversy must be between persons whose interests are adverse; (3) the party
25
26

1 seeking declaratory relief must have a legal interest in the controversy, that is to say, a
2 legally protectable interest; and (4) the issue involved in the controversy must be ripe
3 for judicial determination. MB Am., Inc. v. Alaska Pac. Leasing, 132 Nev. Adv. Op. 8,
4 367 P.3d 1286, 1291 (2016).

5 10. A justiciable controversy initially existed in this case regarding whether
6 there was a joint venture/partnership.

7 11. Any person whose rights, status, or other legal relations "are affected by
8 a statute . . . may have determined any question of construction" of that statute. NRS
9 30.040(1); Prudential Ins. Co. of Am. v. Ins. Comm'r, 82 Nev. 1, 5, 409 P.2d 248, 250
10 (1966) (declaratory relief is available when a controversy concerning the meaning of a
11 statute arises).

12 12. Formation of joint ventures is governed by NRS 87.4322 which states, in
13 part, "the association of two or more persons to carry on as co-owners of a business
14 for profit forms a partnership, whether or not the persons intend to form a partnership."

15 13. Mr. Kvam, Mr. Meneau and Mr. Spinola formed a joint
16 venture/partnership pursuant to NRS 87.4322. *Motion*, Ex. 2; *Opposition*, Ex. 11.

17 14. The justiciable controversy regarding creation of a joint
18 venture/partnership was resolved during the litigation and the parties agree a joint
19 venture/partnership was created.

20 15. A justiciable controversy exists regarding the parties' rights under the
21 Terms of Agreement.

22 16. Mr. Kvam's and Mineau/Legion's interests are adverse.

23 17. Mr. Kvam, Mr. Mineau and Legion have a legal interest in the
24 controversy.
25
26

1 18. For declaratory relief, "Person" is "construed to mean any person,
2 partnership . . . or other corporation of any character whatsoever." NRS 30.020.

3 19. "Whether a determination is proper in an action for declaratory relief is a
4 matter within the trial judge's discretion that will not be disturbed on appeal unless
5 abused." El Capitan Club v. Fireman's Fund Ins. Co., 89 Nev. 65, 68, 506 P.2d 426,
6 428 (1973).

7 20. Declaratory relief should be granted on Mineau/Legion's *FACC* Third
8 Claim for Relief for Declaratory Relief.

9 21. The Court should declare with respect to the parties' respective rights
10 and interests:

11 a. Mr. Kvam, Mr. Spinola, and Mr. Mineau were the member partners
12 for the acquisition of the Property, 7747 S. May Street, Chicago, Illinois.

13 b. Mr. Kvam was the initial funding member.

14 c. The parties formed a joint venture/partnership pursuant to NRS
15 87.4322.

16 d. The Terms of Agreement and NRS Chapter 87 governed the
17 partnership.

18 e. The Terms of Agreement did not constitute a loan agreement.

19 f. There was no meeting of the minds regarding any other provisions
20 to the Terms of the Agreement except those written and contained in the Terms
21 of Agreement.

22 g. Mr. Kvam acceded to Mr. Spinola's interest.

23 h. No party made any loans to the partnership.

24 i. Mr. Kvam acceded to Mr. Spinola interest.

1 j. Mr. Spinola's does not have an interest adverse to the interests of
2 Mr. Kvam and Mineau/Legion. Based on the accession of Mr. Spinola's interest
3 to Mr. Kvam and the remedy of assignment, Mr. Spinola has no legal interest in
4 the Terms of Agreement. Only those who enjoy a legal interest in the Terms of
5 Agreement should be joined in this action. Wells v. Bank of Nevada, 90 Nev.
6 192, 198, 522 P.2d 1014, 1018 (1974).

7 k. The project failed.

8 l. All remedies due to the partnership are assigned to Kvam because
9 the project failed.

10 m. The parties agreed all interests in the partnership and any
11 remedies due to the partnership, including the proceeds from the sale of the
12 Property in the amount of \$26,337.71, should be assigned to Mr. Kvam and the
13 partnership dissolved. *Motion*, Ex. 1, ¶ 38-39; *Opposition*, p. 20; *Stipulation to*
14 *Deposit Funds*, December 12, 2018.

15 22. Based on the Court's findings and conclusions on Mineau/Legion's *FACC*
16 Third Claim for Relief and its findings and conclusions on the SAC's remaining claims
17 for relief, *infra*, summary judgment is denied on the SAC's First Claim for Declaration of
18 Joint Venture.

19 **B. Rescission or Reformation of Agreement.**

20 23. The SAC's Second Cause of Action is for Recission or Reformation of
21 Agreement.

22 24. "A contract may be rescinded on the basis of mutual mistake when both
23 parties, at the time of contracting, share a misconception about a vital fact upon which
24 they based their bargain." Land Baron Inv. v. Bonnie Springs Family LP, 131 Nev. 686,
25 26

1 694, 356 P.3d 511, 517 (2015) (internal citations omitted). “However, mutual mistake
2 will not provide grounds for rescission where a party bears the risk of mistake.” Id.
3 (citing Restatement (Second) of Contracts §§ 152(1), 154(b), (c) (1981)). “[I]f the risk
4 is reasonably foreseeable and yet the contract fails to account for that risk, a court may
5 infer that the party assumed that risk.” Id.

6 25. Alternatively, “courts in this state will reform contracts ... in accordance
7 with the true intention of the parties when their intentions have been frustrated by a
8 mutual mistake.” Seyden v. Frade, 88 Nev. 174, 178, 494 P.2d 1281, 1284 (1972).

9 26. “Reformation is based upon equitable principles, applied when a written
10 instrument fails to conform to the parties' previous understanding or agreement.”
11 Grappo v. Mauch, 110 Nev. 1396, 1398, 887 P.2d 740, 741 (1994).

12 27. The parties accounted for the risks inherent in the investment by agreeing
13 all remedies in the partnership would be assigned to Mr. Kvam if the joint venture failed
14 in any way. *Motion*, Ex. 2; *Opposition*, Ex. 11.

15 28. Even viewing all evidence raised by Mineau/Legion in a light most
16 favorable to Mr. Kvam, Mr. Kvam has failed to bring forth specific evidence that the
17 parties, at the time of contracting, shared a misconception about a vital fact upon which
18 they based their bargain, or that the Terms of Agreement fail to conform to the true
19 intention of the parties or the parties' previous understanding or agreement.

20 29. Mr. Kvam fails to make a showing sufficient to establish an element
21 essential to his claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge
22 Capital, 2020 WL1446700, Slip Copy, March 25, 2020. Accordingly, Mineau/Legion
23 are entitled to judgment as a matter of law on this claim.
24
25
26

1 **C. Breach of Contract - Loan.**

2 30. Mr. Kvam's Third Cause of Action in his SAC is for Breach of Contract –
3 Loan (breach of the Terms of Agreement's loan agreement).

4 31. The elements of a breach of contract claim are (1) existence of a valid
5 contract, (2) breach, and (3) damages. See Contrearas v. Am. Family Mut. Ins. Co.,
6 135 F.Supp.3dc 1208, 1227 (D. Nev. 2015)

7 32. Generally, when a contract is clear on its face, it will be construed from
8 the written language and enforced as written. Canfora v. Coast Hotels & Casinos, Inc.,
9 121 Nev. 771, 776, 121 P.3d 599, 603 (2005). The court has no authority to alter the
10 terms of an unambiguous contract. Id. Furthermore, the court cannot force upon
11 parties contractual obligations, terms or conditions which are not contained in the
12 contract. McCall v. Carlson, 63 Nev. 390, 424, 172 P.2d 171, 187 (1946); Harrison v.
13 Harrison, 132 Nev. 564, 376 P.3d 173 (2016); Golden Rd. Motor Inn, Inc. v. Islam, 132
14 Nev. 476, 376 P.3d 151 (2016); Reno Club, Inc. v. Young Inv. Co., 64 Nev. 312, 323,
15 182 P.2d 1011, 1016 (1947).

16 33. A loan is the delivery of a sum of money to another under a contract to
17 return at some future time an equivalent amount with or without an additional sum
18 agreed upon for its use; and if such be the intent of the parties the transaction will be
19 deemed a loan regardless of its form. Kline v. Robinson, 83 Nev. 244, 249, 428 P.2d
20 190, 194 (1967), *overruled in part by* Pease v. Taylor, 88 Nev. 287, 496 P.2d 757
21 (1972).

22 34. Kvam has not identified any evidence of a loan agreement and thus
23 cannot establish a breach.
24
25
26

1 35. The Terms of Agreement provide Mr. Kvam will receive 7% annual return
2 on any funds provided if the project was profitable. The project failed. Mr. Kvam's
3 remedy is assignment of all interests and remedies of the partnership to him. *Motion*,
4 Ex. 2; *Opposition*, Ex. 11.

5 36. Based on the Court's findings and conclusions on the FACC's Third
6 Claim for Relief for Declaratory Relief, even viewing all evidence raised by
7 Mineau/Legion in a light most favorable to Mr. Kvam, Mr. Kvam has not established
8 that a loan agreement existed and cannot establish a breach.
9

10 37. Mr. Kvam has not identified with specificity evidence to establish all
11 elements of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge
12 Capital, 2020 WL1446700, Slip Copy, March 25, 2020. Accordingly, Mineau/Legion
13 are entitled to judgment as a matter of law on the SAC's Third Cause of Action for
14 Breach of Contract -Loan.

15 **D. Breach of Contract and Tortious Breach of Implied Covenant of**
16 **Good Faith and Fair Dealing.**

17 37. The SAC's Fourth Cause of Action is for Breach of Contract and Tortious
18 Breach of Implied Covenant of Good Faith and Fair Dealing.

19 38. Every contract imposes upon the contracting parties the duty of good faith
20 and fair dealing. See A.C. Shaw Construction v. Washoe County, 105 Nev. 913, 914,
21 784 P.2d 9, 9-10 (1984).

22 39. The remedy for breach of the implied covenant of good faith and fair
23 dealing generally is on the contract itself. In certain circumstances breach of contract,
24 including breach of the covenant of good faith and fair dealing, may provide the basis
25 for a tort claim. Hilton Hotels Corp. v. Butch Lewis Productions, Inc., 109 Nev. 1043,
26 1046-47, 862 P.2d 1207, 1209 (1993) (citations omitted).

1 40. To prevail upon a claim for tortious breach of the covenant of good faith
2 and fair dealing, the plaintiff must prove that: (1) plaintiff and defendant entered into a
3 contract; (2) defendant owed a duty of good faith to plaintiff arising from the contract;
4 (3) a special element of reliance or fiduciary duty existed between plaintiff and
5 defendant where defendant was in a superior or entrusted position; (4) defendant
6 breached the duty of good faith by engaging in grievous and perfidious misconduct;
7 and (5) plaintiff suffered damages as a result of the breach. Great Amer. Ins. Co. v.
8 Gen. Builders, Inc., 113 Nev. 346, 355, 934 P.2d 257, 263 (1997); see also State, Univ.
9 & Cmty. Coll. Sys. v. Sutton, 120 Nev. 972, 989, 103 P.3d 8, 19 (2004).

11 41. Summary judgment has been affirmed on claims involving a partnership
12 and claims for breach of contract and breach of the implied covenant of good faith and
13 fair dealing. See e.g. Phelps v. Frampton, 170 P.3d 474 (Mont. 2007) (not tortious
14 claim).

15 42. “The only fiduciary duties a partner owes to the partnership and the other
16 partners are the duty of loyalty and the duty of care.” NRS 87.4336(1).

17 43. The statutory duty of loyalty requires each partner to, *inter alia*, “to
18 account to the partnership and hold as trustee for it any property, profit or benefit
19 derived by the partner in the conduct and winding up of the partnership business or
20 derived from a use by the partner of partnership property, including the appropriation of
21 a partnership opportunity.” NRS 87.4336(2)(a).

23 44. The statutory duty of care is limited to “refraining from engaging in grossly
24 negligent or reckless conduct, egregious or perfidious conduct, intentional misconduct
25 or a knowing violation of law by Mr. Mineau or Mr. Mineau on behalf of Legion. To the
26 contrary, the evidence supports that the contractor delayed the work, Mr. Kvam

1 conveyed information he received about the progress of the project and/or Mr. Kvam
2 communicated about the project.

3 45. Mineau/Legion kept Mr. Kvam reasonably informed of the Project with the
4 information available to Mineau/Legion and Mr. Kvam had independent
5 communications with the contractor, thereby negating the fourth element required to
6 establish summary judgment on this claim. *Motion*, Ex. 1, ¶ 29, Ex. 14, Ex. 18, Ex. 24.

7 46. Even viewing all evidence raised by Mineau/Legion in a light most
8 favorable to Mr. Kvam, Mr. Kvam has failed to set forth evidence supporting each
9 element of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at 134; Choi v. 8th Bridge
10 Capital, 2020 WL1446700, Slip Copy, March 25, 2020.

11 47. Accordingly, Mineau/Legion are entitled to judgment as a matter of law
12 on the SAC's Fourth Cause of Action for Breach of Contract and Tortious Breach of
13 Implied Covenant of Good Faith and Fair Dealing.

14
15 **E. Accounting.**

16 48. The SAC's Fifth Cause of Action is for Accounting.

17 49. As state, pursuant to NRS 87.4336(2)(a), a partner must account to the
18 partnership for any property, profit or benefit derived by the partner from a use by the
19 partner of partnership property, including the appropriation of a partnership opportunity.

20 50. The only partnership property over which Mineau/Legion had custody
21 was the Property itself, and the proceeds from the sale of the Property. *Motion*, Ex. 1,
22 ¶ 10, ¶ 37-40, Ex. 2; *Opposition*, Ex. 10, Ex. 11.

23 51. Mineau/Legion contends they provided Mr. Kvam with all information
24 necessary for an accounting.
25
26

1 52. Mr. Kvam asserts Mineau/Legon have not provided a complete
2 accounting.

3 53. An accounting will verify the accuracy of the amount net proceeds.

4 54. A genuine issue of material fact exists regarding whether the accounting
5 provided by Mineau/Legion is factually and legally sufficient under applicable law.

6 55. Accordingly, summary judgment on the SAC's Fifth Cause of Action is not
7 warranted under NRCP 56.

8
9 **F. Court Supervision of Dissolution and Winding Up, and Appointment
10 of Receiver.**

11 56. The SAC's Sixth Cause of Action is for Court Supervision of Dissolution
12 and Winding up, and Appointment of Receiver.

13 57. A partnership continues after dissolution only for the purpose of winding
14 up its business. The partnership is terminated when the winding up of its business is
15 completed. NRS 87.4352(1).

16 58. A receiver may be appointed by the court in which an action is pending,
17 or by the judge thereof between partners or others jointly owning or interested in any
18 property or fund. NRS 32.010.

19 59. The winding up by the partners themselves or by a receiver does not
20 affect the personal liability of the partners for unsatisfied claims, absent specific
21 agreement. NRS 87.360.

22 60. The parties agreed all interests in the partnership and any remedies due
23 to the partnership, including the proceeds from the sale of the Property in the amount
24 of \$26,337.71, should be assigned to Mr. Kvam and the partnership dissolved. *Motion*,
25 Ex. 1, ¶ 38-39; *Opposition*, p. 20; *Stipulation to Deposit Funds*, Dec. 12, 2018.
26

1 61. A ruling on this claim is held in abeyance pending resolution of the SAC's
2 Fifth Cause of Action for Accounting.

3 62. **Temporary and Permanent Injunction.**

4 63. The SAC's Seventh Cause of Action is for Temporary and Permanent
5 Injunction.

6 64. Based on the findings and conclusions on the SAC's Second, Third,
7 Fourth, Fifth and Sixth Causes of Action, and on the FACC's Third Claim for Relief for
8 Declaratory Relief, and the deposit of the funds with the Court, the SAC's Seventh
9 Cause of Action for Temporary and Permanent Injunction is legally ineffectual and
10 summary judgment should be denied.
11

12 **H. Fraud, Fraudulent Inducement, and Fraudulent Concealment.**

13 65. The SAC's Eighth Cause of Action is for Fraud, Fraudulent Inducement,
14 and Fraudulent Concealment.

15 **i. Fraud.**

16 66. Under Nevada law, the elements of a fraud claim are as follows: (1) a
17 false representation made by the defendant; (2) defendant's knowledge or belief that
18 the representation is false or insufficient basis for making the representation; (3)
19 defendant's intention to induce the plaintiff to act or to refrain from acting in reliance
20 upon the misrepresentation; (4) plaintiff's justifiable reliance upon the
21 misrepresentation; and (5) damage to the plaintiff resulting from such reliance. Starr
22 Indem. & Liab. Co. v. Young, 379 F. Supp. 3d 1103, 1110 (D. Nev. 2019) (citing
23 Bulbman, Inc. v. Nevada Bell, 108 Nev. 105, 825 P.2d 588, 592 (1992)).
24

25 67. To establish a claim for intentional misrepresentation, a plaintiff must
26 show that the defendant supplied plaintiff with false information, and summary

1 judgment is appropriate if plaintiff has not provided evidence of this essential element.
2 Land Baron Inv. v. Bonnie Springs Family LP, 131 Nev. 686, 695-96, 356 P.3d 511,
3 518 (2015); Moore v. Prudential Residential Services Ltd. Partnership, 849 So.2d
4 914, 926 (Ala. 2002) (affirming summary judgment in favor of defendants because
5 plaintiffs presented no evidence indicating that defendants knew real estate had any
6 defects, or evidence demonstrating reliance on misrepresentations.)

7
8 **ii. Fraudulent Inducement.**

9 68. To prove fraudulent inducement, plaintiff must show: (1) defendant's false
10 representation; (2) that defendant knew or believed statement was false, or defendant
11 had an insufficient basis for making statement; (3) defendant intended to induce
12 plaintiff to act or refrain from acting upon the misrepresentation; and (4) plaintiff was
13 damaged as a result of relying on the misrepresentation. Hernandez v. Creative
14 Concepts, Inc., 862 F. Supp. 2d 1073, 1092–93 (D. Nev. 2012).

15 69. Where a plaintiff fails to provide any evidence of defendant's intent when
16 defendant entered into agreement, summary judgment is appropriate. Argonaut
17 Development Group, Inc. v. SWH Funding Corp., 150 F.Supp.2d 1357, 1364 (S.D. Fla.
18 2001).

19
20 **iii. Fraudulent Concealment.**

21 70. To establish fraudulent concealment, a plaintiff must prove five elements:
22 (1) the defendant concealed or suppressed a material fact; (2) the defendant was
23 under a duty to disclose the fact to the plaintiff; (3) the defendant intentionally
24 concealed or suppressed the fact with the intent to defraud the plaintiff; (4) the plaintiff
25 was unaware of the fact and would have acted differently if she had known of the
26 concealed or suppressed fact; and (5) the plaintiff sustained damages as a result of the

1 concealment or suppression. Nevada Power Co. v. Monsanto Co., 891 F. Supp. 1406,
2 1415 (D. Nev. 1995).

3 71. Mr. Mineau conveyed the information he was provided and kept Mr.
4 Kvam reasonably informed of the Project with the information available to
5 Mineau/Legion. *Motion*, Ex. 1, ¶ 29, Ex. 14, Ex. 18, Ex. 24.

6 72. Mr. Kvam had independent and direct communications with the
7 contractor and therefore was aware of the progress on the project.

8 73. Mr. Kvam did not rely upon Mineau/Legion's representations as Mr. Kvam
9 communicated directly with TNT concerning the status of the project. *Motion*, Ex. 9-11,
10 Ex. 13-16, Ex. 20.

11 74. Mr. Kvam identifies no specific evidence that Mr. Mineau made any
12 affirmative misrepresentations during the Project.

13 75. Mr. Kvam cites not evidence that Mr. Mineau supplied false information to
14 him.

15 76. Mr. Kvam has not established that he relied on any false information to his
16 detriment.

17 77. Even viewing all evidence raised by Mineau/Legion in a light most
18 favorable to Mr. Kvam, Mineau/Legion have demonstrated that Mr. Kvam has failed to
19 identify specific evidence for all of the elements of this claim. Cuzze, 123 Nev. at 602,
20 172 P.3d at 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25,
21 2020.

22 78. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on
23 the SAC's Eighth Cause of Action for Fraud, Fraudulent Inducement, and Fraudulent
24 Concealment.
25
26

1 **I. Conversion.**

2 79. The SAC's Ninth Cause of Action is for Conversion.

3 80. "Conversion is a distinct act of dominion wrongfully exerted over
4 another's personal property in denial of, or inconsistent with his title or rights therein or
5 in derogation, exclusion, or defiance of such title or rights." M.C. Multi-Family Dev.,
6 L.L.C. v. Crestdale Assocs., Ltd., 124 Nev. 901, 910, 193 P.3d 536, 542 (2008).

7 81. "Conversion generally is limited to those severe, major, and important
8 interferences with the right to control personal property that justify requiring the actor to
9 pay the property's full value." Edwards v. Emperor's Garden Rest., 122 Nev. 317, 328–
10 29, 130 P.3d 1280, 1287 (2006).

11 82. Mr. Kvam has not identified disputed facts regarding any distinct act of
12 dominion that Mineau or Legion wrongfully exerted over Kvam's personal property, or
13 the funds delivered to the title company and TNT.

14 83. Mr. Kvam delivered all project funds either directly to the title company to
15 purchase the Property or directly to TNT to fund the renovation. *Motion*, Ex. 3-4, Ex. 8,
16 Ex. 12; *Opposition*, Ex. 7-8, Ex. 18, Ex. 20.

17 84. Even viewing all evidence raised by Mineau/Legion in a light most
18 favorable to Mr. Kvam, Mineau/Legion have demonstrated Mr. Kvam has failed to
19 identify evidence for each element of this claim. Cuzze, 123 Nev. at 602, 172 P.3d at
20 134; Choi v. 8th Bridge Capital, 2020 WL1446700, Slip Copy, March 25, 2020.

21 85. Accordingly, Mineau/Legion are entitled to judgment as a matter of law on
22 the SAC's Ninth Cause of Action for Conversion.
23
24
25
26

1 **J. RICO.**

2 86. The SAC's Tenth Cause of Action SAC is for civil RICO.

3 87. In Nevada, the elements for a claim of civil RICO violations (Racketeering
4 Influenced and Corrupt Organizations Act) are: (a) defendants engaged in racketeering
5 activities as defined in NRS 207.390 and a racketeering enterprise as is defined in
6 NRS 207.380; (b) defendants acting directly, and in conspiracy with one another or
7 through their syndicate, participated directly in racketeering activity by engaging in at
8 least two crimes related to racketeering; (c) defendants' activities have the same or
9 similar pattern, intent, results, accomplices, victims, or methods of commission, or
10 otherwise interrelated by distinguishing characteristics and are not isolated events; (d)
11 defendants acquired or maintained directly or indirectly an interest in, or control of, any
12 enterprise, or defendants are employed by or associated with any enterprise to conduct
13 or participate directly or indirectly in the affairs of the enterprise through a racketeering
14 activity; (e) plaintiff's injuries flow from the defendants' violation of a predicate Nevada
15 RICO act; (f) plaintiff's injury was be proximately caused by the defendants' violation of
16 the predicate act; (g) plaintiff did not participate in the commission of the predicate act;
17 and, plaintiff is entitled to institute a civil action for recovery of treble damages
18 proximately caused by the RICO violations. NRS 207.470(1). NRS 207.470; Stoddart
19 v. Miller, 2008 WL 6070835 (Nev. 2008); Siragusa v. Brown, 114 Nev. 1384, 971 P.2d
20 801 (1999); Gordon v. Eighth Judicial Dist. Ct., 12 Nev. 216, 231, 913 P.2d 240, 250-
21 51 (1996); Cummings v. Charter Hosp. of Las Vegas, Inc., 111 Nev. 639, 896 P.2d
22 1137 (1995); Allum v. Valley Bank of Nevada, 109 Nev. 280, 849 P.2d 297
23 (1993); Hale v. Burkhardt, 104 Nev. 632, 634, 764 P.2d 866, 867 (1988).
24
25
26

1 88. Any person who is injured in his business or property by reason of any
2 violation of NRS 207.400 has a cause of action against a person causing such injury for
3 three times the actual damages sustained. NRS 207.470

4 89. "'Racketeering activity' means engaging in at least two crimes related to
5 racketeering that have the same or similar pattern, intents, results, accomplices,
6 victims, or methods of commission, or are otherwise interrelated by distinguishing
7 characteristics and are not isolated incidents...." NRS 207.390.

8 90. Criminal syndicate means any combination of persons, so structured that
9 the organization will continue its operation even if individual members enter or leave
10 the organization, which engages in or has the purpose of engaging in racketeering
11 activity. NRS 207.370.

12 91. Mr. Kvam has not identified specific evidence of racketeering activity, or
13 any activities between Mineau/Legion that resemble the type of activities required to
14 support the elements of this claim.

15 92. Summary judgment has been affirmed on civil RICO claims. See e.g.,
16 Agency Holding Corp. v. Malley-Duff & Associates, Inc., 483 U.S. 143, 107 S.Ct. 2759
17 (1987); In re Southwest Exchange, Inc., 128 Nev. 907, 381 P.3d 626 (2012).

18 93. Even viewing the evidence in a light most favorable to Mr. Kvam, Mr.
19 Kvam has not identified with specificity evidence to establish any of the elements of a
20 civil RICO claim which warrants entry of summary judgment on this claim. Cuzze, 123
21 Nev. at 602, 172 P.3d at 134; Knutson v. County of Barnes, 642 N.W.2d 910 (N.D.
22 2002) (holding defendants were entitled to summary judgment on RICO claim because
23 plaintiffs failed to plead with specificity as required, and failed to present any evidence
24 to support their claim).

1 94. Mineau/Legion are entitled to judgment as a matter of law on the SAC's
2 Tenth Cause of Action for RICO.

3 **K. Derivative Claim.**

4 95. The SAC's Eleventh Cause of Action is a Derivative claim on behalf of
5 the joint venture.

6 96. Mr. Kvam conceded the partnership does not hold any independent
7 claims for relief against Mineau/Legion.

8 97. Based on the Courts findings and conclusions on the SAC's Second,
9 Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth, and Tenth Causes of Action, and Mr.
10 Kvam's concession, the Court finds and concludes no genuine issue of material fact
11 exists for trial on the SAC's Eleventh Cause of Action for a Derivative Claim and
12 Mineau/Legion are entitled to judgment as a matter of law.

13 **V. ORDER.**

14 Based on the foregoing findings of undisputed facts and conclusions of law, and
15 good cause appearing therefor,
16

17 **IT IS HEREBY ORDERED SUMMARY ADJUDICATION IS GRANTED,**
18 **DENIED, AND HELD IN ABEYANCE AS FOLLOWS:**

19 1. Notice was reasonably given to the parties of the Court's intent to grant
20 summary judgment on Mineau/Legion's *FACC* Third Cause of Action for Declaratory
21 Relief.

22 2. Summary adjudication is granted on Mineau/Legion's *FACC* Third Cause
23 of Action for Declaratory Relief and the Court declares:
24

25 a. Mr. Kvam, Mr. Spinola, and Mr. Mineau were the member partners
26 in Legion for the acquisition of 7747 S. May Street, Chicago, Illinois.

- b. Mr. Kvam was the initial funding member.
- c. The parties formed a joint venture/partnership pursuant to NRS 87.4322.
- d. The Terms of Agreement and NRS Chapter 87 governed the partnership.
- e. The Terms of Agreement did not constitute a loan agreement.
- f. There was no meeting of the minds regarding any other provisions to the Terms of the Agreement except those written and contained in the Terms of Agreement.
- g. Mr. Kvam acceded to Mr. Spinola's interest.
- h. No party made any loans to the partnership.
- i. Mr. Kvam acceded to Mr. Spinola interest.
- j. Mr. Spinola's does not have an interest adverse to the interests of Mr. Kvam and Mineau/Legion. Based on the accession of Mr. Spinola's interest to Mr. Kvam and the remedy of assignment, Mr. Spinola has no legal interest in the Terms of Agreement.
- k. The project failed.
- l. All remedies due to the partnership are assigned to Kvam because the project failed.
- m. The parties stipulated all interests in the partnership and any remedies due to the partnership, including the proceeds from the sale of the Property in the amount of \$26,337.71, should be assigned to Mr. Kvam and the partnership dissolved.

1 3. Summary adjudication is GRANTED in favor of Mineau/Legion and
2 against Mr. Kvam on the SAC's Second Cause of Action for Recission or Reformation
3 of Agreement.

4 4. Summary adjudication is GRANTED in favor of Mineau/Legion and
5 against Mr. Kvam on the SAC's Third Cause of Action for Breach of Contract - Loan.

6 5. Summary adjudication is GRANTED in favor of Mineau/Legion and
7 against Mr. Kvam on the SAC's Fourth Cause of Action for Breach of Contract and
8 Tortious Breach of Implied Covenant of Good Faith and Fair Dealing.

9 6. Summary adjudication is DENIED on the SAC's Fifth Cause of Action for
10 Accounting.

11 7. The Court's ruling on Motion is held in abeyance on the SAC's Sixth
12 Cause of Action for Court Supervision of Dissolution and Winding up, and Appointment
13 of Receiver until resolution of Mr. Kvam's Fifth Cause of Action
14

15 8. Based on the Court's foregoing findings of fact and conclusions of law,
16 summary adjudication is DENIED on the SAC's Seventh Cause of Action for
17 Temporary and Permanent Injunction as the claim is legally ineffectual based on the
18 deposit of the funds.

19 9. Summary adjudication is GRANTED in favor of Mineau/Legion and
20 against Mr. Kvam on the SAC's Eighth Cause of Action for Fraud, Fraudulent
21 Inducement, and Fraudulent Concealment.

22 10. Summary adjudication is GRANTED in favor of Mineau/Legion and
23 against Mr. Kvam on the SAC's Ninth Cause of Action for Conversion.

24 11. Summary adjudication is GRANTED in favor of Mineau/Legion and
25 against Mr. Kvam on the SAC's Tenth Cause of Action for civil RICO.
26

12. Summary adjudication is GRANTED in favor of Mineau/Legion and against Mr. Kvam on the SAC's Eleventh Cause of Action for Derivative Claim.

13. Based on the Court's foregoing findings of fact and conclusions of law, summary adjudication is DENIED on the SAC's First Claim for Relief for Declaration of Joint Venture.

14. The claims remaining at issue in this action for is Mr. Kvam's Fifth Cause of Action and Sixth Cause of Action, and any declaratory relief requested under Mr. Kvam's First Cause of Action which was not resolved by the declarations or findings of fact and conclusions of law made herein, and claims remaining against Defendant 7747 S. May Street, if any.

15. The parties are directed to contact the Judicial Assistant in Department 6 within thirty (30) days to set this matter for trial on these claims.

16. The parties are further directed to resubmit any motions previously submitted which are not made moot by reason of this Order.

DATED this 4th day of June, 2020.


LYNNE K. SIMONS
DISTRICT JUDGE

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

MICHAEL MATUSKA, ESQ.
AUSTIN SWEET, ESQ.
MARK GUNDESON, ESQ.

Hadi Bre