

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

JAY KVAM,

Appellant,

v.

BRIAN MINEAU; AND LEGION  
INVESTMENTS, LLC,

Respondents.

Electronically Filed  
Sep 11 2020 01:56 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**Supreme Court Case No. 81422**

District Case No. CV18-00764

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**RESPONDENTS' RENEWED MOTION TO DISMISS APPEAL**

Respondents BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq. and Mark H. Gunderson, Esq., file this Renewed Motion to Dismiss the Appeal ("Motion") filed by Appellant JAY KVAM ("Kvam"). Respondents' original *Motion to Dismiss Appeal* was denied without prejudice to Respondents' right to renew the motion, if necessary, upon completion of settlement proceedings. As set forth in the *Settlement Program Status Report* filed on September 10, 2020, the parties were unable to agree to a settlement and settlement proceedings have been completed.

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This Motion is made and based upon NRAP 3A, NRAP 4, the following memorandum of points and authorities, the pleadings on file in this case, and any oral argument this Court wishes to entertain.

### **MEMORANDUM OF POINTS AND AUTHORITIES**

NRAP 3A(b)(1) allows an appeal to be taken from a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered. A final judgment is “one that disposes of the issues presented in the case, determines the costs, and leaves nothing for the future consideration of the court.” Lee v. GNLV Corp., 116 Nev. 424, 426, 996 P.2d 416, 417 (2000) (internal quotations omitted).

Kvam appeals from the district court’s *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* (“Order”), entered by the district court on June 5, 2020. The Order is attached to Kvam’s *Notice of Appeal*, and another copy is attached as Exhibit “1” for this Court’s ease of reference. As expressly set forth in the Order, the district court declined to enter summary judgment with respect to Kvam’s First, Fifth, and Sixth Causes of Action. See Order at p. 44 ¶ 14. The district court directed the parties to contact the court’s Judicial Assistant to set the matter for trial on the remaining claims. Id. ¶ 15. Instead, Kvam filed the *Notice of Appeal*.

The Order is not a final judgment on its face. Kvam still has three (3) claims pending before the district court which have not been adjudicated and are ready for trial. No statute or court rule authorizes an appeal from an order granting partial summary judgment. See Taylor Constr. Co. v. Hilton Hotels, 100 Nev. 207, 678 P.2d 1152 (1984) (holding that this court has jurisdiction to consider an appeal only when it is authorized by statute or court rule).


Accordingly, this appeal is premature and must be dismissed.

### **AFFIRMATION**

The undersigned does hereby affirm that the preceding **RESPONDENTS' RENEWED MOTION TO DISMISS APPEAL**, filed in the Supreme Court of the State of Nevada, does not contain the social security number of any person.

DATED this 11 day of September, 2020.

GUNDERSON LAW FIRM

By:   
Austin K. Sweet, Esq.  
Nevada State Bar No. 11725  
Mark H. Gunderson, Esq.  
Nevada State Bar No. 2134  
*Attorneys for Brian Mineau and  
Legion Investments, LLC*

**CERTIFICATE OF SERVICE**

Pursuant to NRAP 25(c), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 11 day of September, 2020, I electronically filed a true and correct copy of the **RESPONDENTS' RENEWED MOTION TO DISMISS APPEAL**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

Michael L. Matuska, Esq.  
MATUSKA LAW OFFICES, LTD.  
2310 South Carson Street, Suite 6  
Carson City, NV 89701  
*Attorney for Jay Kvam*

Janet L. Chubb, Esq.  
50 W Liberty Suite 700  
Reno, Nevada 89501  
*Settlement Judge*

  
\_\_\_\_\_  
Kelly Gunderson

## **EXHIBIT LIST**

<b>Exhibit #</b>	<b>Description</b>	<b>Pages</b>
Exhibit "1"	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	45

**Exhibit “1”**

**Exhibit “1”**

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*<sup>1</sup>  
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, ¶¶

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24  
25 <sup>1</sup>The 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.<sup>2</sup>

19 On September 4, 2018, the Court<sup>3</sup> entered its *Order* on Mr. Kvam's *Motion for*  
20 *Dissolution*. The Court declined to enter the order requested, finding the record did not  
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25 <sup>2</sup> The Tenth Claim for Relief (Fraud) and the Eleventh Claim for Relief (Negligence) are  
26 identified as "Tenth Claim for Relief."

<sup>3</sup> 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.

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:

<b><u>MR. KVAM'S FIRST CAUSE OF ACTION</u></b> <b>(Declaration of Joint Venture)</b>	<b><u>MINEAU/LEGION'S THIRD CLAIM FOR RELIEF</u></b> <b>(Declaratory Relief)</b>
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 Judgment<sup>4</sup>.**

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.

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<sup>4</sup>It 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 8<sup>th</sup> 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. 8<sup>th</sup> 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 (8<sup>th</sup>  
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 (9<sup>th</sup> Cir. 2001). "We refuse to do  
12 this work for it. See Indep. Towers of Wash. v. Washington, 350 F.3d 925, 929 (9<sup>th</sup> Cir.  
13 2003) ('[J]udges are not like pigs, hunting for truffles.') (quoting United States v. Dunkel,  
14 927 F.2d 955, 956 (7<sup>th</sup> Cir. 1991))." Freeman Inv. Mgmt. Co., LLC v. Frank Russell  
15 Co., 729 F. App'x 590, 591 (9<sup>th</sup> 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 answer<sup>5</sup> (“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.

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<sup>5</sup> 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.<sup>6</sup>

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.<sup>7</sup>

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26          <sup>6</sup> 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.

<sup>7</sup> 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  
20           **B.       Rescission or Reformation of Agreement.**

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

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

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

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

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

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

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

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

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