IN THE SUPREME COURT OF THE STATE OF NEVADA

In the matter of:

JAY KVAM,

Appellant,

vs.

BRIAN MINEAU; and LEGION INVESTMENTS, LLC,

Respondents.

Supreme Court Case No. 81422

District Court Case No. CV1800764

JOINT APPENDIX

VOLUME 2

APPEAL FROM AN ORDER GRANTING PARTIAL SUMMARY JUDGMENT, INCLUDING SUMMARY JUDGMENT ON APPELLANT'S SEVENTH CAUSE OF ACTION FOR INJUNCTIVE RELIEF IN THE SECOND JUDICIAL DISTRICT COURT, WASHOE COUNTY, THE HONORABLE LYNNE K. SIMONS, DISTRICT JUDGE

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JAY KVAM

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

JAY KVAM,

Plaintiff / Counterdefendant,

vs.

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

Defendants / Counterclaimants.
_____/

Case No. CV18-00764

Dept. No. 3

FIRST AMENDED COUNTERCLAIM

BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq., and Mark H. Gunderson, Esq., and in accordance with the Court's September 5, 2018 *Order*, allege and complain as follows:

1. Prior to 2018, Mineau, JAY KVAM ("Kvam"), and Michael Spinola engaged in a number of successful investment transactions through various legal entities.

2. In February 2017, Legion and Kvam entered into an agreement (the "Agreement") involving a property located at 7747 S. May Street, Chicago, Illinois (the "House").

3. The Agreement was drafted by Kvam.

4. Pursuant to the Agreement, Legion acquired the House.

5. Pursuant to the Agreement, Kvam paid the seller directly to fund Legion's acquisition of the House.

6. Pursuant to the Agreement, Legion began renovating the House for resale.

7. Pursuant to the Agreement, Kvam paid the contractor directly to fund the renovations.

8. The Agreement does not include a defined maturity date or a defined rate of return because those terms were undefined and unknown to the parties when the Agreement was made.

9. All parties to the Agreement knew that this was a high-risk investment with a potential for high returns.

10. The House is located in a dangerous and crime-ridden area of the south side of Chicago, which creates various difficulties with renovations.

11. For reasons beyond any of the parties' knowledge, control, or expectation, the contractor initially hired to perform the renovations was unable to complete the job.

12. Legion undertook the difficult process of identifying and retaining a competent, trustworthy, and affordable contractor who was willing to work in the House's neighborhood.

13. At approximately the same time, Kvam had a falling out with Mineau and Michael Spinola after Kvam refused to make a duly-imposed capital call in an unrelated investment company called Atlas Investors Southside LLC ("Atlas").

14. Consequently, Kvam demanded to be "bought out" of the Agreement. Legion declined to modify the Agreement and informed Kvam that, pursuant to the Agreement, he would be paid what he is owed under the Agreement when the House is sold.

15. After Legion and Mineau refused to renegotiate the terms of the Agreement, Kvam began undertaking efforts to interfere with Mineau's business investments and harm Mineau's business relationships in an effort to coerce Mineau and Legion into renegotiating the terms of the Agreement and/or to retaliate against Mineau.

16. Among other things, Kvam wrongfully and fraudulently accessed Atlas's bank accounts and engaged in unauthorized and fraudulent online banking transactions. Specifically, on or around March 6, 2018, without any legal authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's checking account and transferred $20,000 out of Atlas's checking account to pay off an interest-free credit card held by Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's checking account to be overdrawn by more than $10,000.00. As

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a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences. Mineau and Legion were consequently unable to invest those funds into the House.

17. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam wrongfully and fraudulently turned off the power to the House without Legion's or Mineau's knowledge, consent, or authorization, causing the pipes in the House to freeze, burst, and flood the House. Kvam intentionally and knowingly withheld this material information from Legion and Mineau, precluding Legion or Mineau from taking any steps to protect the House.

18. Among other things, after initiating this suit, Kvam caused his process servers to harass, threaten, and intimidate Mineau's family. Specifically, Kvam's agents entered Mineau's property and knocked on his front door in an effort to serve Mineau with process in this action. Mineau's wife answered the door and informed the process servers that Mineau was not home. The process servers raised their voices, threatened, and harassed Mineau's wife until she told them to leave the property. The process servers refused to leave and continued to scream, threaten, and harass Mineau's wife until she called the police. The process servers left before the police arrived, then returned shortly after the police left and again entered the property and screamed at, threatened, and harassed Mineaus' wife.

19. As a result of these actions, among others, Mineau and Legion have been forced to retain counsel to pursue the claims listed below.

FIRST CLAIM FOR RELIEF
(Breach of Contract)

20. 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. Kvam alleges that the Agreement constitutes a binding legal contract.

22. To the extent that the Agreement constitutes a binding legal contract, Mineau and Legion fulfilled all of their obligations pursuant to the Agreement and are entitled to full performance from Kvam.

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23. Kvam breached the Agreement by, among other things, demanding payment before payment was due, interfering with the renovation of the House by turning off the utilities without notifying Legion, and by interfering with Legion's ability to perform its obligations under the Agreement and finish renovating the House for a profit.

24. As a result of Kvam's breach of contract, Mineau and Legion are entitled to damages in excess of $15,000.00, plus interest, attorneys' fees, and costs.

25. By reason of Kvam's breach of contract, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter.

SECOND CLAIM FOR RELIEF
(Breach of the Covenant of Good Faith and Fair Dealing)

26. 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.

27. Kvam alleges that the Agreement constitutes a binding legal contract governed by the laws of the State of Nevada.

28. In Nevada, every contract contains an implied covenant of good faith and fair dealing.

29. By the actions described above, Kvam has breached the implied covenant of good faith and fair dealing by performing in a manner that was unfaithful to the purpose of the Agreement.

30. Kvam's breach of the covenant of good faith and fair dealing directly and proximately caused Mineau and Legion to suffer damages in excess of $15,000.00.

31. By reason of Kvam's breaches of the covenant of good faith and fair dealing, Mineau and Legion have been compelled to retain the services of an attorney, and are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the prosecution of this matter.

THIRD CLAIM FOR RELIEF
(Declaratory Relief)

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.

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33. A justiciable controversy has arisen between the parties regarding their respective rights, restriction, duties, and obligations pursuant to the Agreement and the House.

34. Mineau's and Legion's interests in the controversy are adverse to Kvam's.

35. Mineau's and Legion's interests in the controversy are legally protectable.

36. The controversy is ripe for judicial determination.

37. Mineau and Legion were forced to retain an attorney and have incurred attorneys' fees and costs in prosecuting this action.

FOURTH CLAIM FOR RELIEF
(Intentional Interference with Prospective Economic Advantage)

38. 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.

39. Mineau and Legion enjoyed prospective economic relationships with various third parties involving the marketing and sale of the House.

40. Kvam knew of these prospective relationships.

41. In taking the actions described above, Kvam intended to harm Mineau and Legion by preventing and/or interfering with those relationships.

42. Kvam had no privilege or justification in interfering with those relationships.

43. As a direct and proximate result of Kvam's actions, Mineau's and Legion's prospective business relationships have been damaged.

44. Kvam undertook the actions described above with the intent to vex, harass, and annoy Mineau and Legion and his actions were taken with malice, fraud, and oppression. As a result, Mineau and Legion are entitled to an award of exemplary and punitive damages.

45. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages in excess of $15,000.00, plus interest, attorneys' fees, and costs.

46. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter.

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FIFTH CLAIM FOR RELIEF
(Deceptive Trade Practices)

47. 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.

48. Mineau and Legion entered into a business transaction with Kvam that is subject to the provisions of the Deceptive Trade Practices Act, NRS Chapter 598.

49. During the course of this transaction, Kvam used coercion, duress, and intimidation in an attempt to force Mineau and Legion to pay him more than he is entitled under the Agreement, pay him sooner than he is entitled under the Agreement, and/or renegotiate the terms of the Agreement to terms more favorable to Kvam.

50. Among other things, Kvam wrongfully and fraudulently accessed Atlas's bank accounts and engaged in unauthorized and fraudulent online banking transactions. Specifically, on or around March 6, 2018, without any legal authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's checking account and transferred $20,000 out of Atlas's checking account to pay off an interest-free credit card held by Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's checking account to be overdrawn by more than $10,000.00. As a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences.

51. Kvam's actions were designed and intended to deprive Mineau and Legion of operating capital and interfere with their other business ventures to the point where Mineau and Legion would acquiesce to Kvam's improper demands to prevent further damage.

52. Among other things, after initiating this suit, Kvam caused his process servers to harass, threaten, and intimidate Mineau's family. Specifically, Kvam's agents entered Mineau's property and knocked on his front door in an effort to serve Mineau with process in this action. Mineau's wife answered the door and informed the process servers that Mineau was not home. The process servers raised their voices, threatened, and harassed Mineau's wife until she told them to leave the property. The process servers refused to leave and continued to scream, threaten, and harass Mineau's wife until she called the police. The process servers left before the police arrived, then

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returned shortly after the police left and again entered the property and screamed at, threatened, and harassed Mineaus' wife.

53. Kvam's actions were designed and intended to harass and intimidate Mineau and his family to the point where Mineau would acquiesce to Kvam's improper demands to prevent further harassment.

54. By his actions described above, Kvam has engaged in deceptive trade practices by using coercion, duress, and intimidation through the course of this transaction.

55. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages in excess of $15,000.00, plus interest, attorneys' fees, and costs.

56. Kvam's actions in this regard were malicious, fraudulent, and oppressive. As a result, Mineau and Legion are entitled to an award of exemplary and punitive damages.

57. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter.

SIXTH CLAIM FOR RELIEF
(Abuse of Process)

58. 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.

59. Through his actions described above, Kvam is using the statutes and laws of the State of Nevada for an ulterior purpose and for private gain by wrongfully initiating, prosecuting, and otherwise using this action not to resolve a legitimate legal dispute, but instead to force Mineau and Legion to buy him out of the Agreement, pay him more than he is entitled under the Agreement, and/or pay sooner than he is entitled under the Agreement.

60. Kvam's actions are willful, intentional, and not proper in the regular conduct of the proceeding.

61. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages in excess of $15,000.00, plus interest, attorneys' fees, and costs.

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62. Kvam's actions in this regard were malicious, fraudulent, and oppressive. As a result, Mineau and Legion are entitled to an award of exemplary and punitive damages.

63. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter.

SEVENTH CLAIM FOR RELIEF
(Trespass)

64. 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.

65. Through his actions described above, Kvam intentionally caused his agents to physically enter Mineau's property without permission, after they had been instructed to leave Mineau's property, and without legal purpose or justification.

66. Kvam's agents acted intentionally and at Kvam's direction to invaded Mineau's property.

67. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages in excess of $15,000.00, plus interest, attorneys' fees, and costs.

68. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter.

EIGHTH CLAIM FOR RELIEF
(Trespass to Chattels)

69. 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.

70. Legion owns the House and all personal property within the House.

71. Through his actions described above, Kvam intentionally impaired the condition, quality, and value of the personal property within the House.

72. As a result of Kvam's actions, Legion has been deprived of the use and value of the personal property within the House.

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73. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages in excess of $15,000.00, plus interest, attorneys' fees, and costs.

74. Kvam's actions in this regard were malicious, fraudulent, and oppressive. As a result, Mineau and Legion are entitled to an award of exemplary and punitive damages.

75. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter.

NINTH CLAIM FOR RELIEF
(Conversion)

76. 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.

77. Legion owns the House and all personal property within the House.

78. Through his actions described above, Kvam seriously interfered with Legion's rights in the personal property within the House.

79. As a result of Kvam's actions, Legion has been deprived of the use and value of the personal property within the House in its entirety.

80. Kvam's acts were and are in denial of, or inconsistent with, Legion's title or rights therein.

81. Kvam's acts were and are in derogation, exclusion, or defiance of Legion's title or rights therein.

82. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages in excess of $15,000.00, plus interest, attorneys' fees, and costs.

83. Kvam's actions in this regard were malicious, fraudulent, and oppressive. As a result, Mineau and Legion are entitled to an award of exemplary and punitive damages.

84. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter.

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TENTH CLAIM FOR RELIEF
(Fraud)

85. 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.

86. During the course of this transaction, Kvam used deception and fraud in an attempt to force Mineau and Legion to pay him more than he is entitled under the Agreement, pay him sooner than he is entitled under the Agreement, and/or renegotiate the terms of the Agreement to terms more favorable to Kvam.

87. Among other things, Kvam wrongfully and fraudulently accessed Atlas's bank accounts and engaged in unauthorized and fraudulent online banking transactions. Specifically, on or around March 6, 2018, without any legal authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's checking account and transferred $20,000 out of Atlas's checking account to pay off an interest-free credit card held by Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's checking account to be overdrawn by more than $10,000.00. As a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences.

88. Kvam intentionally concealed his actions from Mineau to avoid detection, knowing that he was not authorized to take these actions, that Mineau and Legion would object to such actions, and that such actions would harm Mineau and Legion. Kvam's actions were designed and intended to deprive Mineau and Legion of operating capital and interfere with their other business ventures to the point where Mineau and Legion would acquiesce to Kvam's improper demands to prevent further damage. Kvam's actions caused Mineau and Legion actual and material damages.

89. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam wrongfully and fraudulently turned off the power to the House without Legion's or Mineau's knowledge, consent, or authorization, causing the pipes in the House to freeze, burst, and flood the House. Kvam intentionally and knowingly withheld this material information from Legion and Mineau, precluding Legion or Mineau from taking any steps to protect the House.

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90. Kvam intentionally concealed his actions from Mineau to avoid detection, knowing that he was not authorized to take these actions, that Mineau and Legion would object to such actions, and that such actions would harm Mineau and Legion. Kvam's actions caused Mineau and Legion actual and material damages.

91. Through his actions described above, Kvam intentionally deceived, defrauded, and harmed Mineau and Legion.

92. As a result of Kvam's wrongful conduct, Mineau and Legion are entitled to damages in excess of $15,000.00, plus interest, attorneys' fees, and costs.

93. Kvam's actions in this regard were malicious, fraudulent, and oppressive. As a result, Mineau and Legion are entitled to an award of exemplary and punitive damages.

94. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter.

ELEVENTH CLAIM FOR RELIEF
(Negligence)

95. 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.

96. Kvam owed Mineau and Legion a duty to act with reasonable care to avoid damaging Mineau, Legion, or their property.

97. During the course of this transaction, Kvam breached his duties to Mineau and Legion by failing to act with reasonable care.

98. Among other things, Kvam improperly accessed Atlas's bank accounts and engaged in unauthorized and unreasonable online banking transactions. Specifically, on or around March 6, 2018, without any legal authority whatsoever, Kvam improperly accessed Atlas's checking account and transferred $20,000 out of Atlas's checking account to pay off an interest-free credit card held by Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's checking account to be overdrawn by more than $10,000.00. As a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic

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financial and business consequences.

99. Kvam's actions were unreasonable and taken without due care or consideration for the damages such actions would cause Mineau and Legion.

100. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam improperly turned off the power to the House without Legion's or Mineau's knowledge, consent, or authorization, causing the pipes in the House to freeze, burst, and flood the House. Kvam failed to notify Legion and Mineau of his actions, precluding Legion or Mineau from taking any steps to protect the House.

101. Through his actions described above, Kvam seriously damaged the House, its components, and the personal property within the House.

102. Kvam's actions were unreasonable and taken without due care or consideration for the damages such actions would cause Mineau and Legion.

103. Among other things, after initiating this suit, Kvam caused his process servers to harass, threaten, and intimidate Mineau's family. Specifically, Kvam's agents entered Mineau's property and knocked on his front door in an effort to serve Mineau with process in this action. Mineau's wife answered the door and informed the process servers that Mineau was not home. The process servers raised their voices, threatened, and harassed Mineau's wife until she told them to leave the property. The process servers refused to leave and continued to scream, threaten, and harass Mineau's wife until she called the police. The process servers left before the police arrived, then returned shortly after the police left and again entered the property and screamed at, threatened, and harassed Mineaus' wife.

104. By instructing his process servers to trespass on Mineau's property, Kvam's actions were unreasonable and taken without due care or consideration for the damages such actions would cause Mineau and his family.

105. Kvam's conduct as described above was at least negligent.

106. As a direct and proximate result of Kvam's negligent conduct, Mineau and Legion are entitled to damages in excess of $15,000.00, plus interest, attorneys' fees, and costs.

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107. By reason of Kvam's wrongful conduct, Mineau and Legion have been compelled to retain the services of an attorney and Mineau and Legion are entitled to recover the reasonable amount of their attorneys' fees and costs expended in the defense and prosecution of this matter

WHEREFORE, Mineau and Legion pray for:

1. Judgment for damages in excess of $15,000.00 in favor of Mineau and Legion and against Kvam according to the evidence;

2. Punitive and exemplary damages in an amount to be determined at trial;

3. An award of interest, costs and attorneys' fees;

4. Declaratory relief; and

5. Such further relief as the Court deems proper.

AFFIRMATION

The undersigned does hereby affirm that the preceding document, **FIRST AMENDED COUNTERCLAIM**, 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 5 day of October, 2018.

GUNDERSON LAW FIRM

By: _____

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 5 day of October, 2018, I deposited for mailing in Reno, Nevada AND electronically filed a true and correct copy of the **FIRST AMENDED COUNTERCLAIM**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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

Kelly Gunderson

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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. 3

MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT

Plaintiff / Counter-Defendant, JAY KVAM, "Kvam"), by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, Esq., pursuant to NRCP 9(b), NRCP 9(f), NRCP 12(b)(5), and NRCP 56, hereby moves this Court for an Order

(1) dismissing the Fifth, Tenth, and Eleventh Clams for Relief in the First Amended Counterclaim ("FACC") filed by Defendants Brian Mineau and Legion Investments, LLC (collectively, "Mineau");

(2) dismissing any remaining Claims for Relief in the Counterclaim, to the extent that such claims depend upon Mineau's allegations regarding the "unrelated" company Atlas Investors Southside LLC ("Atlas"); and

(3) for summary judgment as to all Claims for Relief set forth in the Counterclaim.

This motion is made and based on the Points and Authorities submitted herewith, the

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Declaration of Michael L. Matuska and other exhibits attached hereto, and all other pleadings, exhibits and documents of record.

POINTS AND AUTHORITIES

I. BACKGROUND

A. Mineau's Original Answer and Counterclaim

Kvam filed his Complaint on April 11, 2018 to be reimbursed for money invested with Mineau and Legion pursuant to the Terms of Agreement. **Ex. "1."** Kvam has previously described the Terms of Agreement as a Joint Venture Agreement ("JVA"). The subject of the JVA was to remodel and resell the house located at 7747 May Street, Chicago, Illinois (the "Property"). Kvam alleged in ¶ 10 of his Complaint that he fulfilled his funding obligation in the total amount of $93,781.31. Mineau and Legion filed their Answer and Counterclaim on June 5, 2018 in which they admitted that Kvam fulfilled his obligation. (Answer, ¶ 5). Kvam had no other performance obligations arising from the JVA.

However, Mineau included eleven (11) counterclaims based on badly confused legal theories that can only be described as a jumbled mess. The counterclaims contain five (5) general themes that recur in different claims for relief: (i) that Kvam committed an unspecified breach of the JVA, even though he admittedly fully performed it; (ii) that Kvam damaged the Property by turning off the power; (iii) that Kvam caused an "unrelated"[1] non-party, Atlas, to pay off a credit card earlier than it wanted to; (iv) that Kvam abused process by demanding to be repaid on his investment; and (v) that Kvam directed licensed process servers to harass Mineau's wife, who also is a non-party to this action.

A list of Mineau's Claims for Relief and the main themes in question in his original Counterclaim are as follows:

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[1] Mineau refers to Atlas as "an unrelated investment company" in Paragraph 13 of the Answer and Counterclaim.

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1. Breach of Contract: demanding payment; turning off power to the Property

2. Breach of Covenant of Good Faith and Fair Dealing: same as 1.

3. Declaratory Relief: same as 1.

4. Interference with Prospective Economic Advantage: same as 1.

5. Deceptive Trade Practices (NRS Chapter 598): non-specific allegation of "coercion, duress and intimidation throughout this transaction." (¶ 49.).

6. Abuse of Process: demanding repayment.

7. Trespass: process servers.

8. Trespass to Chattels: turning off power and using Atlas' bank account.

9. Conversion: same as 8.

10. Fraud: non-specific allegations of exercise of dominion and control over Legion's assets and Atlas' assets.

11. Negligence: turning off power to the Property; depriving Atlas of operating capital.

B. <u>Kvam's Original Motion to Dismiss, and This Court's Order</u>

Kvam predictably filed a *Motion To Dismiss Counterclaim Or In The Alternative For A More Definite Statement* (See #6746240). The motion was granted in part and denied in part (See Order entered September 5, 2018, #6864914). In summary, the Order directed as follows:

> 5./10. Deceptive Trade Practices and Fraud:
>
> Actions for deceptive trade practices are actions that sound in fraud. NRS 41.600(2)(e).
>
> * * * *
>
> Mineau does not meet this elevated standard . . . There are no specifics of time, place, nor descriptions of precisely the conduct involved. Therefore, this Court orders that Mineau submit a more definite statement complying with the standards for pleading fraud regarding claims five and ten.
> (Order at 3:17-4:2)

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8./9. Trespass to Chattels and Conversion

Mineau's main allegations in this claim are that there was a deprivation of the use and value of real property, which does not fall under the umbrella of conversion. Further, Mineau pleads that Kvam converted Atlas' assets. As stated in the Counterclaim, Atlas is an "unrelated investment company" and is further not a party to this action. Answer and Counterclaim, 4:25-27. Under these theories, Mineau cannot maintain a claim for conversion.

However, Mineau does allege that there was personal property within the house, and that Kvam interfered with Mineau's rights to the property and impaired the condition of the personal property within the house. This is sufficient to assert a claim for conversion and trespass to chattels.

Therefore, Mineau's claims for conversion and trespass to chattels regarding real property and Atlas' assets are dismissed.
(Order at 5:23-6:6)

10/11. Negligence.

While Mineau alleges that Kvam "owed Mineau and Legion a duty to act with reasonable care to avoid damaging Mineau, Legion or their property," it does not allege sufficient facts to put Kvam on notice of what the claim actually refers to.

Therefore, this Court orders that Mineau submit a more definite statement that will comply with Nevada's notice pleading standards.
(Order at 6:9-6:15)

C. Mineau's "First Amended Counterclaim"

Mineau filed his *First Amended Counterclaim* ("FACC") on October 5, 2010 (#6914700).[2]

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[2] The Court may choose to disregard the "First Amended Counterclaim" in its entirety because it does not contain an Answer, and therefore is not a pleading.

> **RULE 7. PLEADINGS ALLOWED; FORM OF MOTIONS**
>
> **(a) Pleadings.** There shall be a complaint and an answer; a reply to a counterclaim denominated as such; an answer to a cross-claim, if the answer contains a cross-claim; a third-party complaint . . . and a third-party answer, if a third-party complaint is served. No other pleading shall be allowed, except that the court may order a reply to an answer or a third-party answer.

A cross-claim or counterclaim must be asserted in an answer. "No other pleading shall be allowed." There is no such thing as a stand-alone counterclaim, and the Nevada Rules of Civil Procedure preclude Mineau from filing a stand-alone FACC. This result is mandated by *Smith v. District Court*, 113 Nev. 1343, 950 P.2d 280. The *Smith* court concluded that the free-standing cross-claim was not a pleading, the cross-claim had to be dismissed, and a writ of

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His FACC only provides two (2) additional factual allegations: First, that Kvam transferred $20,000 out of Atlas' bank account to pay off an interest free credit card (¶ 16), and second, that Kvam turned off the power to the Property sometime between March 1, 2018 and March 24, 2018 (¶ 17). Mineau's specific allegations are as follows:

> 16. Among other things, Kvam wrongfully and fraudulently accessed Atlas's accounts and engaged in unauthorized and fraudulent online banking transactions. Specifically, on or around March 6, 2018, without any legal authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's checking account and transferred $20,000 out of Atlas's checking account to pay off an interest-free credit card held by Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's checking account to be overdrawn by more than $10,000. As a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences. Mineau and Legion were consequently unable to invest those funds into the house.
>
> (FACC, ¶16)
>
> 17. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam wrongfully and fraudulently turned off power to the House without Legion's or Mineau's knowledge, consent, or authorization, causing the pipes in the House to freeze, burst and flood the House. Kvam knowingly and intentionally withheld this material information from Legion and Mineau, precluding Legion or Mineau from taking any steps to protect the House.
>
> (FACC, ¶17)

Thereafter, Mineau simply strung together and repeated his different theories regarding Atlas's accounts, turning off the power to the Property, and trespass by the process servers, so that these different themes now appear in an incomprehensible, desultory sequence in almost every one of Mineau's claims for relief. This repetitious form of pleading does not constitute a more definite

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mandate was appropriate to compel this result. The court proceeded to issue a writ of mandate to the lower court to dismiss the cross-claims. The court noted that this result did not turn on a technical construction or enforcement of the pleading requirements. Rather, the cross-claims were not a pleading and did not put the matter at issue.

> We do not suggest that dismissal of Chang's cross-claim was mandated because of a technical defect in pleading . . . There is, however, nothing technical about the defect in Chang's cross-claim; the document simply is not a pleading, and does not itself put the matters asserted therein at issue. (*Smith* at 1348)

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statement and subjects the so-called FACC to Kvam's Motion to Dismiss.

Perhaps more importantly, Mineau disregarded the prior order which dismissed the claims regarding Atlas. The Court was clear on page 6 of its Order of September 5, 2018, "IT IS HEREBY ORDERED that Plaintiff/Counter-Defendant's Motion to Dismiss is GRANTED with regards to . . . Atlas' assets . . . ." In the FACC, however, Mineau added new allegations regarding Atlas to his Fifth, Tenth, and Eleventh Claims for Relief, and impliedly includes the allegations regarding Atlas in his other Claims, such as his Fourth and Sixth Claims for Relief. This expanded use of factual allegations that were dismissed by this Court does not constitute a more definite statement. Mineau's Fifth, Tenth, and Eleventh Claims for Relief should be dismissed, and the remaining Claims for Relief also should be dismissed to the extent that they depend upon the allegations regarding Atlas.

Additionally, documentation recently provided by Mineau disproves his new allegations in ¶s 16 and 17 of his FACC. Mineau's own records prove that Kvam maintained power to the property through April 6, 2018 – after the alleged pipe-freeze incident – and the transfer from Atlas' checking account on March 6, 2018 was made to account 9494, not to the US Bank credit card 7005. Mineau's claims are therefore subject to Summary Judgment.

II. MOTION TO DISMISS

NRCP 12(b)(5) mandates dismissal of a claims that fail to state a claim upon which relief can be granted. NRCP 12(b)(5) provides in pertinent part, as follows:

> **(b) How Presented.** Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion:
> . . .
> (5) failure to state a claim upon which relief can be granted . . . . A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. . . . If, on a motion asserting the defense numbered (5) to dismiss for failure of the pleading to state a

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> claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

Nevada is a "notice pleading" jurisdiction and, therefore, a complaint need only set forth sufficient facts to demonstrate the necessary elements of a claim for relief so that the defending party has "adequate notice of the nature of the claim and relief sought." *Hay v. Hay*, 100 Nev. 196, 198, 678 P.2d 672, 674 (1984). In reviewing motions to dismiss under NRCP 12(b)(5), a district court must construe the pleadings liberally, accept all factual allegations in the Complaint as true, and draw every fair inference in favor of the non-moving party. *Blackjack Bonding v. City of Las Vegas Mun. Court*, 116 Nev. 1213, 1217, 14 P.3d 1275, 1278 (2000) (citing *Simpson v. Mars, Inc.*, 1134 Nev. 188, 190, 929 P.2d 966, 967 (1997)).

However, dismissal under NRCP 12(b)(5) is proper where the allegations are insufficient to establish the elements of a claim for relief. *Stockmeier v. Nevada Dep't of Corr, Psychological Review Panel*, 124 Nev. 313, 316, 183 P.3d 133, 135, (2008). "To survive dismissal, a complaint must contain some 'set of facts, which, if true, would entitle [the plaintiff] to relief.'" *In re AMERCO Derivative Litig.*, 127 Nev. 196, 210-11, 252 P. 3d 681, 692 (2011) (quoting *Buzz Stew, LLC v. City of N. Las Vegas*, 124 Nev. 224, 228, 181 P.3d 670, 672 (2008)).

Further, a "court may take into account matters of public record, orders, items presented in the record of the case, and any exhibits attached to the complaint when ruling on a motion to dismiss for failure to state a claim upon which relief can be granted." *Breliant v. Preferred Equities Corp.*, 109 Nev. 842, 847, 858 P.2d 1258, 1261 (1993).

In the present case, Mineau cannot maintain any of his claims regarding Atlas, and it would be futile for this Court to allow Mineau to make further amendments.

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1. **Mineau's Fourth and Sixth Claims for Relief Must be Dismissed to the Extent that they Depend upon the Allegations Regarding Atlas.**

Mineau's Fourth Claim for Relief alleges Intentional Interference with Prospective Economic Advantage. Kvam cannot reasonably frame an answer to this Claim because it does not identify any wrongful conduct or the prospective contracts. It merely references "actions described above . . ." It is unclear whether these actions concern Atlas, turning off the power, requesting repayment, or the non-specific allegation of breach of contract.

Moreovoer, any economic advantage would have accrued to the joint venture, and Mineau lacks standing to assert any such claim.

Mineau's sixth Claim for Relief for abuse of process also should be dismissed to the extent it is based on the allegations regarding Atlas. Defendants also fail to allege any willful act of Mr. Kvam in the use of process.

2. **Mineau's Fifth, Tenth, and Eleventh Claims for Relief Must be Dismissed.**

Rather than provide a more definite statement, Kvam appended his prior allegations regarding Atlas to his Fifth, Tenth, and Eleventh Claims for Relief. With regard to the Fifth Claim for Relief, there is no legal authority for Mineau's attempt to base a claim for deceptive trade practices on the action of a process server, and he cannot salvage this claim by repeating the already dismissed claims relating to Atlas.

Mineau's Tenth Claim for Relief for Fraud is based primarily on allegations concerning Atlas (FACC ¶s 87, 88). Mineau also added a new allegation concerning turning off power to the Property. Specifically, Mineau alleges that:

> 89. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam wrongfully and fraudulently turned off the power to the House without Legion's or Mineau's knowledge, consent or authorization, causing the pipes in the House to freeze, burst, and flood the House. Kvam intentionally and knowingly withheld this material information from Legion and Mineau, precluding Legion or Mineau from taking any steps to protect the House.

This an entirely new allegation, and factually incorrect as discussed in the summary judgment section, below. This allegation is based on a theory of concealment, which requires a special relationship or fiduciary duty, and the cause of action would have accrued to the joint venture, not Legion and Mineau. See Nevada Jury Instructions, Civil 10FR.6 ("the plaintiff must show: 1. There was a special relationship between the parties . . ."; *Nevada Power Co. v. Monsanto Co.*, 891 F.Supp. 1406, 1415 (D. Nev. 1995) ("Under Nevada Law, the general rule is that an action will not lie for nondisclosure unless the defendant had a duty to disclose."). Mineau does not base his fraud claim on a false or misleading statement of material fact.

The same is true for Mineau's repetitive allegations concerning Atlas. Aside from the fact that Mineau cannot assert claims on behalf of Atlas, he failed to allege that Kvam owed a duty to inform him that he was paying off Atlas' credit card.

Mineau's Eleventh Claim for Relief for Negligence repeats the previous defects concerning Atlas and also should be dismissed. Furthermore, any alleged duty owed by Kvam was owed to the joint venture as a result of the JVA and not to Mineau and Legion.

Mineau's eleventh counterclaim is also barred by the economic loss doctrine which was adopted in Nevada in *Calloway v. City of Reno*, 116 Nev. 250, 993 P.2d 1259 (2000). The plaintiff homeowners in *Calloway* sued the City of Reno and framing subcontractors who had performed work on their homes, seeking recovery for alleged construction defects in the homes. The plaintiffs in part asserted tort theories of recovery, but alleged only economic losses. The District Court dismissed the plaintiffs' tort claims based on the economic loss rule.

The Nevada Supreme Court affirmed the decision of the District Court to dismiss plaintiffs' tort claims pursuant to the economic loss rule, explaining:

> Under the economic loss doctrine 'there can be no recovery in tort for purely economic losses.' American Law of Products Liability (3d), § 60:39, at 69 (1991). Purely economic loss is generally defined as 'the loss of the benefit of the user's

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> bargain... including... pecuniary damage for inadequate value, the cost of repair and replacement of the defective product, or consequent loss of profits, without any claim of personal injury or damage to other property. *Id.* § 60:36, at 66. *Calloway*, 116 Nev. at 257.[3]
>
> * * * *
>
> The economic loss doctrine marks the fundamental boundary between contract law, which is designed to enforce the expectancy interests of the parties, and tort law, which imposes a duty of reasonable care and thereby encourages citizens to avoid causing physical harm to others.
>
> * * * *
>
> Under the economic loss doctrine 'there can be no recovery in tort for purely economic losses. *Calloway*, 116 Nev. at 256, 993 P.2d at 1263 (*quoting* Sidney R. Barrett, Jr., Recovery of Economic Loss in Tort for Construction Defects: A Critical Analysis, 40 S.C.L.Rev. 891, 894 (1989)).

The Court also noted that the rule "shields a defendant from unlimited liability for all of the economic consequences of a negligent act, particularly in a commercial or professional setting, and thus ... keeps the risk of liability reasonably calculable." *Id.*, 993 P.2d at 1266 (internal quotation marks omitted).

The economic loss doctrine is not an affirmative defense. The economic loss doctrine delineates the distinction between contract claims and tort claims, and bars plaintiffs from recovering in tort what they can recover in contract. It "primarily functions to bar the recovery of purely monetary losses in certain products liability and unintentional tort actions." *Davis v. Beling*, 278 P.3d 501, 514, 128 Nev. Adv. Op. 28 (2012). "[W]hen economic loss occurs as a result of negligence in the context of commercial activity, contract law can be invoked to enforce the quality expectations derived from the parties' agreement." *Terracon Consultants v. Mandalay Resort,* 206 P.3d 81, 87, 125 Nev. 66, 75 (2009). Additionally, the doctrine is based on balancing

[3] The Court made it clear that the property damage referred to as "other property" is damage to "property other than the defective entity itself." *Calloway*, 116 Nev. at 262. In doing so, the Court expressly rejected the Appellants argument that a defective component of house that causes damage to other components of the house qualifies as damage to "other property."

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the need for useful economic activity with plaintiff's recovery and to prevent tort claims from deterring useful economic activity. *See id.* "Intentional torts are not barred by the economic loss doctrine." *Halcrow, Inc. v. Eighth Judicial Dist. Court of State*, 302 P.3d 1148, 1155, 129 Nev. Adv. Op. 42 (2013). As such, the economic loss doctrine does not bar contract claims or intentional torts.

In this case, the expectations of the parties are defined by the JVA, which precludes Mineau's separate counterclaim for negligence.

III. MOTION FOR SUMMARY JUDGMENT

A. STANDARD FOR SUMMARY JUDGMENT

Wood v. Safeway, Inc., 121 Nev. 724, 121 P.3d 1026 (2005) is the seminal case on summary judgments in Nevada and speaks directly to the burden that the plaintiff [in this case, the counterclaimant] bears in opposing a motion for summary judgment. *Wood* rejected the "slightest doubt" standard that was adopted in 1954 in place of the standards in *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986), *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 106 S.Ct. 2505 (1986), and *Matsushita Electric Industrial Co. v. Zenith Radio*, 475 U.S. 574, 586, 106 S.Ct. 1348 (1986). "By its very terms [the summary judgment standard] provides that the mere existence of some alleged factual dispute between the parties will not defeat an otherwise properly supported motion for summary judgment; the requirement is that there be no genuine issue of material fact." *Wood v. Safeway, Inc.*, 121 Nev. at ___; 121 P.3d at 1030.

> This court has often stated that the nonmoving party may not defeat a motion for summary judgment by relying "on the gossamer threads of whimsy, speculation and conjecture." As this court has made abundantly clear, "[w]hen a motion for summary judgment is made and supported as required by NRCP 56, the non-moving party may not rest upon general allegations and conclusions, but must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine factual issue." *Id.* at ___, 1030-31 [internal citations omitted].
>
> "A factual dispute is genuine when the evidence is such that a rational trier

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> of fact could return a verdict for the nonmoving party." *Id.* at ___, 1031 [internal citations omitted].
>
> While the pleadings and other proof must be construed in a light most favorable to the nonmoving party, that party bears the burden to "do more than simply show that there is some metaphysical doubt" as to the operative facts in order to avoid summary judgment being entered in the moving party's favor. The nonmoving party "must, by affidavit or otherwise, set forth specific facts demonstrating the existence of a genuine issue for trial or have summary judgment entered against him." The nonmoving party "'is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" *Id.* at ___, 1031 [internal citations omitted].

Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986) is also instrumental to this decision because that case considered whether the moving party/defendant had to support its summary judgment motion with evidence or only needed to demonstrate that the plaintiff could not produce admissible evidence to carry its burden of proof. The United State Supreme Court confirmed that summary judgment is appropriate where the moving party has demonstrated the absence of a genuine issue of fact regardless of whether the motion is supported by affidavits or not.

> Under Rule 56(c), summary judgment is proper "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. "[T]h[e] standard [for granting summary judgment] mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a). . . ." Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250, 106 S.Ct. 2505 2511, 91 L.Ed.2d 202 (1986).

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> Of course, a party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any," which it believes demonstrate the absence of a genuine issue of material fact. But unlike the Court of Appeals, we find no express or implied requirement in Rule 56 that the moving party support its motion with affidavits or other similar materials negating the opponent's claim. On the contrary, Rule 56(c), which refers to "the affidavits, if any" (emphasis added), suggests the absence of such a requirement. And if there were any doubt about the meaning of Rule 56(c) in this regard, such doubt is clearly removed by Rules 56(a) and (b), which provide that claimants and defendants, respectively, may move for summary judgment "with or without supporting affidavits" [emphasis added].
> *Celotex Corporation v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548 (1986)

That standard was adopted by the Nevada Supreme Court in *Woods v. Safeway* and is the standard that governs consideration of this motion.

Based on the foregoing, Kvam need not produce any evidence to support this Motion for Summary Judgment. It is not enough for Mineau to simply allege that a factual dispute exists. Rather the burden is on him to produce sufficient evidence that a reasonable jury could return a verdict in his favor.

B. STATEMENT OF MATERIAL FACTS AS TO WHICH NO CONTROVERSY EXISTS

1. The Terms of Agreement state as follows:

> Terms of Agreement between Legion Investments LLC (its Members) and Jay Kvam (Initial Funding Member of Same)
> Re: 7747 May Street, Chicago, Illinois.
>
> With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam and Michael Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest due on funds dispersed. Initial purchase is being funded by Kvam, who is there by assigned any remedies due should the transaction fail in anyway. Initial funder will be due a 7% annual return on any funds provided due from date of disbursement. There is expected to be 3 renovation draws necessary on this project. First draw to be funded by Mr. Kvam, Due to present and ongoing business dealings between Jay and Michael, Michael has agreed to allot %50 of his 1/3 profit for both initial funding's.

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See **Ex. "1"** attached hereto.

2. Mineau admitted that Kvam provided the required funding (Answer, ¶ 5). Mineau admitted this again in interrogatory response no. 6, wherein he also acknowledged that he did not provide any funding. (**Ex. "3"**).

3. Mineau alleges as follows in FACC:

> 16. Among other things, Kvam wrongfully and fraudulently accessed Atlas's accounts and engaged in unauthorized and fraudulent online banking transactions. Specifically, on or around March 6, 2018, without any legal authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's checking account and transferred $20,000 out of Atlas's checking account to pay off an interest-free credit card held by Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's checking account to be overdrawn by more than $10,000. As a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences. Mineau and Legion were consequently unable to invest those funds into the house.
>
> (FACC, ¶16)

4. The Atlas South Side Checking detail proves that $20,000 was transferred to account 9494 on March 6, 2018, and not paid to a zero-interest credit card, as Mineau alleged. (**Ex. "4"**). This same detail proves that $20,000 was also returned from account 9494 that same day, which cancelled out the transfer complained of and essentially resulted in a zero-net transaction. There is no proof that Kvam made these transfers or had any connection with this odd sequence of transfers.[4]

5. Mineau also alleges as follows in the FACC:

> 17. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam wrongfully and fraudulently turned off power to the House without Legion's or Mineau's knowledge, consent, or authorization,

[4] In order to prove this allegation, Mineau would have to produce the signature cards for Atlas' checking account to prove that Kvam was not authorized on the account, prove that Kvam initiated the transfer in question on March 6, 2018, and produce the credit card account agreement to prove that that the account was a zero-interest account for years to come. Mineau would also have to provide proof that the was "forced to liquidate other assets." He has not and cannot produce such proof, which is within his sole custody and control.

causing the pipes in the House to freeze, burst and flood the House. Kvam knowingly and intentionally withheld this material information from Legion and Mineau, precluding Legion or Mineau from taking any steps to protect the House.

(FACC, ¶17)

6. Mineau repeated this allegation in interrogatory response no. 2: "The water pipes burst at the house on the Property at some point between March 1, 2018, and March 24, 2018." **(Ex. "3")**.

7. The Final Bill from ComEd attached hereto as **Ex. "2"** confirms that Kvam maintained electricity for the Property through April 6, 2018, even though there was no contractual duty for him to do so.

8. Mineau admitted in interrogatory response no. 1 that "On April 14, 2018, Mr. Kvam confirmed via email that he had cancelled electrical service to the Property." **(Ex. "3")**.

9. Mineau admitted in interrogatory response no. 11 that the chattels at issue in the Eighth Claim for Relief (Trespass) are "Drywall, insulation and copper plumbing." **(Ex. "3")**.

10. Mineau is listed as the Registered Agent of Defendant, Legion Investments, LLC, and the service address provided for Mr. Mineau, as Registered Agent of Legion Investments, LLC, the Mr. Mineau's home address: 2171 San Remo Drive, Sparks, Nevada 89434. See true and correct copy of information from the Nevada Secretary of State website, attached hereto as **Ex. "5."**

C. ANALYSIS

The undisputed record summarized above proves that Kvam funded his contractual obligations. As such, Kvam is entitled to summary judgment on Mineau's first three Claims for Relief for Breach of Contract, Breach of Covenant of Good Faith and Fair Dealing and Declaratory Relief.

The undisputed record summarized above proves that $20,000 was transferred from Atlas'

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account on March 6, 2018 to account no. 9494, not to a zero-interest credit card. $20,000 was also transferred back that same day. As such, Atlas was never short of capital, and that cannot be the cause of Mineau's failure to provide the required funding for the Property. There is no evidence that Kvam made any of those transfers or that he had any involvement with account 9494. As such, Kvam is entitled to summary judgment on all of Mineau's claims involving Atlas, including Fifth Claim for Relief (Deceptive Trade Practices), Tenth Claim for Relief (Fraud) and Eleventh Claim for Relief (Negligence).

The undisputed record summarized above also proves that Kvam maintained power to the Property through April 6, 2018, even though there was no obligation for him to do so, and that Kvam notified Mineau of the cancellation eight (8) days later on April 14, 2018. Kvam has no personal knowledge of when or if the pipes burst between March 1, 2018 and March 24, 2018, or the cause, but that had nothing to do with cancelling electrical service which occurred later. As such, Kvam is entitled to summary judgment on all of Mineau's claims for relief that are based on turning off the power, including: Fourth Claim for Relief (Intentional Interference With Prospective Economic Advantage), Eight Claim for Relief (Trespass to Chattels), Ninth Claim for Relief (Conversion), Tenth Claim for Relief (Fraud), and Eleventh Claim for Relief (Negligence).

Kvam is further entitled to summary judgment on Mineau's Eighth Claim for Relief (Trespass to Chattels) and Ninth Claim for Relief (Conversion) because drywall, insulation and copper plumbing are part of the realty, not chattels. Moreover, Mineau has not provided any evidence of damages or evidence to support a theory of causation. Any such evidence would be solely in his possession and should have been produced by now.

Kvam is further entitled to summary judgment on Mineau's Fourth Claim for Relief (Intentional Interference with Prospective Economic Advantage), Fifth Claim for Relief (Deceptive Trade Practices), Sixth Claim for Relief (Abuse of Process) and Eight Claim for Relief

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(Trespass) for lack of evidence sufficient to withstand a directed verdict. In particular, Mineau is the Registered Agent of Legion Investments, LLC, and Mineau listed his home address as the registered office for service of process. See **Ex. "5."**

NRS 14.020 provides in pertinent part as follows:

> **NRS 14.020 Artificial persons doing business in this State to appoint registered agents; service of process, demand or notice; fine for failure to staff street address of registered agent.**
>
> 1. Every corporation, miscellaneous organization described in chapter 81 of NRS, limited-liability company, limited-liability partnership, limited partnership, limited-liability limited partnership, business trust and municipal corporation created and existing under the laws of this State, any other state, territory or foreign government, or the Government of the United States, doing business in this State ***shall*** appoint and keep in this State a registered agent who resides or is located in this State, upon whom all legal process and any demand or notice authorized by law to be served upon it may be served in the manner provided in subsection 2. . . .
>
> 2. All legal process and any demand or notice authorized by law to be served upon the corporation, miscellaneous organization, limited-liability company, limited-liability partnership, limited partnership, limited-liability limited partnership, business trust or municipal corporation may be served upon the registered agent listed as the registered agent of the entity in the records of the Secretary of State, personally or by leaving a true copy thereof with a person of suitable age and discretion at the most recent street address of the registered agent shown on the information filed with the Secretary of State pursuant to chapter 77 of NRS. . . .
>
> . . . .
>
> 4. A corporation, miscellaneous organization, limited-liability company, limited-liability partnership, limited partnership, limited-liability limited partnership, business trust or municipal corporation that fails or refuses to comply with the requirements of subsection 3 is subject to a fine of not less than $100 nor more than $500 for each day of such failure or refusal to comply with the requirements of subsection 3, to be recovered with costs by the State, before any court of competent jurisdiction, by action at law prosecuted by the Attorney General or by the district attorney of the county in which the action or proceeding to recover the fine is prosecuted.

(emphasis added)

Having provided his home address as the registered office for Legion Investments, Mineau was required by NRS 14.020 to accept service of process against Legion Investments at that address. The licensed process server therefore was legally permitted to access the property to serve process, and Mineau may not base his Fourth, Fifth, Sixth, or Eighth Claims for Relief on

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such statutorily permitted activity. Further, there is no evidence that the process server proceeded beyond Mr. Mineau's porch, would not amount to trespass or abuse of process under any scenario. Mineau's Fourth, Fifth, Sixth, or Eighth Claims for Relief should be dismissed on summary judgment.

Mineau also has yet to produce actual evidence that Kvam filed this lawsuit for a reason other than to resolve his legitimate claim for repayment under the JVA. Mineau cannot maintain his Counterclaim "on the gossamer threads of whimsy, speculation and conjecture." *Wood v. Safeway, Inc.*, 121 Nev. at ___; 121 P.3d at 1030-31.

IV. CONCLUSION

Mineau's First Amended Counterclaim does not provide a more definite statement, but instead doubles-down on the allegations regarding Atlas, a non-party, in violation of this Court's Order. Consequently, Mineau's Fifth, Tenth, Eleventh, and any remaining claims based upon Atlas, should be dismissed. Mineau's Eleventh counterclaim for negligence is also barred by the economic loss doctrine.

Mineau's FACC also should be dismissed under NRCP 56. Mineau lacks standing to sue for breach of contract claims on behalf of the joint venture. The only duty imposed on Kvam pursuant to the parties' joint venture agreement was funding for the project at 7747 May Street, Chicago, Illinois, which he undeniably provided. Mineau has not kept of his end of the bargain. He failed to provide his funding, has not completed project, has not provided a completion date, and has not repaid Mineau any part of his investment. Mineau has tried to punish Kvam by filing eleven specious counterclaims after Kvam predictably demanded his money back. The counterclaims lack essential elements of the claims for relief, lack any allegations of time, place and manner of the alleged wrongs, and include confusing allegations regarding non-parties such as process servers and Atlas. Mineau has not and cannot produce evidence to support his allegations.

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Mineau falsely alleged that Kvam shut off the power to the Property in March, 2018 and transferred $20,000 from the Atlas account on March 6, 2018 to pay off a zero-interest credit card. In fact, based on documents provided by Mineau, power continued to the Property through April 6, 2018, and someone other than Kvam transferred $20,000 to account no. 9494, which amount was immediately transferred back. None of this was done by Kvam.

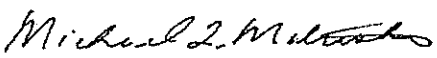
Mineau is the registered agent for Legion Investments, LLC, and he cannot base his trespass and abuse of process claims on his illegal refusal to accept process, especially when there is no allegation or evidence that the process server proceeded beyond Mineau's front porch.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 25th day of October 2018.

MATUSKA LAW OFFICES, LTD.



By: _____
MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM,
individually and derivatively on behalf
the unincorporated joint venture identified as 7747

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DECLARATION

I, MICHAEL L. MATUSKA, do hereby declare as follows:

1. That I am an attorney of law licensed to practice in the court of the state of California, and the attorney of record in this case for Plaintiff, JAY KVAM.

2. That the following are true and correct copies of the documents received from Austin Sweet, attorney of record for the Defendants BRIAN MINEAU and LEGION INVESTMENTS, LLC:

Exhibit 1 – Terms of Agreement (LEG0001)

Exhibit 2 – ComEd Final Bill (LEG0103-0104)

Exhibit 3 – Responses of Brian Mineau and Legion Investments, LLC to First Set of Interrogatories.

Exhibit 4 – Atlas South Side (Checking)- 5328 (LEG0119-0120)

3. That Exhibit 5 attached hereto is a true and correct copy of the Legion Investments, LLC – Secretary of State Business Profile that I printed on October 15, 2018.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated this 25th day of October 2018.

MATUSKA LAW OFFICES, LTD.

Michael L. Matuska

By: _____
MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM,
individually and derivatively on behalf
the unincorporated joint venture identified as
7747

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 25 day of October 2018, I served a true and correct copy of the preceding document entitled **MOTION TO STRIKE COUNTERCLAIM, TO DISMISS, AND FOR SUMMARY JUDGMENT** as follows:

Austin K. Sweet, Esq.
GUNDERSON LAW FIRM
3895 Warren Way
Reno, NV 89509

[X] **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 person 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 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 INDEX

EXHIBIT	DOCUMENT
1	Terms of Agreement
2	ComEd Final Bill
3	Responses of Brian Mineau and Legion Investments, LLC to First Set of Interrogatories
4	Atlas South Side (Checking) – 5328
5	Legion Investments, LLC – Secretary of State Business Profile

EXHIBIT 1
Terms of Agreement
MOTION TO STRIKE

MOTION TO STRIKE
Terms of Agreement
EXHIBIT 1

Terms of Agreement between Legion Investments LLC (its Members)

And Jay Kvam (Initial Funding Member of Same)

RE:

7747 S. May Street, Chicago Illinois.

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

Jay Kvam

_____ Date 2017-02-14

Brian Mineau

_____ Date 2/13/2017

Michael J. Spinola

_____ Date 2/13/17

LORI J. CALLISON
Notary Public - State of Nevada
Appointment Recorded in Churchill County
No: 15-1098-4 - Expires March 12, 2019

_____

EXHIBIT 2
ComEd Final Bill
MOTION TO STRIKE

MOTION TO STRIKE
ComEd Final Bill
EXHIBIT 2

FINAL BILL

ComEd
An Exelon Company

Issued 4/9/18 Account # 7766172077

SERVICE FROM 3/19/18 THROUGH 4/6/18 (18 DAYS)

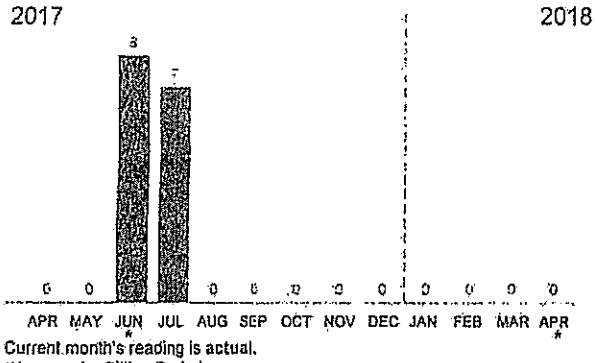
Residential - Single

Jay Kvam
7747 S May St
Chicago, IL 60620
530.251.3205

Total Amount Due by 5/1/18 $24.82

Late payment charges will continue until bill is paid.

TOTAL USAGE (kWh)



Current month's reading is actual.
*Non-regular Billing Period

AVERAGE DAILY USE (monthly usage/days in period)

Current Month 38° avg. temp
0.0 kWh

Last Month	37° avg. temp	Last Year
0.0 kWh		Not Available

Ten 100W light bulbs for 1 hour = 1 kWh

CURRENT CHARGES SUMMARY

See reverse side for details

SUPPLY $0.00

ComEd provides your energy.

ComEd.com
1.800.334.7661

Current Charges **$9.31**

DELIVERY $9.31

ComEd delivers electricity to your home.

ComEd.com
1.800.334.7661

For Electric Supply Choices visit pluginillinois.org

TAXES & FEES $0.00

Return only this portion with your check made payable to ComEd. Please write your account number on your check.

ComEd
An Exelon Company

Pay your bill online, by phone or by mail.

See reverse side for more info

Account # 7766172077

0109286 01 MB 0.421 **AUTO T8 0 1070 89511-147665 -C10-B1-P09297-I1 45

JAY KVAM
7565 MICHAELA DR
RENO, NV 89511-1476

Total Amount Due by 5/1/18 $24.82

Payment Amount:

COMED
PO BOX 6111
CAROL STREAM, IL 60197-6111

7766172077000002482812100248 26

1070-10-01092286-0001-0017665

LEG0103

Issued 4/9/18 Account # 7766172077

For Questions, Support, and Outages visit ComEd.com

English	1.800.EDISON! (1.800.334.7661)
Español	1.800.95.LUCES (1.800.955.8237)
Hearing/Speech Impaired	1.800.572.5789 (TTY)
Federal Video Relay Services (VRS)	Fedvrs.us/session/new

Total Amount Due by 5/1/18 $24.82

METER INFORMATION

Read Dates	Meter Number	Load Type	Reading Type	Previous	Present	Difference	Multiplier	Usage
3/19-4/6	270174556	General Service	Total kWh	4266 Actual	4266 Actual	0	x 1	0

CHARGE DETAILS

- Final Bill

Residential - Single 3/19/18 - 4/6/18 (18 Days)

DELIVERY - ComEd	$9.31
Customer Charge	$6.53
Standard Metering Charge	$2.78
TAXES & FEES	$0.00
Service Period Total	$9.31
MISCELLANEOUS	$15.51
Charges from previous bill	$15.51
Total Amount Due	$24.82

UPDATES

ComEd

- YOUR COMED BILL: Need help understanding your bill line item definitions? Please visit us at ComEd.com/UnderstandBill or call us at 1-800-334-7661.
- ENVIRONMENTAL DISCLOSURE STATEMENT: ComEd's Environmental Disclosure Statement can now be found online at ComEd.com/EnvironmentalDisclosure
- ILLINOIS COMMERCE COMMISSION CONSUMER DIVISION: (800-524-0795): The Consumer Services Division is available to help resolve disputes with ComEd. However, customers should contact ComEd before seeking assistance from the ICC.
- Past due balances are subject to late charges.

1070-10-0105288-0001-0017686

A VARIETY OF METHODS TO PAY YOUR BILL

Visit ComEd.com/PAY for more information including applicable fees for some transactions.

Online

Set up an automatic payment, enroll in paperless billing, or make a convenience payment at ComEd.com/Pay.

Mobile App

Download the ComEd mobile app on your Apple® or Android™ device to view and pay your bill, or manage your account.

Phone

Call us to make a convenience payment with a credit card, ATM card, or your bank account: 1.800.588.9477. (Fee Applies)

In-Person

Pay your bill in-person at many ComEd authorized agents located throughout the region. Visit ComEd.com/Pay for details.

When you provide a check as payment, you authorize us to use information from your check either to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

LEG0104

EXHIBIT 3
Reponses of Brian Mineau and Legion Investments, LLC to First Set of Interrogatories
MOTION TO STRIKE

MOTION TO STRIKE
Reponses of Brian Mineau and Legion Investments, LLC to First Set of Interrogatories
EXHIBIT 3

DISC
GUNDERSON LAW FIRM
Austin K. Sweet, Esq.
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Nevada State Bar No. 2134
3895 Warren Way
Reno, Nevada 89509
Telephone: 775.829.1222
Attorneys for Brian Mineau and Legion Investments

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

JAY KVAM,

Plaintiff / Counterdefendant,

vs.

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

Defendants / Counterclaimants.
_____/

Case No. CV18-00764

Dept. No. 3

BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES

PROPOUNDING PARTY: Jay Kvam

RESPONDING PARTY: Brian Mineau and Legion Investments, LLC

Pursuant to NRCP 16.1, Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq., and Mark H. Gunderson, Esq., and pursuant to Rule 33 of the Nevada Rules of Civil Procedure, responds to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s First Set of Interrogatories to Mineau and Legion ("Requests") as follows:

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INTERROGATORY NO. 1:

Describe when and how Mr. Kvam allegedly turned off power to the Property. Including the date and time.

RESPONSE TO INTERROGATORY NO. 1:

At some point between March 1, 2018, and March 24, 2018, electrical service to the Property ceased. On April 14, 2018, Mr. Kvam confirmed via email that he had cancelled electrical service to the Property. Further details concerning when and how Mr. Kvam completed this task, including the date and time, are presently unknown.

INTERROGATORY NO. 2:

State the date and approximate time on which the water pipes burst at the house on the Property.

RESPONSE TO INTERROGATORY NO. 2:

The water pipes burst at the house on the Property at some point between March 1, 2018, and March 24, 2018.

INTERROGATORY NO. 3:

State the date on which Legion Investments, LLC's improvements to the house at the Property were completed.

RESPONSE TO INTERROGATORY NO. 3:

Objection. Interrogatory No. 3 assumes incorrect facts and therefore cannot be directly answered. Specifically, Interrogatory No. 3 assumes that Legion Investments, LLC was the party making improvements to the house at the Property and that such improvements were completed.

Without waiving this objection, Legion Investments, LLC has not itself made improvements to the house at the Property and the improvements which were being made to the house at the Property by licensed contractors have not been completed.

INTERROGATORY NO. 4:

State the date and amount of each expenditure for improvements to the Property.

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RESPONSE TO INTERROGATORY NO. 4:

Legion Investments, LLC and Brian Mineau are aware of the following expenditures made for improvements to the Property:

March 23, 2017	$20,000.00
April 14, 2017	$20,000.00
May 18, 2017	$9,000.00
May 26, 2017	$20,000.00

INTERROGATORY NO. 5:

State date [sic] and amount of each capital call or funding request for the property.

RESPONSE TO INTERROGATORY NO. 5:

None.

INTERROGATORY NO. 6:

Identify all persons who contributed capital or funds for the purchase and improvement of the Property. Including the names, addresses, phone numbers, dates and amounts of the contributions.

RESPONSE TO INTERROGATORY NO. 6:

Jay Kvam
7565 Michaela Dr.
Reno, NV 89511

Contributions:	February 13, 2017	$44,000.00
March 23, 2017	$20,000.00	
April 14, 2017	$20,000.00	
May 18, 2017	$9,000.00	

Criterion NV LLC
7560 Michaela Dr.
Reno, NV 89511

Contributions:	March 26, 2017	$20,000.00

INTERROGATORY NO. 7:

Describe the heating system for the property, including the heater model and number, and whether it a [sic] gas or electric heater.

RESPONSE TO INTERROGATORY NO. 7:

The heating system on the property is electric. The heater model and number are unknown.

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INTERROGATORY NO. 8:

Identify all dates that Brian Mineau was present at the Property.

RESPONSE TO INTERROGATORY NO. 8:

Brian Mineau has never been present at the Property.

INTERROGATORY NO. 9:

Identify all prospective economic relationships alleged in your Fourth Claim for Relief. Include the name, address, phone numbers and describe any contracts and the dates and contents thereof.

RESPONSE TO INTERROGATORY NO. 9:

The earlier completion of the project and profitable sale of the Property. Although most potential buyers are not specifically known, Mutual Happiness LLC was in contract to purchase the Property but cancelled that contract. Documentation of this lost prospective economic relationship has been produced and identified as LEG0023 – LEG0036.

INTERROGATORY NO. 10:

Describe all acts of coercion, duress and intimidation identified in your Fifth claim for Relief (Deceptive Trade Practices). Include the date, time and manner of the alleged acts and any identify any [sic] witness thereto.

RESPONSE TO INTERROGATORY NO. 10:

Jay Kvam repeatedly demanded to be "reimbursed" for all funds he invested into the Property, despite the fact that the project was incomplete, no disbursements were yet due to anyone under the "Terms of Agreement," and the project had been severely set back by Mr. Kvam's own actions. Brian Mineau and Legion Investments, LLC nonetheless affirmed that they intended to complete the project and perform their obligations under the "Terms of Agreement." However, Mr. Kvam demanded that the "Terms of Agreement" be renegotiated to his benefit and threatened Mr. Mineau and Legion Investments, LLC with frivolous legal action if they refused to acquiesce to those demands. Mr. Kvam also wrongfully and fraudulently accessed Atlas Investors Southside LLC ("Atlas")'s bank accounts and fraudulently, and without authorization, used Atlas's operating funds to pay off an interest-free debt held by Atlas which would not come due for several more years, causing Atlas's

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operating account to be overdrawn and forcing Mr. Mineau and Legion Investments, LLC to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences. Mr. Kvam also demanded Legion Investments' historic financial records, without any legal or factual right to such information, again under threat of frivolous litigation. Mr. Kvam also demanded that Mr. Mineau and/or Legion Investments, LLC personally guaranty Mr. Kvam's return on his investment and provide separate collateral to protect his investment, again under threat of frivolous litigation. When Brian Mineau and Legion Investments, LLC refused, Mr. Kvam's agents harassed, threatened, and intimidated Mr. Mineau's family. Each of these acts constitutes acts of coercion, duress, and intimidation designed to compel Mr. Mineau and/or Legion Investments, LLC to buy Mr. Kvam out of the "Terms of Agreement," pay him more than he is entitled under the "Terms of Agreement," and/or pay him sooner than he is entitled under the "Terms of Agreement." The date, time, and manner of these acts is documented in correspondence between the parties' counsel and the pleadings of this action.

INTERROGATORY NO. 11:

Describe all chattels identified in your Eighth Claim for Relief (Trespass to Chattels).

RESPONSE TO INTERROGATORY NO. 11:

Drywall, insulation, and copper plumbing.

DATED this 1 day of October, 2018.

GUNDERSON LAW FIRM

By: _____

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
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VERIFICATION

I, Brian Mineau, a Defendant and a Manger of Legion Investments, LLC in the above-entitled action, make this verification. I have read the foregoing *Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kvam's First Set of Interrogatories* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Reno, NV.

DATED this 1st day of October, 2018.

Brian Mineau

STATE OF NEVADA
COUNTY OF WASHOE

This instrument was acknowledged before me on this 1st day of October, 2018 by Brian Mineau.

NOTARY PUBLIC for Nevada
Commission Expires: 9/14/2021

DEVAN GENNARO
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 09-14-2021
Certificate No: 17-3855-2

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 1 day of October, 2018, I deposited for mailing in Reno, Nevada a true and correct copy of the **BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES**, to the following:

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

Kelly Gunderson

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EXHIBIT 4
Atlas South Side (Checking) - 5328
MOTION TO STRIKE

MOTION TO STRIKE
Atlas South Side (Checking) - 5328
EXHIBIT 4

Atlas South Side (Checking) - 5328

Account Balance $798.03

Available Balance $798.03

Transactions

Date	Description	Check Number	Deposits	Withdrawals	Acct Balance
Completed Transactions					
03/15/2018	Overdraft Paid Fee			$36.00	$117.46
03/15/2018	Overdraft Returned Fee Refund		$36.00		$153.46
03/15/2018	Extended Overdraft Fee Refund 0000		$25.00		$117.46
03/15/2018	Extended Overdraft Fee Refund 0000		$25.00		$92.46
03/15/2018	Overdraft Returned Fee Refund		$36.00		$67.46
03/15/2018	Extended Overdraft Fee Refund 0000		$25.00		$31.46
03/15/2018	Overdraft Paid Fee Refund		$36.00		$6.46
03/14/2018	Debit Purchase -visa 03/12 card 0934 Fsi*liberty Util855-541-3939ca			$808.95	-$29.54
03/14/2018	Analysis Service Charge			$96.00	$779.41
03/12/2018	Internet Banking Transfer Deposit 9494		$750.00		$875.41
03/08/2018	Wire Transfer Deposit 03/06 card 0000 Wt01 Ref000223 Umpqua Bk Roseburg [redacted]334		$12,000.00		$125.41
03/06/2018	Mobile Banking Transfer Withdrawal 9494			$20,000.00	-$11,874.59
03/06/2018	Internet Banking Transfer Deposit 9494		$8,000.00		$8,125.41
03/06/2018	Mobile Banking Transfer Deposit 9494		$2,000.00		$125.41
03/05/2018	Extended Overdraft Fee			$25.00	-$1,874.59
03/05/2018	Overdraft Returned Fee	1023		$36.00	-$1,849.59
03/02/2018	Deposit		$800.00		-$1,813.59
02/26/2018	Extended Overdraft Fee			$25.00	-$2,613.59
02/20/2018	Extended Overdraft Fee			$25.00	-$2,588.59

Date	Description	Check Number	Deposits	Withdrawals	Acct Balance
02/20/2018	Overdraft Returned Fee	1021		$36.00	-$2,563.59
02/16/2018	Overdraft Returned Fee	1018		$36.00	-$2,527.59
02/14/2018	Overdraft Returned Fee			$36.00	-$2,491.59
02/14/2018	Analysis Service Charge			$41.00	-$2,455.59
02/13/2018	Overdraft Paid Fee	1022		$36.00	-$2,414.59
02/12/2018	Check	1022		$21,000.00	-$2,378.59
02/12/2018	Internet Banking Payment To Credit Card 02/09 card 7005 7005			$14,266.52	$18,621.41
02/09/2018	Wire Transfer Withdrawl 02/09 card 0000 Wt27 Ref002149 Jp Morgan Chase Ba[redacted]i499			$1,353.71	$32,887.93
02/08/2018	Electronic Withdrawal Nv Sos Portal			$350.00	$34,241.64
02/07/2018	Check	1019		$10,000.00	$34,591.64
02/07/2018	Customer Withdrawal			$6,000.00	$44,591.64

EXHIBIT 5
Legion Investments, LLC – Secretary of State Business Profile
MOTION TO STRIKE

MOTION TO STRIKE
Legion Investments, LLC – Secretary of State Business Profile
EXHIBIT 5

SilverFlume
NEVADA'S BUSINESS PORTAL

LEGION INVESTMENTS, LLC

Business Entity Information			
Status:	Active	File Date:	07/02/2014
Type:	Domestic Limited-Liability Company	Entity Number:	E0344102014-7
Qualifying State:	NV	List of Officers Due:	07/31/2019
Managed By:	Managers	Expiration Date:	
Foreign Name:		On Admin Hold:	No
NV Business ID:	NV20141431794	Business License Exp:	07/31/2019

Additional Information	
Central Index Key	

Registered Agent Information			
Name:	BRIAN MINEAU	Address 1:	2171 SAN REMO DR
Address 2:		City:	SPARKS
State:	NV	Zip Code:	89434
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	NV
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

View all business entities under this registered agent ()

Officers			☐ Include Inactive Officers
Manager - BRIAN MINEAU			
Address 1:	2171 SAN REMO DR	Address 2:	
City:	SPARKS	State:	NV
Zip Code:	89434	Country:	
Status:	Active	Email:	

Actions\Amendments
Click here to view 7 actions\amendments associated with this company ()

Supported Internet Browser versions or above: Apple IOS 9.3.5, Internet Explorer 11.0.9600.18665, FireFox 53.0.3, Google Chrome 58.0.3029.110
Disclaimer

CODE 2645

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Attorneys for Brian Mineau and Legion Investments

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

JAY KVAM,

Plaintiff / Counterdefendant,

vs.

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

Defendants / Counterclaimants.
_____/

Case No. CV18-00764

Dept. No. 3

OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT

Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq., and Mark H. Gunderson, Esq., submit the following Opposition to the *Motion to Dismiss Counterclaim, and for Summary Judgment* ("Motions") filed by Plaintiff / Counterdefendant JAY KVAM ("Kvam"). This Opposition is made and based upon the following memorandum of points and authorities, the pleadings on file in this case, the Declaration of Austin K. Sweet, Esq., attached as Exhibit "1," and any oral argument this Court wishes to entertain.

MEMORANDUM OF POINTS AND AUTHORITIES

Kvam's Motions contain two entirely separate and distinct motions filed together: a motion to dismiss ("Dismissal Motion") and a motion for summary judgment ("Summary Judgment Motion").

The Motions do not appear to be pled in the alternative and therefore violate WDCR 10(3). The Motions should be denied outright as improperly before this Court. However, should this Court elect to address the Motions on their merits, Legion and Mineau will address each of the Motions separately.

I. OPPOSITION TO MOTION TO DISMISS

A. Introduction

Mineau and Legion's First Amended Counterclaim is adequately pled and complies with this Court's September 5, 2018 Order. The Dismissal Motion should be denied.

B. Legal Standard

A complaint will not be dismissed for failure to state a claim unless it appears beyond a doubt that the plaintiff could prove no set of facts which, if accepted by the trier of fact, would entitle him to relief. Simpson v. Mars Inc., 113 Nev. 188, 929 P.2d 966 (1997). The court must construe the pleading liberally and draw every fair intendment in favor of the plaintiff. Capital Mtg. Holding v. Hahn, 101 Nev. 314, 705 P.2d 126 (1985).

A pleading which sets forth a claim for relief shall contain (1) a short and plain statement of the claim showing that the pleader is entitled to relief, and (2) a demand for judgment for the relief the pleader seeks. NRCP 8(a). Courts liberally construe pleadings to place into issue matters which are fairly noticed to the adverse party. Hay v. Hay, 100 Nev. 196, 678 P,2d 672 (1984).

In all averments of fraud, the circumstances constituting the fraud shall be stated with particularity. NRCP 9(b). Malice, intent, knowledge, and other condition of mind of a person may be averred generally. Id. This level of pleading is required "in order to afford adequate notice to the opposing part[ies], so that they can defend against the charge and not just deny that they have done anything wrong." Rocker v. KPMG LLP, 122 Nev. 1185, 1192, 148 P.3d 703, 707-08 (2006) (abrogated on other grounds by Buzz Stew, LLC v. City of N. Las Vegas, 124 Nev. 224, 181 P.3d 670 (2008)).

C. Argument

In a footnote, Kvam first argues that the *First Amended Counterclaim* should be disregarded in its entirety because it does not restate the answer to Kvam's complaint and is therefore not a pleading under NRCP 7. Motions at 4. However, the *First Amended Counterclaim* is not a stand-alone

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counterclaim; rather, it is an amendment to the previously filed *Answer and Counterclaim*. The amendment properly relates back to the original pleading and need not restate the unamended answer to constitute a proper pleading. NRCP 15. However, should this Court disagree, leave should be granted for Mineau and Legion to refile their *First Amended Counterclaim* as a *First Amended Answer and Counterclaim*.

Kvam attacks the Fourth, Fifth, Sixth, Tenth, and Eleventh Claims for Relief in the *First Amended Counterclaim*. Each challenged claim for relief will be addressed in turn.

i. The Fourth Claim for Relief Is Adequately Pled.

Kvam first moves to dismiss the Fourth Claim for Relief (Intentional Interference with Prospective Economic Advantage). Motions at 8. However, this Court denied Kvam's first motion to dismiss with respect to the Fourth Claim for Relief and that claim has not been amended. See September 5, 2018 *Order* at 3. Kvam's efforts to reargue this issue without leave of court are improper. DCR 13(7); WDCR 12(8). The Fourth Claim for Relief remains adequately pled and the Dismissal Motion should be denied in this regard.

ii. The Fifth Claim for Relief Is Adequately Pled.

The Court granted Kvam's alternative motion for a more definite statement concerning the Fifth Claim for Relief (Deceptive Trade Practices). See September 5, 2018 *Order* at 3-4. The Court ordered Mineau and Legion to submit a more definite statement including specifics of time and place, and descriptions of precisely the conduct involved. Id. Mineau and Legion complied with this requirement by specifically describing the conduct which constituted coercion, duress, and intimidation through the course of his transaction with Mineau and Legion. See *First Amended Counterclaim* ¶¶ 47 – 57.

Specifically, as alleged in the *First Amended Counterclaim*, Mineau and Legion entered into a business transaction (the "Term of Agreement") with Kvam that is subject to the provisions of the Deceptive Trade Practices Act, NRS Chapter 598. *First Amended Counterclaim* ¶ 48. In taking the actions described in the *First Amended Counterclaim* (including (1) inhibiting Mineau's and Legion's access to operating capital by improperly paying off the Atlas loan; (2) threatening to further sabotage the project or initiate baseless litigation unless Mineau and Legion agreed to pay Kvam more than he

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is owed, sooner than he is owed; and (3) threatening and intimidating Mineau's family to coerce settlement), Kvam has engaged in deceptive trade practices. Id. ¶¶ 49 - 54. Based upon these allegations, the Fifth Claim for Relief is adequately pled.

In moving to dismiss the Fifth Claim for Relief, Kvam argues "there is no legal authority for Mineau's attempt to base a claim for deceptive trade practices on the actions of a process server, and he cannot salvage this claim by repeating the already dismissed claims relating to Atlas." Motions at 8. As explained in the *First Amended Counterclaim*, Mineau alleges that Kvam specifically directed his process servers to harass, threaten, and intimidate Mineaus' family and is therefore responsible for his agent's actions. Further, this Court did not dismiss "claims relating to Atlas" and the fact that Kvam's improper conduct involved non-parties, such as Atlas and Mineau's family, does not relieve Kvam of his liability to Mineau and Legion for such conduct. Kvam offers no other argument or analysis concerning the Fifth Claim for Relief.

The Fifth Claim for Relief is adequately pled. The Dismissal Motion should be denied in this regard.

iii. The Sixth Claim for Relief Is Adequately Pled.

Kvam also moves to dismiss the Sixth Claim for Relief (Abuse of Process). Motions at 8. However, this Court denied Kvam's first motion to dismiss with respect to the Sixth Claim for Relief and the Sixth Claim for Relief has not been amended. See September 5, 2018 *Order* at 4. Kvam's efforts to reargue this issue without leave of court are improper. DCR 13(7); WDCR 12(8). The Sixth Claim for Relief remains adequately pled and the Dismissal Motion should be denied in this regard.

iv. The Tenth Claim for Relief Is Adequately Pled.

The Court granted Kvam's alternative motion for a more definite statement concerning the Tenth Claim for Relief (Fraud). See September 5, 2018 *Order* at 3-4. The Court ordered Mineau and Legion to submit a more definite statement including specifics of time and place, and descriptions of precisely the conduct involved. Id. Mineau and Legion complied with this requirement by specifically describing Kvam's conduct which constituted fraud. See *First Amended Counterclaim* ¶¶ 85 – 94.

Kvam moves to dismiss the amended Tenth Claim for Relief based upon the argument that Mineau and Legion have actually pled a claim for "concealment," not a claim for "fraud." Motions at

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9. Fraudulent concealment is a subset of fraud, so Kvam's efforts to dismiss the Tenth Claim for Relief based upon the distinction between "concealment" and "fraud" is unavailing. Regardless, a plaintiff is only required to set forth the facts which support a legal theory, but the legal theory relied upon need not be correctly identified. See Liston v. Las Vegas Metro. Police Dep't, 111 Nev. 1575, 1578, 908 P.2d 720, 723 (1995). Kvam plainly understands the facts supporting Mineau's and Legion's legal theories and claims, so the claim is adequately pled regardless of how the Tenth Claim for Relief is identified.

Kvam further states that a theory of concealment requires a special relationship or fiduciary duty between the parties. Motions at 9. Kvam implies, but does not argue, that the *First Amended Counterclaim* does not adequately plead such a relationship. On the contrary, the relationship between the parties is thoroughly pled in the *First Amended Counterclaim*. Indeed, Kvam himself repeatedly characterizes this relationship as a "joint venture" throughout his Motions. Thus, the existence of a special relationship or fiduciary duty is adequately pled.

Finally, Kvam asserts that the cause of action for "concealment" would accrue to the joint venture, not to Legion or Mineau. Kvam cites no legal authority supporting this proposition. Regardless, Mineau and Legion adamantly deny that a "joint venture" exists between the parties or that any such "joint venture" would hold independent legal claims against Kvam separate and apart from Legion's or Mineau's claims.

For these reasons, the Dismissal Motion should be denied in this regard. However, if this Court agrees that the amended Tenth Claim for Relief improperly refers to the wrong legal theory, Mineau and Legion request leave to amend their *First Amended Counterclaim* as necessary.

v. The Eleventh Claim for Relief Is Adequately Pled.

The Court granted Kvam's alternative motion for a more definite statement concerning the Eleventh Claim for Relief (Negligence). See September 5, 2018 *Order* at 6. The Court ordered Mineau and Legion to submit a more definite statement to put Kvam on notice of what the claim actually refers to. Id. Mineau and Legion complied with this requirement by specifically describing Kvam's conduct which constituted negligence. See *First Amended Counterclaim* ¶¶ 95 – 107.

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Kvam first argues again that the negligence claim would accrue to the joint venture, not to Legion or Mineau. Kvam cites no legal authority supporting this proposition. Regardless, Mineau and Legion again adamantly deny that a "joint venture" exists between the parties or that any such "joint venture" would hold legal claims against Kvam separate and apart from Mineau or Legion's claims.

Kvam next resurrects his argument that the Eleventh Claim for Relief is barred by the economic loss doctrine. Motion at 9 – 11. Again, as in his first motion, the economic loss doctrine bars purely economic losses, not losses caused by personal injury or damage to other property. Motions at 10; see also Calloway v. City of Reno, 116 Nev. 250, 257, 993 P.2d 1259 (2000). Here, the *First Amended Counterclaim* specifically alleges that Kvam's negligence damaged Mineau's and Legion's property. The economic loss doctrine therefore does not bar the Eleventh Claim for Relief.

Furthermore, Legion and Mineau adamantly dispute that the parties' expectations are defined by the "Terms of Agreement." As explained in more detail in response to Kvam's Summary Judgment Motion below, the "Terms of Agreement" is ambiguous on its face and, by itself, lacks essential terms to form a contract. If the finder of fact in this matter determines that the "Terms of Agreement" does not constitute a valid and enforceable contract, or that its terms are too vague and undefined to govern the totality of the expectations between the parties, then the economic loss doctrine cannot preclude damages for Kvam's negligent conduct which was not governed by the "Terms of Agreement." Mineau and Legion have therefore properly pled their Eleventh Claim for Relief in the alternative to their First Claim for Relief.

For these reasons, the Eleventh Claim for Relief is adequately pled, and the Dismissal Motion should be denied in this regard.

vi. Mineau and Legion Should Be Granted Leave To Amend As Necessary To Cure Any Deficiencies In The Counterclaim.

As explained in this Opposition, the *First Amended Counterclaim* is adequately and properly pled. The Dismissal Motion should therefore be denied in its entirety. However, should this Court

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determine that the *First Amended Counterclaim* contains any technical deficiencies, Mineau and Legion should be afforded the opportunity to amend their *First Amended Counterclaim* to address those deficiencies and ensure that this dispute is litigated on its merits.

D. Conclusion

Mineau and Legion have properly pled their counterclaims against Kvam. Mineau and Legion have plainly explained the facts from which their claims arise and the legal basis for their claims. The *First Amended Counterclaim* clearly and properly explains the basis of Mineau's and Legion's Counterclaims and complies with this Court's September 5, 2018 Order.

This dispute should be resolved on the merits. The Dismissal Motion should be denied.

II. OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

A. Introduction

In addition to moving to dismiss certain claims, Kvam also seeks summary judgment on all claims in the *First Amended Counterclaim*. Summary judgment is extremely premature at this stage: Kvam has yet to file an answer, the disputed facts and legal theories have not yet been defined, Mineau and Legion have not yet commenced discovery, no discovery deadlines have been set, and trial has not yet been scheduled.

Despite these facts, Kvam's Summary Judgment Motion makes no affirmative arguments explaining why he is entitled to judgment as a matter of law. Rather, Kvam simply invites Mineau and Legion to prove their entire case in this Opposition and ask this Court to enter summary judgment in his favor if Mineau and Legion fail to do so. This is not how summary judgment works in Nevada.

The Summary Judgment Motion should be denied.

B. Statement of Disputed and Unknown Facts

The Summary Judgment Motion relies upon incomplete and disputed facts. Kvam identifies ten (10) statements and then analyzes this dispute as if Kvam's ten (10) statements contain the totality of this action. However, as pled in the *First Amended Counterclaim*, Mineau and Legion's claims are not based solely upon the ten (10) statements identified by Kvam in his Summary Judgment Motion.

Kvam's Summary Judgment Motion first quotes the "Terms of Agreement" in its entirety. However, the "Terms of Agreement" is an incredibly vague, ambiguous, and incomplete document.

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The "Terms of Agreement" is silent regarding the purpose of the project, the scope of the project, the timeline of the project, the parties' respective roles, duties, and obligations for the project, the project's budget, how the second and third "renovation draws" would be funded, the source of the project's anticipated profits, the amount of the project's anticipated profits, how potential losses on the project would be allocated, or even the end goal of the project. Kvam offers no extrinsic evidence concerning his understanding or interpretation of the "Terms of Agreement." Absent extrinsic evidence supplementing the written document, the "Terms of Agreement" lacks the essential terms to form a contract. Therefore, the full extent of the parties' respective rights, duties, and obligations cannot be determined absent a review and adjudication of extrinsic and parol evidence, which is not currently before this Court. Accordingly, a genuine dispute of material fact exists concerning the "Terms of Agreement."

Kvam's Summary Judgment Motion goes on to assert that "There is no proof that Kvam made [the transfers from Atlas's account] or had any connection with this odd sequence of transfers." Motions at 14. Tellingly, Kvam does not actually deny doing so, he merely asserts that the bank statement attached to the Motions as Exhibit 4 is not, by itself, sufficient evidence to prove Kvam's wrongdoing. This statement exemplifies why this motion is premature: Mineau and Legion do not believe that Kvam disputes that he paid off Atlas's credit card and expect Kvam to admit this allegation when an answer to the *First Amended Counterclaim* is eventually filed. If necessary, Mineau and Legion intend to conduct discovery to determine the circumstances surrounding Kvam's access Atlas's accounts, under what authority he was allegedly acting, and his motivations for doing so. Until such discovery is completed, this information is solely within Kvam's custody and control and summary judgment is inappropriate.

Kvam's Summary Judgment Motion goes on to assert that Exhibit 2 to the Motions "confirms that Kvam maintained electricity for the Property through April 6, 2018...." Motions at 15. On the contrary, Exhibit 2 to the Motions merely indicates that the final billing period ended April 6, 2018, without any evidence as to when Kvam actually turned the electricity off. Motions at Ex. 2. By contrast, the property manager managing the Property has asserted that, on March 1, 2018, the Property was in good order and the electricity was operating. See Watkins' May 22, 2018 letter, identified as

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LEG0020, attached as Exhibit "2." However, on March 24, 2018, the electricity was not working, the pipes had burst and water was running, and the Property had suffered water damage in an estimated amount of $10,000.00. Id. Mineau and Legion intend to conduct discovery to concerning these facts and circumstances. Regardless, a genuine dispute of material facts exists concerning when the power was shut off to the Property, who shut the power off to the Property, and whether shutting off the power to the Property caused the pipes to burst.

C. Legal Standard

Summary judgment may be entered only when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. NRCP 56(c). When reviewing a motion for summary judgment, "the evidence, and any reasonable inference drawn from it, must be viewed in a light most favorable to the nonmoving party." Wood v. Safeway, Inc., 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005). If "the evidence is such that a rational trier of fact could return a verdict for the nonmoving party," a genuine issue of material fact exists precluding summary judgment. Id. at 731, 1031.

D. Argument

i. Summary Judgment Is Premature.

Kvam's Summary Judgment Motion is based upon the argument that Mineau and Legion must, at this early stage in the litigation, "produce sufficient evidence that a reasonable jury could return a verdict in [their] favor." Motions at 13. This is not the summary judgment standard and the time for Mineau and Legion to prove their case to the finder of fact has not yet arrived.

This action has yet to proceed past the pleading stage and Mineau and Legion's *First Amended Counterclaim* is not even at issue. Kvam has not filed an answer, so it is not yet clear which factual allegations Kvam admits, which he denies, or what his affirmative defenses might be. As such, Mineau and Legion have not yet been able to analyze the issues or commence meaningful discovery. See Exhibit "1." Further, no discovery deadlines have been set, nor has trial been scheduled, so Mineau and Legion are not being dilatory in waiting until the pleadings stage is completed, and the factual and legal issues clearly defined, before commencing discovery. The Summary Judgment Motion is therefore premature and should be denied. NRCP 56(f).

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Kvam cites Celotex Corp. v. Catrett, 477 U.S. 317, 106 S.Ct. 2548 (1986) to support his proposition that Mineau and Legion must produce sufficient evidence to prove their case to survive summary judgment. Motions at 12-13. However, Kvam's own citation states that such requirement applies only "after adequate time for discovery." Motions at 12. As explained above, Mineau and Legion have not had adequate time for discovery. Thus, even accepting Kvam's legal argument, the time for Mineau and Legion to "produce sufficient evidence that a reasonable jury could return a verdict in [their] favor" has yet to arrive.

For these reasons, Mineau and Legion cannot present by affidavit facts essential to justify their opposition, so the Summary Judgment Motion should be denied. NRCP 56(f).

ii. Kvam Is Not Entitled To Summary Judgment On The Counterclaims Concerning the "Terms of Agreement."

Even if this Court considers the merits of the Summary Judgment Motion at this early stage in the litigation, before the *First Amended Counterclaim* is at issue or any discovery has been conducted, Kvam's Summary Judgment Motion should still be denied. Kvam's motion is broken into five separate arguments, which Mineau and Legion will address in turn.

Kvam first asserts that, because he funded the "first draw" as required by the "Terms of Agreement," then he fully satisfied his contractual obligations and is therefore entitled to summary judgment on Mineau's and Legion's First, Second, and Third Claims for Relief. Motions at 15. This argument is nonsensical and wrong.

As explained above, the "Terms of Agreement" is an incredibly vague, ambiguous, and incomplete document. The "Terms of Agreement" is silent regarding the purpose of the project, the scope of the project, the timeline of the project, the parties' respective roles, duties, and obligations for the project, the project's budget, how the second and third "renovation draws" would be funded, the source of the project's anticipated profits, the amount of the project's anticipated profits, how potential losses on the project would be allocated, or even the end goal of the project. Therefore, the full extent of the parties' respective rights, duties, and obligations cannot be determined absent a review and adjudication of extrinsic and parol evidence, with all ambiguities in the Terms of Agreement construed against Kvam as the drafter. Dickenson v. State, Dep't of Wildlife, 110 Nev.

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934, 937, 877 P.2d 1059, 1061 (1994). Accordingly, a genuine dispute of material fact exists precluding summary judgment on any claims concerning the "Terms of Agreement."

Mineau and Legion's First Claim for Relief alleges that, to the extent the "Terms of Agreement" constitutes a binding legal contract, Kvam breached that contract by, among other things, demanding payment before payment was due and interfering with the renovation of the Property for a profit. See *First Amended Counterclaim* ¶¶ 20 – 25. The fact that Kvam funded the "first draw" does not absolve him of the other breaches of contractual obligations under the "Terms of Agreement." Kvam is not entitled to judgment as a matter of law on this claim.

Mineau and Legion's Second Claim for Relief alleges that, to the extent the "Terms of Agreement" constitutes a binding legal contract, Kvam breached the implied covenant of good faith and fair dealing by performing in a manner that was unfaithful to the purpose of the agreement. See *First Amended Counterclaim* ¶¶ 26 – 31. Kvam apparently argues that he cannot have breached the implied covenant of good faith and fair dealing if he "funded his contractual obligations." However, literal compliance with the terms of a contract does not absolve a defendant from liability for breach of the implied covenant of good faith and fair dealing. Hilton Hotels Corp. v. Butch Lewis Productions, Inc., 107 Nev. 226, 232, 808 P.2d 919, 920 (1991) ("Where the terms of a contract are literally complied with but one party to the contract deliberately countervenes the intention and spirit of the contract, that party can incur liability for breach of the implied covenant of good faith and fair dealing.") Thus, the fact that Kvam funded the "first draw" does not entitle him to judgment as a matter of law on Mineau and Legion's Second Claim for Relief.

Mineau and Legion's Third Claim for Relief seeks a judicial declaration of the parties' respective rights, restrictions, duties, and obligations pursuant to the "Terms of Agreement" and the Property. The fact that Kvam funded the "first draw" does not resolve this controversy or otherwise determine the parties' respective rights, restrictions, duties, and obligations pursuant to the "Terms of Agreement." Kvam is not entitled to judgment as a matter of law on this claim.

For these reasons, genuine disputes of facts exist concerning the "Terms of Agreement" and Kvam is not entitled to judgment as a matter of law on Mineau and Legion's First, Second, or Third Claims for Relief.

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iii. Kvam Is Not Entitled To Summary Judgment On The Counterclaims Concerning Kvam Accessing Atlas's Bank Account.

Kvam next asserts that he is entitled to summary judgment on Mineau and Legion's Fifth, Tenth, and Eleventh Claims for Relief because Exhibit 4 to the Motions does not, by itself, prove that Kvam improperly accessed Atlas's bank accounts and engaged in unauthorized transactions. The fact that a single document does not prove Counterclaimants' case at this early stage in the litigation is far from sufficient to enter summary judgment in Kvam's favor.

Summary judgment shall be entered "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." NRCP 56(c). When a motion for summary judgment is made and supported by affidavits, an adverse party may not rest upon the mere allegations of their pleading. NRCP 56(e).

Kvam has failed to establish that there is no genuine issue as to any material fact or that he is entitled to judgment as a matter of law concerning the allegation that he improperly accessed Atlas's bank accounts and engaged in unauthorized transactions. Kvam's Summary Judgment Motion is not supported by affidavits. Indeed, Kvam does not even deny the fact that he unilaterally paid off Altas's credit card. Therefore, summary judgment on this issue is inappropriate.

Further, Mineau and Legion's Fifth, Tenth, and Eleventh Claims for Relief arise out of various facts, not just Kvam's tortious conduct concerning Atlas's bank accounts. Thus, even if this Court somehow determines that Kvam is entitled to judgment as a matter of law on this particular issue, and even if this Court is inclined to enter summary judgment on an issue-by-issue basis, Kvam is not entitled to judgment as a matter of law on the entirety of Mineau and Legion's Fifth, Tenth, and Eleventh Claims for Relief. The Summary Judgment Motion must therefore be denied in this regard.

As explained above, summary judgment on this issue is premature. However, should this Court choose to consider this issue on the merits, the Summary Judgment Motion should be denied in this regard because Kvam has failed to establish that there is no genuine issue as to any material fact or that he is entitled to judgment as a matter of law. NRCP 56(c).

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iv. Kvam Is Not Entitled To Summary Judgment On The Counterclaims Concerning The Water Damage To The Property.

Kvam next asserts that he is entitled to summary judgment on Mineau and Legion's Fourth, Eighth, Ninth, Tenth, and Eleventh Claims for Relief because Exhibit 2 to the Motions "proves that Kvam maintained power to the Property through April 6, 2018." Motions at 16. However, as explained above, Exhibit 2 to the Motions merely establishes that the final billing cycle for the Property ended April 6, 2018, it does not establish when Kvam turned off the power. This single document is therefore insufficient to establish that Kvam is entitled to judgment as a matter of law.

Furthermore, as explained above, the property manager has asserted that the power to the property was shut off at some point between March 1, 2018, and March 24, 2018, causing the pipes to burst and causing water damage in an estimated amount of $10,000.00. Exhibit 2. To the extent that these statements contradict the power bill presented by Kvam, a genuine dispute of material fact exists precluding summary judgment.

Kvam goes on to argue that he is entitled to summary judgment on Mineau and Legion's Eighth and Ninth Claims for Relief because Mineau and Legion have not yet "provided any evidence of damages or evidence to support a theory of causation," but that such evidence "should have been produced by now." Motions at 16. Again, Kvam has not yet even answered the *First Amended Counterclaim*, no discovery deadlines have been set, and trial has not been scheduled. Mineau and Legion have not yet determined whether expert witnesses must be retained to address these issues and the initial expert disclosure deadline has not yet been set. This evidence therefore should not have been produced by now, and Kvam is not entitled to summary judgment at this early stage in the litigation.

Finally, Mineau and Legion's Fourth, Tenth, and Eleventh Claims for Relief arise out of various facts, not just Kvam's tortious conduct concerning turning off the power to the Property. Thus, even if this Court somehow determines that Kvam is entitled to judgment as a matter of law on this particular issue, and even if this Court is inclined to enter summary judgment on an issue-by-issue

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basis, Kvam is not entitled to judgment as a matter of law on the entirety of Mineau and Legion's Fourth, Tenth, and Eleventh Claims for Relief. The Summary Judgment Motion must therefore be denied in this regard.

As explained above, summary judgment on this issue is premature. However, should this Court choose to consider this issue on the merits, the Summary Judgment Motion should be denied in this regard because Kvam has failed to establish that there is no genuine issue as to any material fact or that he is entitled to judgment as a matter of law. NRCP 56(c).

v. Kvam Is Not Entitled To Summary Judgment On The Counterclaims Concerning Kvam's Process Servers.

Last, Kvam asserts that he is entitled to summary judgment on Mineau and Legion's Fourth, Fifth, Sixth, and Eighth Claims for Relief because Mineau is listed as Legion's Registered Agent, thereby permitting Kvam's process servers to access his property to serve process. Motions at 17 – 18. Kvam again fails to establish an absence of a genuine dispute of material fact or that he is entitled to judgment as a matter of law in this regard.

As alleged in the *First Amended Counterclaim*, the issue is not that Kvam's process servers merely entered Mineau's property to serve process, it is that they raised their voices, threatened, and harassed Mineau's wife until she told them to leave the property, which they refused to do and continued to scream, threaten, and harass Mineau's wife until the police arrived. *First Amended Counterclaim* ¶ 18. After the police left, Kvam's process servers returned to Mineau's property at Kvam's express direction and again screamed at, threatened, and harassed Mineau's wife. Id. Critically, Kvam does not dispute these facts in the Motions. These facts establish that Kvam's process servers went well beyond merely entering Mineau's property to serve process. Kvam has failed to establish that he is entitled to judgment as a matter of law in this regard simply because Mineau is listed as Legion's Registered Agent.

Furthermore, Mineau and Legion's Fourth, Fifth, and Sixth Claims for Relief arise out of various facts, not just the tortious conduct of Kvam's process servers. Thus, even if this Court somehow determines that Kvam is entitled to judgment as a matter of law on this issue, and even if this Court is inclined to enter summary judgment on an issue-by-issue basis, Kvam is not entitled to

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judgment as a matter of law on the entirety of Mineau and Legion's Fourth, Fifth, and Sixth Claims for Relief. The Summary Judgment Motion must therefore be denied in this regard.

As explained above, summary judgment on this issue is premature. However, should this Court choose to consider this issue on the merits, the Summary Judgment Motion should be denied in this regard because Kvam has failed to establish that there is no genuine issue as to any material fact or that he is entitled to judgment as a matter of law. NRCP 56(c).

E. Conclusion

Summary judgment is premature at this time. Kvam has not yet answered the *First Amended Counterclaim*, Mineau and Legion have not commenced discovery, no discovery deadlines have been set, and trial has not yet been scheduled. The Summary Judgment Motion should therefore be denied until discovery is completed.

Regardless, even if this Court considers Kvam's Summary Judgment Motion on its merits, the motion must be denied. Genuine disputes concerning several material facts exist and Kvam has failed

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to establish that he is entitled to judgment as a matter of law on any of Mineau or Legion's counterclaims.

This dispute should be resolved on the merits. The Summary Judgment Motion should be denied.

III. CONCLUSION

The Motions are not properly before the Court and should be procedurally denied outright. Nonetheless, for the reasons explained above, both the Dismissal Motion and the Summary Judgment Motion are without merit and should be denied.

AFFIRMATION

The undersigned does hereby affirm that the preceding document, **OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT**, 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 13 day of November, 2018.

GUNDERSON LAW FIRM

By: _____

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 13 day of November, 2018, I electronically filed a true and correct copy of the **OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT**, with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the following:

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

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 13 day of November, 2018, I deposited for mailing in Reno, Nevada a true and correct copy of the **OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT**, to the following:

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

Kelly Gunderson

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EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Declaration of Austin K. Sweet, Esq.	2
Exhibit "2"	Watkins' May 22, 2018 letter, identified as LEG0020	1

Exhibit "1"

Exhibit "1"

DECLARATION OF AUSTIN K. SWEET, ESQ.

I, AUSTIN K. SWEET, ESQ., declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18.

2. I am counsel of record for Defendants / Counterclaimants Brian Mineau ("Mineau") and Legion Investments, LLC ("Legion") in this action.

3. This Declaration is made in support of Mineau and Legion's *Opposition to Motion to Dismiss Counterclaim, and for Summary Judgment* ("Opposition").

4. Mineau and Legion filed their *First Amended Counterclaim* on October 5, 2018.

5. Plaintiff / Counterdefendant Jay Kvam ("Kvam") has yet to file an answer to the *First Amended Counterclaim.*

6. As such, Counterclaimants have not yet been able to analyze the factual and legal disputes at issue in this matter as necessary to commence meaningful discovery.

7. The parties have agreed that all discovery deadlines in this matter shall be based upon the trial date. However, no trial has been scheduled in this matter. Therefore, no discovery deadlines have been set.

8. Mineau and Legion have not yet commenced discovery.

9. Mineau and Legion are not dilatory in waiting until the pleadings stage is completed, and the factual and legal issues clearly defined, before commencing discovery, particularly when the *First Amended Counterclaim* was only recently filed and no discovery deadlines have been set.

10. Through discovery, Mineau and Legion expect to learn Kvam's intentions, expectations, and understandings concerning each of the parties' respective the parties' respective rights, duties, and obligations under the "Terms of Agreement."

11. Through discovery, Mineau and Legion expect to learn how Kvam accessed Atlas's checking account, when he did so, why he did so, why he did not notify Mineau, and under what authority he was allegedly acting.

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12. Through discovery, Mineau and Legion expect to learn how Kvam turned off the power to the Property, when he did so, why he did so, why he did not notify Mineau, and under what authority he was allegedly acting.

13. If necessary, Mineau and Legion may consider retaining expert witnesses concerning the cause of the pipes bursting at the Property and the extent of water damage suffered at the Property.

14. For these reasons, Mineau and Legion cannot present by affidavit facts essential to justify their opposition to Kvam's motion for summary judgment at this time.

15. Attached as Exhibit "2" to the Opposition is a true and correct copy of the May 22, 2018 letter from the property manager that was produced by Mineau and Legion in this matter.

16. The foregoing is true and correct and based upon my own personal knowledge except as to those statements made upon information and belief, and for those I believe them to be true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is trust and correct.

Executed at Reno, Nevada this 13 day of November, 2018.

AUSTIN K. SWEET, ESQ.

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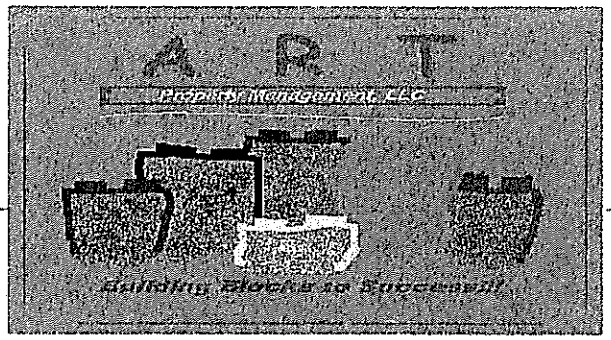
Jacqueline Bryant
Clerk of the Court
Transaction # 6974711 : yviloria

Exhibit "2"

Exhibit "2"



May 22, 2018

Brian Mineau
Legion Investment Group
2171 San Remo Drive
Sparks, NV 89434

Dear Mr. Mineau:

Upon hiring us to manage your property at 7747 S May, Chicago, Illinois we inspected it on March 1, 2018. During the inspection all the following were operating and in good standing:

- Plumbing
- Electricity
- Windows
- Roof

On March 24, 2018 when I returned with several contractors for estimates to complete unfinished work there were some damages that have been done to the property. We would like to bring your attention to them:

- Electricity was not operating
- Pipes burst and water was running
- Water damage from the burst pipe

Our contractor has estimated the cost of the damage at $10,000. If you have any additional questions or concerns please do not hesitate to contact me.

Sincerely,

Tiffany L Watkins

Tiffany L Watkins
Property Manager

1507 E 53rd Street, Chicago, IL 60615
TEL: 773-568-1138 FAX: 773-846-2383
www.artpropertymgmt.com

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mlm@matuskalawoffices.com

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. 3

REPLY TO OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT

COMES NOW Plaintiff / Counter-Defendant, JAY KVAM, ("Kvam"), by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, Esq., and hereby files this Reply to the Opposition to Motion to Dismiss Counterclaim and for Summary Judgment filed by Defendants / Counterclaimants BRIAN MINEAU and LEGION INVESTMENTS, LLC (collectively, "Mineau").

This Reply is made and based on the following Points and Authorities, the Affidavit of Jay Kvam submitted herewith, and all other pleadings, exhibits and documents of record.

I. REPLY TO OPPOSITION TO MOTION TO DISMISS

Kvam need not reargue the Motion to Dismiss. The only new factual allegations contained in Mineau's First Amended Counterclaim ("FACC") were as follows:

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> 16. Among other things, Kvam wrongfully and fraudulently accessed Atlas's accounts and engaged in unauthorized and fraudulent online banking transactions. Specifically, on or around March 6, 2018, without any legal authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's checking account and transferred $20,000 out of Atlas's checking account to pay off an interest-free credit card held by Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's checking account to be overdrawn by more than $10,000. As a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences. Mineau and Legion were consequently unable to invest those funds into the house.
>
> (FACC, ¶16)
>
> 17. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam wrongfully and fraudulently turned off power to the House without Legion's or Mineau's knowledge, consent, or authorization, causing the pipes in the House to freeze, burst and flood the House. Kvam knowingly and intentionally withheld this material information from Legion and Mineau, precluding Legion or Mineau from taking any steps to protect the House.
>
> (FACC, ¶17)

Mineau repeats these allegations in his Fifth, Tenth and Eleventh Claims for Relief, and incorporated them into all others. Mineau's Fourth Claim for Relief (Intentional Interference with Economic Advantage) does not specifically allege any wrongful conduct, and presumably relies on the aforementioned allegations in ¶s 16 and 17. Kvam's Motion to Dismiss, therefore, appropriately challenges all of Mineau's claims which are based on these new allegations. "Failure of the opposing party to serve and file his written opposition may be construed as an admission that the motion is meritorious and a consent to granting the same." DCR 13(3).

Mineau failed to provide any legal authority in his Opposition to support his claims, and Kvam's Motion to Dismiss is therefore largely unrebutted.

The only new issue raised in Mineau's Opposition concerns the discussion on pp. 4-5 regarding his Tenth Claim for Relief (Fraud). Mineau seems to concede that his claim for fraud is actually a claim for fraudulent concealment which depends on a fiduciary duty or other special relationship. Mineau also seems to acknowledge that he did not allege a fiduciary duty or other

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special relationship in his FACC. He therefore attempts to bootstrap his FACC to Kvam's Complaint, which alleges that the Agreement at issue in this case is a joint venture agreement which creates corresponding fiduciary duties between the joint venture partners. Mineau's argument is deceitful and inadequate. He must either concede that the parties are joint venture partners, in which case he is a fiduciary to Kvam, or admit that he did not allege a fiduciary duty or other special relationship which would result in the dismissal of his Tenth Claim for Relief.

II. REPLY TO OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

1. Mineau Failed to Carry His Burden of Proof On His Counterclaim

Mineau's Opposition to Kvam's Motion for Summary Judgment is based on a fundamental misunderstanding of the parties' respective burdens when moving for summary judgment. "A party against whom a claim, counterclaim or cross-claim is asserted, or a declaratory judgment is sought may, *at any time,* move *with or without supporting affidavits* for summary judgment in the party's favor as to all or any part thereof." NRCP 56(a) (italics added). "The judgment sought *shall be rendered forthwith* if the pleadings, depositions, answers to interrogatories, admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact." NRCP 56(c) (italics added).

> In our view, the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial. In such a situation, there can be "no genuine issue as to any material fact," since a complete failure of proof concerning an essential element of the nonmoving party's case necessarily renders all other facts immaterial. The moving party is "entitled to a judgment as a matter of law" because the nonmoving party has failed to make a sufficient showing on an essential element of her case with respect to which she has the burden of proof. "[T]h[e] standard [for granting summary judgment] mirrors the standard for a directed verdict under Federal Rule of Civil Procedure 50(a). . ." *Celotex Corp v. Catrett*, 477 U.S. 317, 322-23 (1986), *cert. denied*, 484 U.S. 1066 (1988) (citing *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986)).

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The Nevada Practice Manual provides an excellent discussion of the relative burdens of the claimant and defendant in making and opposing motions under Rule 56.

> If the moving party is the party defending a claim, the burden of production on the moving party may be met by "showing" – that is, pointing out to the trial court – that there is an absence of evidence to support any one or more of the prima facie elements of the non-moving party's claim. FRCP 56(c)(1)(b); NRCP 56(c); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986), *cert. denied*, 484 U.S. 1066 (1988); *Farrakhan v. Gregoire*, 590 F.3d 989, 1003 (9th Cir. 2010), *rehearing granted on other grounds*, 623 F.3d 990 (9th Cir. 2010); *Forest v. Vitek, Inc.*, 884 F.Supp. 1203, 1205-06 (D.Nev. 1993); *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007); *NGA #2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1156, 946 P.2d 163, 166-67 (1997).
>
> The moving party itself need not *affirmatively* produce any evidence by affidavit or otherwise, negate the prima facie elements of its opponent's claim. NRCP 56(a); *see also Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986), *cert. denied*, 484 U.S. 1066 (1988); *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1105 (9th Cir. 2000); *Main v. Stewart*, 109 Nev. 721, 727, 857 P.2d 755, 759 (1993). Rather, the moving party may simply point out the *lack* of evidence produced by the non-moving claimant on any of the prima facie elements of the claim. *Lujan v. Nat'l Wildlife Fed'n*, 49 U.S. 871, 884-85 (1990); *Shwarz v. United States*, 234 F.3d 428, 436 (9th Cir. 2000); see also *Cuzze v. Univ. & Cmty. Coll. Sys. of Nev.*, 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007).
>
> 1 Nevada Practice Manual, Sec. 17.15[2] (2015) (italics in original)

Cuzze v. Univ. & Cmty. Coll. Sys. of Nev., 123 Nev. 598, 602-03, 172 P.3d 131, 134 (2007) removed any doubt about whether the federal standard would be applied in Nevada.

> With respect to burdens of proof and persuasion in the summary judgment context, we follow the federal approach outlined in *Celotex Corp. v. Catrett.*[3] The party moving for summary judgment bears the initial burden of production to show the absence of a genuine issue of material fact. If such a showing is made, then the party opposing summary judgment assumes a burden of production to show the existence of a genuine issue of material fact. The manner in which each party may satisfy its burden of production depends on which party will bear the burden of persuasion on the challenged claim at trial. If the moving party will bear the burden of persuasion, that party must present evidence that would entitle it to a judgment as a matter of law in the absence of contrary evidence. But if the nonmoving party will bear the burden of persuasion at trial, the party moving for summary judgment may satisfy the burden of production by either (1) submitting evidence that negates an essential element of the nonmoving party's claim, or (2) "pointing out . . . that there is an absence of evidence to support the nonmoving party's case." In such instances, in order to defeat summary judgment, the nonmoving party must transcend the pleadings and, by affidavit or other

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admissible evidence, introduce specific facts that show a genuine issue of material fact. [footnotes and internal citations omitted].

Application of summary judgment standards

In this case, appellants, as plaintiffs below, bore the burden of persuasion at trial. Thus, respondents, in moving for summary judgment, properly pointed to the absence of evidence to support appellants' causes of action. Once respondents pointed to this evidentiary deficiency, appellants had the burden of presenting evidence showing a material issue of fact.

Id. at 134.

For these reasons, Kvam, as the counter-defendant need not present evidence to *affirmatively* disprove each element of Mineau's counterclaims, but only point out where Mineau has failed to make a sufficient showing on the essential elements of his case. Kvam has done exactly that. In order to avoid summary judgment, Mineau was therefore required to submit sufficient evidence to rebut Kvam's Statement of Facts and demonstrate a prima facie case on his various claims. Evidence submitted in opposition to a motion for summary judgment must be admissible evidence. NRCP 56(e); *Collins v. Union Fed. Sav. & Loan Ass'n*, 99 Nev. 284, 662 P.2 610 (1983). The only piece of evidence that Mineau provided was a letter from a property manager about the condition of the property between March 1, 2018 and March 24, 2018. That letter is inadmissible hearsay. It is also irrelevant because it does not relate to Kvam.

2. <u>Kvam Affirmatively Disproved Essential Elements of Mineau's Claims</u>

Kvam also *affirmatively* disproved Mineau's case. See, Statement of Material Facts as to Which No Controversy Exists and Exhibits 1-5. Specifically, Kvam affirmatively disproved the allegations in ¶16 of Mineau's FACC that he transferred $20,000 from the Atlas account to pay off a credit card on March 6, 2018. The transfers on March 6, 2018 were not made to a credit card, at all. Rather, the transfers were to account 9494 and were immediately reversed[1]. None of this was

[1] The Atlas account statement (Ex. "4") shows three deposits on March 6, 2018: $2,000 from account 9494; $8,000 from account 9494; and $12,000 from Umpqua Bank account 334.

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Kvam's doing, and no amount of discovery can cure Mineau's false allegations that contradict his own records.

Kvam also disproved the allegations in ¶17 of Mineau's FACC that Kvam turned off the electricity for the heater sometime between March 1, 2018 and March 24,2018. According to the ComEd Final Bill that was provided by Mineau and submitted as Exhibit "2" in support of Kvam's Motion for Summary Judgment, the electricity was turned off on April 6, 2018. Mineau offers his own, tortured, reading of the ComEd Final Bill when he writes "However, as explained above, Exhibit 2 to the Motion merely establishes that the final billing cycle for the Property ended April 6, 2018, it does not establish when Kvam turned off the power." (Opposition at 13:5-7). Kvam does not understand this theory, except to the extent that it seems to be an unsupported allegation of fact by Mineau that ComEd stopped supplying power to the Property sometime prior to April 6, 2018. This is contrary to the information on the Final Bill. The Final Bill was "Issued 4/9/18" and included "Service From 3/19/18 Through 4/6/18." That was the final service date.

Mineau has no evidence that Kvam or ComEd turned off power to the Property before April 6, 2018 and he "is not entitled to build a case on the gossamer threads of whimsy, speculation, and conjecture.'" *Wood v. Safeway, Inc.*, 121 Nev. 724, ___, 121 P.3d 1026, 1031 (2006) [internal citations omitted]. Mineau produced no evidence that Kvam turned off the power before April 6, 2018, and he could not survive a directed verdict on that issue. For good measure, Kvam provides herewith all of the ComEd bills for 2018. These bills prove that there was no electrical use at all in 2018 and that the normal billing cycle ends on the 17th or 18th of the month. **[Ex. "6"]**

3. Absence of Genuine Issue of Material Fact

Based Mineau's failure to provide any admissible evidence and Kvam's unrebutted statement of facts and Exhibits 1-6, Mineau failed to demonstrate the existence of a genuine issue of

material facts, the record now stands as follows:

1-3. Kvam funded his obligation under the Joint Venture Agreement; Mineau did not provide his funding; there are no other obligations imposed on Kvam pursuant to the JVA; and Mineau failed to present any admissible evidence of a breach of contract. Mineau's contract-based claims 1-3 must be dismissed.

4. Mineau failed to present any admissible evidence of prospective economic advantage, Kvam's knowledge thereof or his interference therewith. Mineau's fourth claim must be dismissed.

5. Mineau failed to present any admissible evidence of Deceptive Trade Practices. His fifth claim must be dismissed.

6. Mineau failed to present any admissible evidence of abuse of process. His sixth claim must be dismissed.

7. Mineau argues on page 14 of his Opposition that his Fourth, Fifth and Sixth Claims for Relief all allege tortious conduct of the process servers. This is false. Only his Seventh Claim for Relief (Trespass) contains any reference that can be construed as relating to process servers: "Through the action described above, Kvam intentionally caused his agents to physically enter Mineau's property without permission, after they had been instructed to leave Mineau's property, and without legal purpose or justification." (First Amended Counterclaim at ¶65)

Unfortunately for Mineau, he provided no evidence that anyone physically entered his property without permission. He now seems to concede this point, and backtracks on his claim, when he alleges for the first time at p. 14 of his Opposition that "they raised their voices, threatened and harassed Mineau's wife . . ." Mineau's wife is not a party and raising voices is not trespass. There is no evidence that the process servers proceeded beyond Mineau's front porch or that Kvam was involved in any manner.

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8. Mineau admitted in interrogatory response no. 11 that the chattels at issue in the Eighth Claim for Relief (Trespass to Chattels) are "Drywall, insulation and copper plumbing." Those items are fixtures to the property that are part of the realty. They are not chattels, and Mineau's eighth claim must be dismissed. Mineau did not even defend this claim in his Opposition.

9. Mineau's Ninth Claim for Relief (Conversion) alleges: "78. Through his actions described above, Kvam seriously interfered with Legion's rights in the personal property in the house." The actions described above presumably refer to the allegation that pipes burst between March 1, 2018 and March 24, 2018. Mineau failed to provide any admissible evidence that Kvam caused the pipes to burst, and Kvam affirmatively disproved this allegation. In addition, Mineau has not identified any personal property. Drywall, insulation and copper plumbing are not personal property, and Mineau's ninth claim must be dismissed. Mineau did not defend this claim in his Opposition.

10. Mineau failed to provide any evidence of fraud or concealment, and his tenth claim must be dismissed.

11. Mineau's Eleventh Claim for Relief (Negligence) is based on the allegations in ¶s 16 and 17 of the FACC regarding paying off the Atlas credit card on March 6, 2018 and shutting off power to the property between March 1, 2018 and March 24, 2018. Mineau has no evidence that either of these events happened, and Kvam affirmatively disproved them both. The transfers on March 6, 2018 were made to account 9494, not to a credit card. The last day power was supplied to the Property was April 6, 2018. This seems to be irrelevant, as the ComEd bills indicate that the heater was not drawing power before that date, anyway.

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III. NO NEW DISCOVERY

Mineau's main defense to the entry of summary judgment seems to be that he needs more time to conduct discovery.

> **(f) When Affidavits Are Unavailable.** Should it appear from the affidavits of a party opposing the motion that the party cannot for reasons stated present by affidavit facts essential to justify the party's opposition, the court may refuse the application for judgment or may order a continuance to permit affidavits to be obtained or depositions to be taken or discovery to be had or may make such other order as is just.
>
> (NRCP 56(f)).

Mineau failed to carry his burden to show that he is entitled to an extension of time to delay the entry of summary judgment.

> Rule 56(f) is not a shield that can be raised to block a motion for summary judgment without even the slightest showing by the opposing party that his opposition is meritorious. A party invoking its protections must do so in good faith by affirmatively demonstrating why he cannot respond to a movant's affidavits as otherwise required by Rule 56(e) and how postponement of a ruling on the motion will enable him, by discovery or other means, to rebut the movant's showing of the absence of a genuine issue of fact. Where, as here, a party fails to carry his burden under Rule 56(f), postponement of a ruling on a motion for summary judgment is unjustified.

Bakerink v. Orthopedic Assocs., 94 Nev. 428, 581 P.2d 9 (1978) (quoting *Willmar Poultry Co. v. Morton-Norwich Products*, 520 F.2d 289, 297 (8th Cir. 1975), Cert. denied, 424 U.S. 915, 96 S.Ct. 1116, 47 L.Ed.2d 320 (1975)).

In this case, Kvam filed his Verified Complaint on April 11, 2018. Kvam provided the initial disclosures required by NRCP 16.1 on July 19, 2018 and The Joint Case Conference Report was filed on August 6, 2018. Mineau has not requested any further discovery from Kvam. Also, Mineau failed to identify any admissible evidence that he expects to obtain through additional discovery that would support his claims. It is undisputed at this point that Kvam fulfilled his funding obligation under the JVA (Mineau did not), and Mineau failed to identify any breach of contract on behalf of Kvam. Atlas is irrelevant. Kvam did not cause the pipes to burst. Mineau is

the resident agent for Legion, the process servers did not proceed beyond his front porch, and whatever happened with the yelling is unknown to Kvam and does not constitute trespass. There is no evidence of interference with contract, fraud, deceptive trade practices or negligence on behalf of Kvam. Any evidence to support Mineau's various claims would be within his sole possession and control. Kvam has no knowledge about Mineau's various factual allegations. This fact is confirmed by Kvam's affidavit submitted herewith.

IV. CONCLUSION

Atlas is irrelevant to this case, and Mineau's claims relating to Atlas must be dismissed. Mineau's other claims must be dismissed as set forth above. Any claims not dismissed under NRCP 12 must be dismissed under NRCP 56. Although Kvam was only required to point to an absence of evidence to support the essential elements of Mineau's various claims, he went further and affirmatively disproved the bulk of Mineau's case. Mineau failed to provide any admissible evidence to support the allegations in his First Amended Counterclaim, and his FACC must therefore be dismissed in its entirety.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 19th day of November 2018.

MATUSKA LAW OFFICES, LTD.

Michael L. Matuska

By: _____
MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM,
individually and derivatively on behalf of
the unincorporated joint venture identified as 7747

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 19th day of November, 2018, I served a true and correct copy of the preceding document entitled **REPLY TO OPPOSITION TO MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT** as follows:

Austin K. Sweet, Esq.
GUNDERSON LAW FIRM
3895 Warren Way
Reno, NV 89509

[X] **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 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 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

I:\Client Files\Litigation\Kvam\v. Mineau\Pldgs\Motion to Strike\Reply.doc

EXHIBIT INDEX

EXHIBIT	DOCUMENT
1	Terms of Agreement
2	ComEd Final Bill
3	Responses of Brian Mineau and Legion Investments, LLC to First Set of Interrogatories
4	Atlas South Side (Checking) – 5328
5	Legion Investments, LLC – Secretary of State Business Profile
6	**2018 ComEd Bills**

[Exhibits 1-5 filed with Motion to Dismiss Counterclaim and For Summary Judgment; Exhibit 6 filed herewith]

EXHIBIT 6
2018 ComEd Bills
REPLY TO OPPOSITION MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT

EXHIBIT 6
2018 ComEd Bills
REPLY TO OPPOSITION MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT

ComEd.
An Exelon Company

Issued 2/16/18 Account # 7766172077

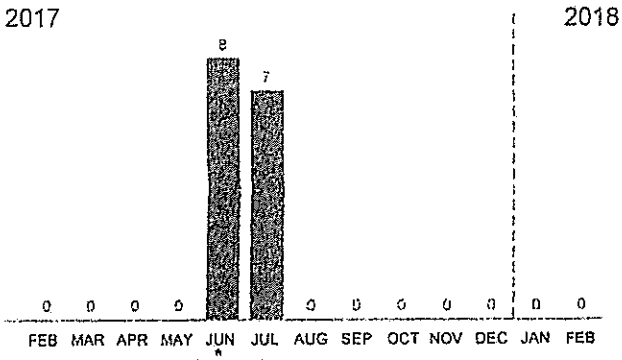
SERVICE FROM 1/18/18 THROUGH 2/16/18 (29 DAYS)

Residential - Single

Jay Kvam
7747 S May St
Chicago, IL 60620
775.434.8230

Past Balance Due Immediately	$16.81
New Charges Due by 3/12/18	$15.51
Total Amount Due	**$32.32**

TOTAL USAGE (kWh)



Current month's reading is actual.
*Non-regular Billing Period

AVERAGE DAILY USE (monthly usage/days in period)

Current Month	27° avg. temp
0.0 kWh	

Last Month	20° avg. temp	Last Year
0.0 kWh		Not Available

Ten 100W light bulbs for 1 hour = 1 kWh

CURRENT CHARGES SUMMARY

See reverse side for details

SUPPLY
$0.00

ComEd provides your energy.

ComEd.com
1.800.334.7661

Current Charges
$15.51

DELIVERY
$15.51

ComEd delivers electricity to your home.

ComEd.com
1.800.334.7661

TAXES & FEES $0.00

For Electric Supply Choices visit pluginillinois.org

Return only this portion with your check made payable to ComEd. Please write your account number on your check.

ComEd.
An Exelon Company

0120786 02 MB 0.421 **AUTO T3 0 1034 89511-147665 -C05-B1-P20805-I1 4 6789AB

JAY KVAM
7565 MICHAELA DR
RENO, NV 89511-1476

COMED
PO BOX 6111
CAROL STREAM, IL 60197-6111

Pay your bill online, by phone or by mail.

See reverse side for more info

Account # 7766172077

Past Balance Due Immediately	$16.81
New Charges Due by 3/12/18	$15.51
Total Amount Due	**$32.32**
Payment Amount:	

7766172077000003232807100323297

1034-05-0120786-0001-0022787

CODE: 1046
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. 3

AFFIDAVIT OFJAY KVAM IN SUPPORT OF REPLY TO OPPOSITION TO MOTION TO DISMISS AND FOR SUMMARY JUDGMENT

STATE OF NEVADA)
) ss.
COUNTY OF Washoe)

COMES NOW PLAINTIFF, JAY KVAM, who being first duly sworn deposes and says:

1. That I am the Plaintiff in the above-encaptioned action. I am over the age of 18, a resident of Washoe County, Nevada, and am competent to make this affidavit. I have first-hand knowledge of the facts alleged herein, the same are true and correct to the best of my knowledge, information and belief, and I am competent to testify to these facts if called upon to do so.

2. That I have reviewed the First Amended Counterclaim filed by Brian Mineau and Legion Investments, LLC (collectively "Mineau") and their Opposition to my Motion to Dismiss Counterclaim and for Summary Judgment. I specifically reviewed ¶s 16 and 17 of Mineau's First Amended Counterclaim wherein he alleges as follows:

16. Among other things, Kvam wrongfully and fraudulently accessed

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Atlas's accounts and engaged in unauthorized and fraudulent online banking transactions. Specifically, on or around March 6, 2018, without any legal authority whatsoever, Kvam wrongfully and fraudulently accessed Atlas's checking account and transferred $20,000 out of Atlas's checking account to pay off an interest-free credit card held by Atlas which would not come due for several more years. Kvam's unauthorized actions caused Atlas's checking account to be overdrawn by more than $10,000. As a result, Mineau and Legion were forced to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences. Mineau and Legion were consequently unable to invest those funds into the house.

17. Among other things, at some point between March 1, 2018 and March 24, 2018, Kvam wrongfully and fraudulently turned off power to the House without Legion's or Mineau's knowledge, consent, or authorization, causing the pipes in the House to freeze, burst and flood the House. Kvam knowingly and intentionally withheld this material information from Legion and Mineau, precluding Legion or Mineau from taking any steps to protect the House.

3. That I have no information that would tend to support Mineau's First Amended Counterclaim, or ¶s 16 and 17 contained therein. I was simply an investor in the project for the remodel and resale of the property at 7747 S. May Street, Chicago, Illinois (the "Property.") I funded my obligation, and there were no other contractual requirements for me to fulfill. Mineau has never told me that further performance was required from me.

4. That I have never been to the Property. I do not know what, if any, personal property is stored at the Property. I do not know when, or if, the pipes burst. I called ComEd to transfer the bills to Brian Mineau on Friday, April 6, 2018. The transfer was not possible, so service was cancelled effective that same day, April 6, 2018. That is apparent from the ComEd Final Bill that was provided as Exhibit "2" to my Motion to Dismiss Counterclaim and for Summary Judgment. The Final Bill correctly states "Issued 4/9/18" and covers "Service From 3/19/18 Through 4/6/18."

5. I did not transfer money from the Atlas checking account on March 6, 2018 to pay off a credit card. That is also apparent from the bank statement that was provided as Exhibit "4" to my Motion to Dismiss Counterclaim and for Summary Judgment. According to that bank statement, the transfers complained of on March 6, 2018 were to and from account 9494. I did not make those transfers. I do not know who made the transfers or who the account holders and

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signatories are for account 9494. Brian Mineau would be the best source of information regarding those transfers.

6. That I have never had any communications with the process servers in this case, whether spoken, written or otherwise. I have no knowledge of what, if anything, happened between the process servers, Brian Mineau and his wife, except for what is contained in the Declaration of Service that was filed in this case wherein the process server stated under oath and penalty of perjury that: "(I observed 2 cars there and I took photos of the license plates). He told me to get off his porch. I felt unsafe, so I left."

7. That I incorporate my prior affidavit in support of the motion for dissolution that was filed on July 11, 2018 regarding the joint venture agreement and the status of the project.

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

Dated this 15 day of November, 2018.

JAY KVAM

SUBSCRIBED and SWORN before me
this 15 day of November, 2018,
by JAY KVAM.

NOTARY PUBLIC

State of Nevada }ss.
County of Washoe }
Subscribed and sworn to (or affirmed) before me on this 15th day of November 2018 by Donatas Pranskevicius
personally known to me or proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

Notary Public Signature

Donatas Pranskevicius
NOTARY PUBLIC
STATE OF NEVADA
Appt. No. 16-1772-2
My Appt. Expires Feb 15, 2020

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 19th day of November 2018, I served a true and correct copy of the preceding document entitled **AFFIDAVIT OF JAY KWAM IN SUPPORT OF REPLY TO OPPOSITION TO MOTION TO DISMISS AND FOR SUMMARY JUDGMENT** as follows:

Austin K. Sweet, Esq.
GUNDERSON LAW FIRM
3895 Warren Way
Reno, NV 89509

[X] **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 person 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.

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/s/ SUZETTE TURLEY
SUZETTE TURLEY

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ued 2/16/18 Account # 7766172077

For Questions, Support, and Outages visit ComEd.com

English	1.800.EDISONI (1.800.334.7661)
Español	1.800.95.LUCES (1.800.955.8237)
Hearing/Speech Impaired	1.800.572.5789 (TTY)
Federal Video Relay Services (VRS)	Fedvrs.us/sossion/new

Past Balance Due Immediately	$16.81
New Charges Due by 3/12/18	$15.51
Total Amount Due	**$32.32**

METER INFORMATION

Read Dates	Meter Number	Load Type	Reading Type	Previous	Present	Difference	Multiplier	Usage
1/18-2/16	270174556	General Service	Total kWh	4266 Actual	4266 Actual	0	x 1	0

CHARGE DETAILS

Residential - Single 1/18/18 - 2/16/18 (29 Days)

DELIVERY - ComEd $15.51

Customer Charge	$10.87
Standard Metering Charge	$4.64

TAXES & FEES $0.00

Service Period Total	$15.51

MISCELLANEOUS $16.81

Charges from previous bill	$16.81
Total Amount Due	$32.32

UPDATES

ComEd

- APPLIANCE REBATES: Get rebates of $25 to $50 from the ComEd Energy Efficiency Program on select ENERGY STAR appliances. Details at ComEd.com/Rebates
- REGISTER FOR OUR TWITTER OUTAGE APP: Customers can tweet @ComEd using #OUT to report outages and #STAT for outage status updates. Register now: ComEd.com/TwitterApp
- SCAM ALERT: ComEd will never call you to request cash or ask you to buy a prepaid credit card to pay your bill. ComEd.com/ScamAlert

- ILLINOIS COMMERCE COMMISSION CONSUMER DIVISION: (800-524-0795): The Consumer Services Division is available to help resolve disputes with ComEd. However, customers should contact ComEd before seeking assistance from the ICC.
- Omit previous balance if paid. Unpaid previous balances are subject to late charges.

1034-06-0120786-0001-0022787

A VARIETY OF METHODS TO PAY YOUR BILL

Visit ComEd.com/PAY for more information including applicable fees for some transactions.

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Set up an automatic payment, enroll in paperless billing, or make a convenience payment at ComEd.com/Pay.

Mobile App

Download the ComEd mobile app on your Apple® or Android™ device to view and pay your bill, or manage your account.

Phone

Call us to make a convenience payment with a credit card, ATM card, or your bank account: 1.800.588.9477. (Fee Applies)

In-Person

Pay your bill in-person at many ComEd authorized agents located throughout the region. Visit ComEd.com/Pay for details.

When you provide a check as payment, you authorize us to use information from your check either to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

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An Exelon Company

Issued 3/19/18 Account # 7766172077

SERVICE FROM 2/16/18 THROUGH 3/19/18 (31 DAYS)

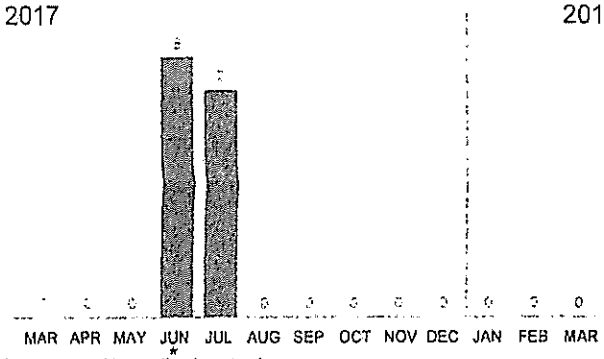
Residential - Single

Jay Kvam
7747 S May St
Chicago, IL 60620
775.434.8230

Total Amount Due by 4/10/18 $15.51

Thank you for your payments totaling $32.32.

TOTAL USAGE (kWh)



Current month's reading is actual.
*Non-regular Billing Period

AVERAGE DAILY USE (monthly usage/days in period)

Current Month	37° avg. temp
0.0 kWh	

Last Month	27° avg. temp	Last Year
0.0 kWh		Not Available

Ten 100W light bulbs for 1 hour = 1 kWh

CURRENT CHARGES SUMMARY

See reverse side for details

SUPPLY $0.00

ComEd provides your energy.

ComEd.com
1.800.334.7661

Current Charges $15.51

DELIVERY $15.51

ComEd delivers electricity to your home.

ComEd.com
1.800.334.7661

TAXES & FEES $0.00

For Electric Supply Choices visit pluginillinois.org

Return only this portion with your check made payable to ComEd. Please write your account number on your check.

ComEd
An Exelon Company

Pay your bill online, by phone or by mail.

See reverse side for more info

Account # 7766172077

0116292 02 MB 0.421 **AUTO T9 0 1055 89511-147665 -C06-B1-P16308-I1 G789ABC

JAY KVAM
7565 MICHAELA DR
RENO, NV 89511-1476

Total Amount Due by 4/10/18 $15.51

Payment Amount:

COMED
PO BOX 6111
CAROL STREAM, IL 60197-6111

77661720770000015518100001551 6

ued 3/19/18 Account # 7766172077

For Questions, Support, and Outages visit ComEd.com

English	1.800.EDISON1 (1.800.334.7661)
Español	1.800.95.LUCES (1.800.955.8237)
Hearing/Speech Impaired	1.800.572.5789 (TTY)
Federal Video Relay Services (VRS)	Fedvrs.us/session/new

Total Amount Due by 4/10/18 $15.51

METER INFORMATION

Read Dates	Meter Number	Load Type	Reading Type	Previous	Present	Difference	Multiplier	Usage
2/16-3/19	270174556	General Service	Total kWh	4266 Actual	4266 Actual	0	x 1	0

CHARGE DETAILS

Residential - Single 2/16/18 - 3/19/18 (31 Days)

DELIVERY - ComEd $15.51

Customer Charge	$10.87
Standard Metering Charge	$4.64

TAXES & FEES $0.00

Service Period Total	$15.51

Thank you for your payment of $32.32 on March 8, 2018

Total Amount Due	$15.51

UPDATES

ComEd

- IT'S A SNAP - GET THE APP! ComEd's free app now offers fingerprint login, account alerts & notifications, and easy pay options on smartphones and tablets. Download the new app today at ComEd.com/App
- ILLINOIS COMMERCE COMMISSION CONSUMER DIVISION: (800-524-0795): The Consumer Services Division is available to help resolve disputes with ComEd. However, customers should contact ComEd before seeking assistance from the ICC.
- Past due balances are subject to late charges.

1055-06-0116292-0001-0016912

A VARIETY OF METHODS TO PAY YOUR BILL

Visit ComEd.com/PAY for more information including applicable fees for some transactions.

Online

Set up an automatic payment, enroll in paperless billing, or make a convenience payment at ComEd.com/Pay.

Mobile App

Download the ComEd mobile app on your Apple® or Android™ device to view and pay your bill, or manage your account.

Phone

Call us to make a convenience payment with a credit card, ATM card, or your bank account: 1.800.588.9477. (Fee Applies)

In-Person

Pay your bill in-person at many ComEd authorized agents located throughout the region. Visit ComEd.com/Pay for details.

When you provide a check as payment, you authorize us to use information from your check either to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

LEG0102 11

FINAL BILL

ComEd
An Exelon Company

Issued 4/9/18 Account # 7766172077

SERVICE FROM 3/19/18 THROUGH 4/6/18 (18 DAYS)

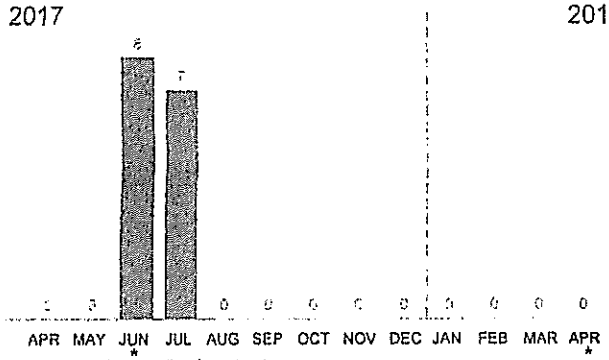
Residential - Single

Jay Kvam
7747 S May St
Chicago, IL 60620
530.251.3205

Total Amount Due by 5/1/18 $24.82

Late payment charges will continue until bill is paid.

TOTAL USAGE (kWh)



Current month's reading is actual.
*Non-regular Billing Period

AVERAGE DAILY USE (monthly usage/days in period)

Current Month 38° avg. temp
0.0 kWh

Last Month	Last Year
37° avg. temp	
0.0 kWh	Not Available

Ten 100W light bulbs for 1 hour = 1 kWh

CURRENT CHARGES SUMMARY

See reverse side for details

SUPPLY $0.00

ComEd provides your energy.

ComEd.com
1.800.334.7661

Current Charges $9.31

DELIVERY $9.31

ComEd delivers electricity to your home.

ComEd.com
1.800.334.7661

For Electric Supply Choices visit pluginillinois.org

TAXES & FEES $0.00

Return only this portion with your check made payable to ComEd. Please write your account number on your check.

1070-10-0109288-0001-0017686

ComEd
An Exelon Company

Pay your bill online, by phone or by mail.

See reverse side for more info

Account # 7766172077

0109288 01 MB 0.421 **AUTO T8 0 1070 89511-147665 -C10-81-P09297-I1 45

JAY KVAM
7565 MICHAELA DR
RENO, NV 89511-1476

Total Amount Due by 5/1/18 $24.82

Payment Amount:

COMED
PO BOX 6111
CAROL STREAM, IL 60197-6111

7766172077000002482812100248 26

LEG0103

ued 4/9/18 Account # 7766172077

For Questions, Support, and Outages visit ComEd.com

English	1.800.EDISON1 (1.800.334.7661)
Español	1.800.95.LUCES (1.800.955.8237)
Hearing/Speech Impaired	1.800.572.5789 (TTY)
Federal Video Relay Services (VRS)	Fedvrs.us/session/new

Total Amount Due by 5/1/18 $24.82

METER INFORMATION

Read Dates	Meter Number	Load Type	Reading Type	Previous		Present		Difference	Multiplier	Usage
3/19-4/6	270174556	General Service	Total kWh	4266	Actual	4266	Actual	0	x 1	0

- Final Bill

CHARGE DETAILS

Residential - Single 3/19/18 - 4/6/18 (18 Days)

DELIVERY - ComEd	$9.31
Customer Charge	$6.53
Standard Metering Charge	$2.78
TAXES & FEES	$0.00
Service Period Total	$9.31
MISCELLANEOUS	$15.51
Charges from previous bill	$15.51
Total Amount Due	$24.82

UPDATES

ComEd

- YOUR COMED BILL: Need help understanding your bill line item definitions? Please visit us at ComEd.com/UnderstandBill or call us at 1-800-334-7661.
- ENVIRONMENTAL DISCLOSURE STATEMENT: ComEd's Environmental Disclosure Statement can now be found online at ComEd.com/EnvironmentalDisclosure
- ILLINOIS COMMERCE COMMISSION CONSUMER DIVISION: (800-524-0795): The Consumer Services Division is available to help resolve disputes with ComEd. However, customers should contact ComEd before seeking assistance from the ICC.
- Past due balances are subject to late charges.

1070-10-01:09268-0001-0017586

A VARIETY OF METHODS TO PAY YOUR BILL

Visit ComEd.com/PAY for more information
including applicable fees for some transactions.

Online

Set up an automatic payment, enroll in paperless billing, or make a convenience payment at ComEd.com/Pay.

Mobile App

Download the ComEd mobile app on your Apple® or Android™ device to view and pay your bill, or manage your account.

Phone

Call us to make a convenience payment with a credit card, ATM card, or your bank account: 1.800.588.9477. (Fee Applies)

In-Person

Pay your bill in-person at many ComEd authorized agents located throughout the region. Visit ComEd.com/Pay for details.

When you provide a check as payment, you authorize us to use information from your check either to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

CODE: 2222
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. 3

MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law Offices, Ltd., Michael L. Matuska, and hereby moves pursuant to NRCP 65 and NRS 33.010 for a temporary restraining order to prevent Defendants BRIAN MINEAU and LEGION INVESTMENTS; LLC from diverting funds received from the sale of the property located at 7747 S. May Street in Chicago, Illinois.

This motion is made and based on the points and authorities attached hereto, the Affidavit of Jay Kvam and exhibits submitted herewith, and all other pleadings, exhibits and documents of record.

Dated this 30th day of November 2018.

MATUSKA LAW OFFICES, LTD.

By: _____
MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM, individually and derivatively on behalf the unincorporated joint venture identified as 7747

MATUSKA LAW OFFICES, LTD.
2310 S. Carson Street, #6
Carson City NV 89701
(775) 350-7220

POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

I. BACKGROUND

On or about February 14, 2017, the Plaintiff Jay Kvam ("Kvam") entered into an agreement (the "Agreement") with Defendants Brian Mineau ("Mineau") and Legion Investments, LLC ("Legion") concerning property located at 7747 may Street, Chicago, Illinois (the "Property") as follows:

> Terms of Agreement between Legion Investments LLC (its Members) and Jay Kvam (Initial Funding Member of Same)
> Re: 7747 May Street, Chicago, Illinois.
>
> With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam and Michael Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest due on funds dispersed. Initial purchase is being funded by Kvam, who is there by assigned any remedies due should the transaction fail in anyway. Initial funder will be due a 7% annual return on any funds provided due from date of disbursement. There is expected to be 3 renovation draws necessary on this project. First draw to be funded by Mr. Kvam, Due to present and ongoing business dealings between Jay and Michael, Michael has agreed to allot %50 of his 1/3 profit for both initial funding's.

See Affidavit of Jay Kvam ("Kvam Aff.") and Ex. "1" attached hereto.

Kvam asserts that the Agreement has two separate components: First, a joint venture agreement to share profits; and Second, a loan agreement which is not conditioned on profits and which must be repaid prior to the distribution of any profits. Kvam funded $93,781.31 toward the purchase and renovation of the Property as shown on the summary attached as Ex. "2," the February 13, 2017 Settlement Statement (Ex. "3") and Defendants' Response to Interrogatory No. 6 attached hereto as Ex. "4". Kvam has predictably demanded his money back.

Defendants do not dispute that Kvam is entitled the return of his investment, but only dispute that the loan has to be repaid prior to sale of the Property. In their verified discovery responses, Defendants acknowledge as follows:

> Jay Kvam repeatedly demanded to be "reimbursed" for all funds he invested into the Property, despite the fact that the project was incomplete, no disbursements were yet due to anyone under the "Terms of Agreement," and the project had been severely set back by Mr. Kvam's own actions. Brian Mineau and Legion

Investments, LLC nonetheless affirmed that they intended to complete the project and perform their obligations under the "Terms of Agreement."

(Response to Interrogatory No. 10, Ex. "4")

The Property recently sold on November 16, 2018. Payment is now due to Kvam, even under Defendants' theory of the case, and the dispute over whether Defendants could wait until the Property sold to repay Kvam is moot. Unfortunately, Defendants sold the Property without informing Kvam. He only learned about the sale from his own investigation. Defendants' attorney provided the settlement statement only after being confronted about the issue from Kvam's attorney (See Letter, Ex. "5" and Settlement Statement, Ex. "6"). Defendants have not paid Kvam, or otherwise accounted to him, and it is yet unknown what Defendants have done with the proceeds of sale. As such, Kvam requests a temporary restraining order to prevent Defendants from disposing of any proceeds of sale, and either to pay the proceeds to Kvam or at least deposit the proceeds of sale in an interest bearing account with the Clerk of the Court pending further orders.

II. ARGUMENT

NRCP 65(b) provides, *inter alia*, that:

> A temporary restraining order may be granted with or without written or oral notice to the adverse party or his attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss or damage will result to the applicant before the adverse party or his attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting his claim that notice should not be required.

NRS 33.010 identifies the cases in which injunctive relief may be granted:

> An injunction may be granted in the following cases:
> 1. When it shall appear by the complaint that the plaintiff is entitled to the relief demanded, and such relief or any part thereof consists in restraining the commission or continuance of the act complained of, either for a limited period or perpetually.

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Carson City NV 89701
(775) 350-7220

2. When it shall appear by the complaint or affidavit that the commission or continuance of some act, during the litigation, would produce great or irreparable injury to the plaintiff.

3. When it shall appear, during the litigation, that the defendant is doing or threatens, or is about to do, or is procuring or suffering to be done, some act in violation of the plaintiff's rights respecting the subject of the action, and tending to render the judgment ineffectual.

"A preliminary injunction is available if an applicant can show a likelihood of success on the merits and a reasonable probability that the non-moving party's conduct, if allowed to continue, will cause irreparable harm for which compensatory damage is an inadequate remedy." *Dangberg Holdings v. Douglas County*, 115 Nev. 129, 142, 978 P.2d 311 (*citing Pickett v. Comanche Construction, Inc.*, 108 Nev. 422, 426, 836 P.2d 42, 44 (1992)). In considering preliminary injunctions, courts also weigh the potential hardships to the relative parties and others, and the public interest. *University and Community College System of Nevada v. Nevadans for Sound Government*, 120 Nev. 712, 100 P.3d 179, 187 (2004). The decision whether to grant a preliminary injunction is within the Court's discretion. *Id.*

Kvam's showing of great or irreparable harm is supported by the previous statement of facts. In this case, Kvam is entitled to be repaid on his loan with interest at the rate of 7% before Mineau and Legion are paid. There is no excuse for Defendants' failure to pay. It is not enough to simply say that Kvam could obtain a judgment for the amount owing to him. He will suffer great harm if Mineau and Legion divert the funds in that they will have inadequate funds to repay him. Also, Mineau and Legion have recently disposed of other property, as recently as September 20, 2016 (See Deed and Ownership History attached hereto as Ex. "7"). It appears therefore that Defendants are trying to make themselves judgment proof or prepare for filing bankruptcy. Kvam is therefore entitled to a temporary restraining order and preliminary injunction under NRS 33.010 and the "relative hardships" test adopted in *Dangberg* and *Nevadans for Sound Government.*

Although NRS 233B.140 and NRCP 65 both require bonds to support a temporary restraining order and preliminary injunction, no monetary damage can or will inure to Defendants if they are enjoined from diverting the funds and deposit the funds with the Clerk of the Court

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(775) 350-7220

while this matter is pending. As such, only a nominal cash bond of $100 should be required.

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 30th day of November 2018.

MATUSKA LAW OFFICES, LTD.

By: _____

MICHAEL L. MATUSKA, SBN 5711
Attorneys for Plaintiff, JAY KVAM, individually and derivatively on behalf the unincorporated joint venture identified as 7747

MATUSKA LAW OFFICES, LTD.
2310 S. Carson Street, #6
Carson City NV 89701
(775) 350-7220

AFFIDAVIT

STATE OF NEVADA)

) ss.

COUNTY OF Elko)

COMES NOW PLAINTIFF, JAY KVAM, who being first duly sworn deposes and says:

1. That I am the Plaintiff in the above-encaptioned action. I am over the age of 18, a resident of Washoe County, Nevada, and am competent to make this affidavit. I have first-hand knowledge of the facts alleged herein, the same are true and correct to the best of my knowledge, information and belief, and I am competent to testify to these facts if called upon to do so.

2. On or about February 14, 2017, I entered into an agreement (the "Agreement") with Defendants Brian Mineau ("Mineau") and Legion Investments, LLC ("Legion") concerning the purchase, renovation and resale of a house located at 7747 may Street, Chicago, Illinois (the "Property"). A true and correct copy of the Agreement is attached hereto as Ex. "1".

3. I funded $93,781.31 toward the purchase and renovation of the Property as shown on the summary attached as Ex. "2" to this affidavit. The initial amount of $44,784.31 was paid directly to escrow to purchase the property as reflected in the 2/13/2017 Alta Settlement Statement attached hereto as Ex. "3". Legion took title to the Property.

4. I recently discovered that the Property had been sold. Brian Mineau did not inform me that the property was listed for sale, that escrow was pending, or that the Property had in fact sold. I discovered this information by searching websites such as Zillow.com.

6. That on November 28, 2018, my attorney of record, Michael L. Matuska, sent a letter to Defendants' attorney (Ex. "4") and received the settlement statement in return (Ex. "5").

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

Dated this 30 day of ~~November~~ November, 2018.

KVAM

JAY KVAM

SUBSCRIBED and SWORN before me
this 30 day of ~~July~~ November, 2018,
by JAY KVAM.

K Brennan

NOTARY PUBLIC

KARALEE BRENNAN
Notary Public, State of Nevada
Appointment No. 17-4193-6
My Appt. Expires Oct 12, 2021

EXHIBIT INDEX

1 Terms of Agreement
2 Funding Draws
3 Settlement Statement 02.13.17
4 Defendants' Answers to Interrogatories
5 Letter to A.Sweet 11.28.18
6 Settlement Statement 11.16.18
7 Deed and Ownership History (2489 Sherman Lane, Carson City, NV)

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2310 S. Carson Street, #6
Carson City NV 89701
(775) 350-7220

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 30th day of November 2018, I served a true and correct copy of the preceding document entitled **REQUEST FOR SUBMISSION** as follows:

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

[ ] **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.

[X] **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 person named 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 INDEX

1	Terms of Agreement
2	Funding Draws
3	Settlement Statement 02.13.17
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5	Letter to A. Sweet 11.28.18
6	Settlement Statement 11.16.18
7	Deed and Ownership History (2489 Sherman Lane, Carson City, NV)

MATUSKA LAW OFFICES, LTD.
2310 S. Carson Street, #6
Carson City NV 89701
(775) 350-7220

EXHIBIT 1
TERMS AGREEMENT
(Motion for Temporary Restraining Order and Preliminary Injunction)

EXHIBIT 1
TERMS AGREEMENT
(Motion for Temporary Restraining Order and Preliminary Injunction)

Terms of Agreement between Legion Investments LLC (its Members)

And Jay Kvam (Initial Funding Member of Same)

RE:

7747 S. May Street, Chicago Illinois.

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

Jay Kvam

Date 2017-02-14

Brian Mineau

Date 2/13/2017

Michael J. Spinola

Date 2/13/17

LORI J. CALLISON
Notary Public - State of Nevada
Appointment Recorded in Churchill County
No: 15-1098-4 - Expires March 12, 2019

EXHIBIT 2
FUNDING DRAWS
(Motion for Temporary Restraining Order and Preliminary Injunction)

EXHIBIT 2
FUNDING DRAWS
(Motion for Temporary Restraining Order and Preliminary Injunction)

Exhibit A

item	value	date
property purchase	$44,781.31	2017-02-13
wire transfer fees, property purchase	$60.00	2017-02-13
1st draw	$20,000.00	2017-03-23
wire transfer fee, 1st draw	$20.00	2017-03-23
2nd draw	$20,000.00	2017-04-14
wire transfer fee, 2nd draw	$30.00	2017-04-14
3rd draw	$9,000.00	2017-05-18
wire transfer fee, 3rd draw	$30.00	2017-05-18
interest, 1st draw	$1,143.01	2018-01-15
interest, 2nd draw	$1,058.63	2018-01-15
interest, 3rd draw	$417.70	2018-01-15

EXHIBIT 3
SETTLEMENT STATEMENT 02.13.17
(Motion for Temporary Restraining Order and Preliminary Injunction)

EXHIBIT 3
SETTLEMENT STATEMENT 02.13.17
(Motion for Temporary Restraining Order and Preliminary Injunction)

American Land Title Association	ALTA Settlement Statement - Cash Adopted 05-01-2015

File No./Escrow No.: 719630	Citywide Title Corporation	
Print Date & Time: 02/13/17 6:24 AM	ALTA Universal ID:	
Officer/Escrow Officer:	850 W. Jackson	
Settlement Location: Citywide Title	Suite 320	
	Chicago, IL 60607	

Property Address:	7747 South May Street Chicago, IL 60620
Buyer:	Legion Investments
Seller:	SDL iVest Group, LLC
Settlement Date:	02/13/2017
Disbursement Date:	02/13/2017
Additional dates per state requirements:	

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Financial		
	$44,000.00	Sale Price of Property	$44,000.00	
		Prorations/Adjustments		
$935.17		County Property Taxes from 07/01/2016 thru 12/31/2016		$935.17
$250.52		County Property Taxes from 01/01/2017 thru 02/13/2017		$250.52
		Title Charges & Escrow / Settlement Charges		
$50.00		Title - CPL Fee to First American	$25.00	
$3.00		Title - DFI Policy Fee to Citywide Title		
$800.00		Title - Owner's Policy to Rosenthal Law Group, LLC	$800.00	
$250.00		Title - Search Fee to Citywide Title		
$600.00		Title - Settlement Fee to Citywide Title	$600.00	
$125.00		Title - Update Fee to Citywide Title	$125.00	
$40.00		Title - Wire Fee to Citywide Title	$40.00	
		Government Recording and Transfer Charges		
		Recording Fee (Deed) to Cook County Recorder	$50.00	
$44.00		Transfer Tax to State of Illinois		
$132.00		City Transfer Tax to City of Chicago	$330.00	
$22.00		County Transfer Tax to Cook County		
		Miscellaneous		
$1,148.99		2016 1st Cook tax to Cook County Treasurer		
$50.00		Final water to City of Chicago		
$750.00		Seller Attorney fee to Rosenthal Law Group, LLC		

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
$320.00		Water/zoning to River North Clerking		
Seller			Borrower/Buyer	
Debit	Credit		Debit	Credit
$5,520.68	$44,000.00	Subtotals	$45,970.00	$1,185.69
		Due From Borrower		$44,784.31
$38,479.32		Due To Seller		
$44,000.00	$44,000.00	Totals	$45,970.00	$45,970.00

Acknowledgement
We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize Citywide Title Corporation to cause the funds to be disbursed in accordance with this statement.

Legion Investments		SDLiVest Group, LLC	
By	Date	By	Date

Escrow Officer Date

EXHIBIT 4
DEFENDANTS' ANSWERS TO INTERROGATORIES
(Motion for Temporary Restraining Order and Preliminary Injunction)

EXHIBIT 4
DEFENDANTS' ANSWERS TO INTERROGATORIES
(Motion for Temporary Restraining Order and Preliminary Injunction)

DISC

GUNDERSON LAW FIRM
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

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

JAY KVAM,

Plaintiff / Counterdefendant,

vs.

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

Defendants / Counterclaimants.
_____/

Case No. CV18-00764

Dept. No. 3

BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES

PROPOUNDING PARTY: Jay Kvam

RESPONDING PARTY: Brian Mineau and Legion Investments, LLC

Pursuant to NRCP 16.1, Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq., and Mark H. Gunderson, Esq., and pursuant to Rule 33 of the Nevada Rules of Civil Procedure, responds to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s First Set of Interrogatories to Mineau and Legion ("Requests") as follows:

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INTERROGATORY NO. 1:

Describe when and how Mr. Kvam allegedly turned off power to the Property. Including the date and time.

RESPONSE TO INTERROGATORY NO. 1:

At some point between March 1, 2018, and March 24, 2018, electrical service to the Property ceased. On April 14, 2018, Mr. Kvam confirmed via email that he had cancelled electrical service to the Property. Further details concerning when and how Mr. Kvam completed this task, including the date and time, are presently unknown.

INTERROGATORY NO. 2:

State the date and approximate time on which the water pipes burst at the house on the Property.

RESPONSE TO INTERROGATORY NO. 2:

The water pipes burst at the house on the Property at some point between March 1, 2018, and March 24, 2018.

INTERROGATORY NO. 3:

State the date on which Legion Investments, LLC's improvements to the house at the Property were completed.

RESPONSE TO INTERROGATORY NO. 3:

Objection. Interrogatory No. 3 assumes incorrect facts and therefore cannot be directly answered. Specifically, Interrogatory No. 3 assumes that Legion Investments, LLC was the party making improvements to the house at the Property and that such improvements were completed.

Without waiving this objection, Legion Investments, LLC has not itself made improvements to the house at the Property and the improvements which were being made to the house at the Property by licensed contractors have not been completed.

INTERROGATORY NO. 4:

State the date and amount of each expenditure for improvements to the Property.

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A PROFESSIONAL
LAW CORPORATION
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RENO, NEVADA 89509
(775) 829-1222

RESPONSE TO INTERROGATORY NO. 4:

Legion Investments, LLC and Brian Mineau are aware of the following expenditures made for improvements to the Property:

March 23, 2017	$20,000.00
April 14, 2017	$20,000.00
May 18, 2017	$9,000.00
May 26, 2017	$20,000.00

INTERROGATORY NO. 5:

State date [sic] and amount of each capital call or funding request for the property.

RESPONSE TO INTERROGATORY NO. 5:

None.

INTERROGATORY NO. 6:

Identify all persons who contributed capital or funds for the purchase and improvement of the Property. Including the names, addresses, phone numbers, dates and amounts of the contributions.

RESPONSE TO INTERROGATORY NO. 6:

Jay Kvam
7565 Michaela Dr.
Reno, NV 89511

Contributions:	February 13, 2017	$44,000.00
March 23, 2017	$20,000.00	
April 14, 2017	$20,000.00	
May 18, 2017	$9,000.00	

Criterion NV LLC
7560 Michaela Dr.
Reno, NV 89511

Contributions:	March 26, 2017	$20,000.00

INTERROGATORY NO. 7:

Describe the heating system for the property, including the heater model and number, and whether it a [sic] gas or electric heater.

RESPONSE TO INTERROGATORY NO. 7:

The heating system on the property is electric. The heater model and number are unknown.

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INTERROGATORY NO. 8:

Identify all dates that Brian Mineau was present at the Property.

RESPONSE TO INTERROGATORY NO. 8:

Brian Mineau has never been present at the Property.

INTERROGATORY NO. 9:

Identify all prospective economic relationships alleged in your Fourth Claim for Relief. Include the name, address, phone numbers and describe any contracts and the dates and contents thereof.

RESPONSE TO INTERROGATORY NO. 9:

The earlier completion of the project and profitable sale of the Property. Although most potential buyers are not specifically known, Mutual Happiness LLC was in contract to purchase the Property but cancelled that contract. Documentation of this lost prospective economic relationship has been produced and identified as LEG0023 – LEG0036.

INTERROGATORY NO. 10:

Describe all acts of coercion, duress and intimidation identified in your Fifth claim for Relief (Deceptive Trade Practices). Include the date, time and manner of the alleged acts and any identify any [sic] witness thereto.

RESPONSE TO INTERROGATORY NO. 10:

Jay Kvam repeatedly demanded to be "reimbursed" for all funds he invested into the Property, despite the fact that the project was incomplete, no disbursements were yet due to anyone under the "Terms of Agreement," and the project had been severely set back by Mr. Kvam's own actions. Brian Mineau and Legion Investments, LLC nonetheless affirmed that they intended to complete the project and perform their obligations under the "Terms of Agreement." However, Mr. Kvam demanded that the "Terms of Agreement" be renegotiated to his benefit and threatened Mr. Mineau and Legion Investments, LLC with frivolous legal action if they refused to acquiesce to those demands. Mr. Kvam also wrongfully and fraudulently accessed Atlas Investors Southside LLC ("Atlas")'s bank accounts and fraudulently, and without authorization, used Atlas's operating funds to pay off an interest-free debt held by Atlas which would not come due for several more years, causing Atlas's

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operating account to be overdrawn and forcing Mr. Mineau and Legion Investments, LLC to liquidate other assets to provide Atlas with adequate operating funds and avoid drastic financial and business consequences. Mr. Kvam also demanded Legion Investments' historic financial records, without any legal or factual right to such information, again under threat of frivolous litigation. Mr. Kvam also demanded that Mr. Mineau and/or Legion Investments, LLC personally guaranty Mr. Kvam's return on his investment and provide separate collateral to protect his investment, again under threat of frivolous litigation. When Brian Mineau and Legion Investments, LLC refused, Mr. Kvam's agents harassed, threatened, and intimidated Mr. Mineau's family. Each of these acts constitutes acts of coercion, duress, and intimidation designed to compel Mr. Mineau and/or Legion Investments, LLC to buy Mr. Kvam out of the "Terms of Agreement," pay him more than he is entitled under the "Terms of Agreement," and/or pay him sooner than he is entitled under the "Terms of Agreement." The date, time, and manner of these acts is documented in correspondence between the parties' counsel and the pleadings of this action.

INTERROGATORY NO. 11:

Describe all chattels identified in your Eighth Claim for Relief (Trespass to Chattels).

RESPONSE TO INTERROGATORY NO. 11:

Drywall, insulation, and copper plumbing.

DATED this 1 day of October, 2018.

GUNDERSON LAW FIRM

By: _____

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

VERIFICATION

I, Brian Mineau, a Defendant and a Manger of Legion Investments, LLC in the above-entitled action, make this verification. I have read the foregoing *Brian Mineau and Legion Investments' Responses to Plaintiff Jay Kyam's First Set of Interrogatories* and know the contents thereof. The same is true of my own knowledge, except as to those matters which are therein alleged upon information and belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed in Reno, NV.

DATED this 1st day of October, 2018.

Brian Mineau

STATE OF NEVADA
COUNTY OF WASHOE

This instrument was acknowledged before me on this 1st day of October, 2018 by Brian Mineau.

NOTARY PUBLIC for Nevada
Commission Expires: 9/14/2021

DEVAN GENNARO
NOTARY PUBLIC
STATE OF NEVADA
My Commission Expires: 09-14-2021
Certificate No: 17-3955-2

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LAW CORPORATION
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(775) 829-1222

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law Firm, and that on the 1 day of October, 2018, I deposited for mailing in Reno, Nevada a true and correct copy of the **BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO PLAINTIFF JAY KVAM'S FIRST SET OF INTERROGATORIES**, to the following:

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

Kelly Gunderson

GUNDERSON LAW FIRM
A PROFESSIONAL
LAW CORPORATION
3895 Warren Way
RENO, NEVADA 89509
(775) 829-1222

EXHIBIT 5
LETTER TO A. SWEET 11.28.18
(Motion for Temporary Restraining Order and Preliminary Injunction)

EXHIBIT 5
LETTER TO A. SWEET 11.28.18
(Motion for Temporary Restraining Order and Preliminary Injunction)

MATUSKA
LAW OFFICES

Michael L. Matuska, Attorney at Law

November 28, 2018

Via Email and U.S. Mail
Austin K. Sweet, Esq.
Gunderson Law Firm
3895 Warren Way
Reno NV 89509
asweet@gundersonlaw.com

Re: *Kvam v. Mineau, et al.*
Second Judicial District Court Case No. CV18-00764

Dear Mr. Sweet:

Please confirm by the close of business today that Jay Kvam will be paid from the proceeds of sale of the property located at 7747 May Street, Chicago, Illinois, and that the payment will be received by the close of business on Friday, November 30, 2018. Absent this confirmation and payment, we will immediately move for a temporary restraining order to enjoin the diversion of funds.

Please also see the Second Set of Requests for the Production of Documents provided herewith.

Sincerely,

MATUSKA LAW OFFICES, LTD.

By: _____
MICHAEL L. MATUSKA, ESQ.
2310 South Carson Street, Suite 6
Carson City NV 89701

cc: Client

I:\Client Files\Litigation\Kvam\v. Mineau\Corr\Sent\Sweet 11.28.18.docx

EXHIBIT 6
SETTLEMENT STATEMENT 11.16.18
(Motion for Temporary Restraining Order and Preliminary Injunction)

EXHIBIT 6
SETTLEMENT STATEMENT 11.16.18
(Motion for Temporary Restraining Order and Preliminary Injunction)

American Land Title Association	ALTA Settlement Statement - Cash Adopted 05-01-2015

File No./Escrow No.: 730323	Citywide Title Corporation
Print Date & Time: 11/16/18 8:49 AM	**ALTA Universal ID:**
Officer/Escrow Officer:	850 W. Jackson
Settlement Location:	Suite 320
Citywide Title	Chicago, IL 60607
850 W. Jackson Blvd., Ste. 320	
Chicago, IL 60607	

Property Address:	7747 S May St Chicago, IL 60620
Borrower:	Thousand Oaks Management, LLC
Seller:	Legion Investments, LLC
Settlement Date:	11/16/2018
Disbursement Date:	11/16/2018
Additional dates per state requirements:	

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Financial		
	$41,000.00	Sale Price of Property	$41,000.00	
		Deposit		$1,000.00
		Prorations/Adjustments		
$2,233.36		County PropertyTaxes from 01/01/2018 thru 11/14/2018		$2,233.36
		Other Loan Charges		
		Appraisal Fee		
		Credit Report Fee		
		Flood Certification Fee		
		Tax Service Fee		
		Title Charges & Escrow / Settlement Charges		
$50.00		Title - CPL Fee to First American	$25.00	
$3.00		Title - DFI Policy Fee to Citywide Title		
$1,660.00		Title - Owner's Policy to Chi-City Title Co.		
$250.00		Title - Search Fee to Citywide Title		
$687.50		Title - Settlement Fee to Citywide Title	$687.50	
$150.00		Title - Update Fee to Chi-City Title Co.	$150.00	
$40.00		Title - Wire Fee to Citywide Title	$40.00	
		Commission		
$700.00		Commission to Altura Realty		
$1,300.00		Commission to Miller Chicago, LLC		

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Government Recording and Transfer Charges		
		Recording Fee (Deed) to Cook County Recorder	$50.00	
$41.00		Transfer Tax to State of Illinois		
$123.00		City Transfer Tax to City of Chicago	$307.50	
$20.50		County Transfer Tax to Cook County		
		Miscellaneous		
		Buyer Attorney Fee to Whitacre & Stefanczuk LTD	$500.00	
$650.00		Seller Attorney fee to Rosenthal Law Group, LLC		
$1,000.00		Sold Tax TI to Citywide TI Account		
$4,547.87		Sold Taxes to Cook County Treasurer		
$400.00		Survey to Urchell & Associates		
$2,000.00		Water Bill TI to Citywide TI Account		
$320.00		Water/Zoning Certs to River North Clerking		
		Invoice to Altura Realty	$2,300.00	
$350.00		fees due prior files to Rosenthal Law Group, LLC		

Seller			Borrower/Buyer	
Debit	Credit		Debit	Credit
$16,526.23	$41,000.00	**Subtotals**	$45,060.00	$3,233.36
		Due From Borrower		**$41,826.64**
$24,473.77		Due To Seller		
$41,000.00	$41,000.00	**Totals**	$45,060.00	$45,060.00

Acknowledgement

We/I have carefully reviewed the ALTA Settlement Statement and find it to be a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction and further certify that I have received a copy of the ALTA Settlement Statement. We/I authorize Citywide Title Corporation to cause the funds to be disbursed in accordance with this statement.

Buyer/Borrower:

Willmetta D. Jones, by David Howard as Agt 11.16.18
THOUSAND OAKS MANAGEMENT LLC Date

Seller:

11-16-18
LEGION INVESTMENTS, LLC Date

Michael R Brown
Escrow Officer

11/16/2018
Date

EXHIBIT 7
DEED AND OWNERSHIP HISTORY (2489 SHERMAN LANE, CARSON CITY, NV)
(Motion for Temporary Restraining Order and Preliminary Injunction)

EXHIBIT 7
DEED AND OWNERSHIP HISTORY (2489 SHERMAN LANE, CARSON CITY, NV)
(Motion for Temporary Restraining Order and Preliminary Injunction)

STATE OF NEVADA
DECLARATION OF VALUE FORM

1. Assessor Parcel Number(s)
   a. 8-172-24
   b.
   c.
   d.

FOR RECORDERS OPTIONAL USE ONLY
Document #: 488671
Date of Recording: 09/20/2018

2. Type of Property:
   a. ☐ Vacant Land b. ✓ Single Fam. Res.
   c. ☐ Condo/Twnhse d. ☐ 2-4 Plex
   e. ☐ Apt. Bldg f. ☐ Comm'l/Ind'l
   g. ☐ Agricultural h. ☐ Mobile Home
   i. Other

FOR RECORDERS OPTIONAL USE ONLY
Book _____ Page _____
Date of Recording: _____
Notes:

3. a. Total Value/Sales Price of Property: $ 270,000.00
   b. Deed in Lieu of Foreclosure Only (value of property) $
   c. Transfer Tax Value $ 270,000.00
   d. Real Property Transfer Tax Due: $ 1,053.00

4. If Exemption Claimed
   a. Transfer Tax Exemption, per NRS 375.090, Section
   b. Explain Reason for Exemption:

5. Partial Interest: Percentage being transferred: 100%

The undersigned declares and acknowledges, under penalty of perjury, pursuant to NRS 375.060 and NRS 375.110, that the information provided is correct to the best of their information and belief, and can be supported by documentation if called upon to substantiate the information provided herein. Furthermore, the parties agree that disallowance of any claimed exemption, or other determination of additional tax due, may result in a penalty of 10% of the tax due plus interest at 1% per month. Pursuant to NRS 375.030, the Buyer and Seller shall be jointly and severally liable for any additional amount owed.

Signature _____ Capacity Grantor

Signature _____ Capacity _____

SELLER (GRANTOR) INFORMATION (REQUIRED)	BUYER (GRANTEE) INFORMATION (REQUIRED)
Print Name: Brian T. Mineau	Print Name: Jo A. Dodd
Address: 2171 San Remo Dr.	Address: 2489 Sherman Lane
City: Sparks	City: Carson City
State: NV. Zip: 89434	State: NV Zip: 89706

COMPANY/PERSON REQUESTING RECORDING (Required if not Seller or Buyer)

Print Name: Ticor Title of Nevada, Inc. Escrow No.: 01804444-010-DC1

Address: 307 W. Winnie Lane Suite #1

City, State, Zip: Carson City, NV 89703

AS A PUBLIC RECORD THIS FORM MAY BE RECORDED/MICROFILMED

WHEN RECORDED MAIL TO:
Jo A. Dodd
2489 Sherman Lane
Carson City, NV 89706

MAIL TAX STATEMENTS TO:
SAME AS ABOVE

Escrow No. 1804444-DC1

The undersigned hereby affirms that this document submitted for recording does not contain the social security number of any person or persons. (Pursuant to NRS 239b.030)

RECORDED AT THE REQUEST OF
TICOR TITLE CARSON CITY- 307
09/20/2018 03:42PM
FILE NO.488671
SUSAN MERRIWETHER
CARSON CITY RECORDER
FEE $35.00 DEP SY

APN No.: 8-172-24
R.P.T.T. $1,053.00

SPACE ABOVE FOR RECORDER'S USE ONLY

GRANT, BARGAIN, SALE DEED

THIS INDENTURE WITNESSETH: That Brian T. Mineau, a married man as his sole and separate property

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, do/does hereby Grant, Bargain, Sell and Convey to Jo A. Dodd, a widow

SEE EXHIBIT "A" ATTACHED HERETO AND BY REFERENCE MADE A PART HEREOF

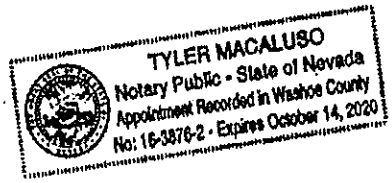
Together with all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining.

Brian T. Mineau

STATE OF NEVADA
COUNTY OF ~~CARSON CITY~~ Washoe } ss:

This instrument was acknowledged before me on, Sep 17, 2018
by Brian T. Mineau

NOTARY PUBLIC



Order No.: 01804444-DC1

EXHIBIT A

All that certain real property situate in the County of Carson City, State of Nevada, described as follows:

A portion of the Southwest 1/4 of the Northeast 1/4 of Section 9, Township 15 North, Range 20 East, M. D. B. & M., particularly described as follows:

Beginning at a point in the Southwest 1/4 of the Northeast 1/4 of said Section 9 from which said point, the section corner common to Sections 3, 4, 9 and 10, Township 15 North, Range 20 East, M. D. B. & M., bears North 55°59'47" East a distance of 2388.21 feet and the quarter section corner common to said Sections 4 and 9 bears North 26°31'25" West a distance of 1481.21 feet; thence South 0°01'25" West a distance of 101.00 feet to the Northeast corner of that certain Parcel conveyed to Sylvester P. Loiacano and Edna R. Loiacano by Deed recorded in Book 74 of Deeds, Page 75, Ormsby County, Nevada, records; thence North 89°58'35" West along the North line of the aforesaid Loiacano Parcel a distance of 200.00 feet to the Northwest corner of the aforesaid Loiacano parcel; thence North 0°01'25" East a distance of 100.41 feet; thence North 89°51'15" East a distance of 200.00 feet to the point of beginning.

EXCEPTING THEREFROM the West 95 feet of the above described parcel of land.

ALSO EXCEPTING THEREFROM any portion lying within Sherman Lane.

ALSO KNOWN AS Parcel B as shown on the Parcel Map for Glenn E. and Thelma A. Walker recorded March 25, 1976 in Book 3, Page 496, Document No. 61782, Official Records of Carson City, Nevada amended on November 8, 1978, in Book 3, Page 690, Document No. 83551, Official Records of Carson City, Nevada.

APN: 8-172-24

Note: Document No. 462619 is provided pursuant to the requirements of Section 6.NRS 111.312.

Ownership History for Parcel # 008-172-24

Current Owners

Name	From
DODD, JO A 2489 SHERMAN LN CARSON CITY, NV 89706-0000	2018

Prior Owners

Name	From	To
MINEAU, BRIAN T 2171 SAN REMO DR SPARKS, NV 89434-0000	2016	2018
LEGION INVESTMENTS LLC 2171 SAN REMO DR SPARKS, NV 89434-0000	2015	2016
U S BANK TRUST, TRUSTEE % U S BANK TRUST, TRUSTEE 16745 W BERNARDO DR STE 300 SAN DIEGO, CA 92127-0000	2015	2015
LSF8 MASTER PARTICIPATION TRUST % U S BANK TRUST, TRUSTEE 16745 W BERNARDO DR STE 300 SAN DIEGO, CA 92127-0000	2015	2015
JOHNSON, KATHRYN K 3045 CHIPMUNK DR WASHOE, NV 89704-0000	2013	2015
JOHNSON, JACK 3045 CHIPMUNK DR WASHOE, NV 89704-0000	2013	2015
C C TREAS - TRUSTEE (JOHNSON, J % JACK & KATHRYN K JOHNSON 3045 CHIPMUNK DR WASHOE, NV 89704-0000	2013	2013
JOHNSON, JACK % JACK & KATHRYN K JOHNSON 3045 CHIPMUNK DR WASHOE, NV 89704-0000	2013	2013
JOHNSON, KATHRYN K % JACK & KATHRYN K JOHNSON 3045 CHIPMUNK DR WASHOE, NV 89704-0000	2013	2013
JOHNSON, JACK 210 GROSH AVE DAYTON, NV 89403-9717	1987	2013
JOHNSON, KATHRYN K 210 GROSH AVE DAYTON, NV 89403-9717	1987	2013

NOTE: This is not a complete history and should not be used in place of a title search.

Go Back