

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the matter of:

JAY KVAM,

Appellant,

vs.

BRIAN MINEAU; and LEGION
INVESTMENTS, LLC,

Respondents.

Electronically Filed
Dec 18 2020 10:10 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 81422

District Court Case No. CV1800764

JOINT APPENDIX

VOLUME 3

**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**

MATUSKA LAW OFFICES, LTD.
Michael L. Matuska (SBN 5711)
2310 S. Carson Street, #6
Carson City, NV 89701

Attorney for Appellant
JAY KVAM

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6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
7 **THE STATE OF NEVADA IN AND FOR THE**
8 **COUNTY OF WASHOE**

9 **JAY KVAM,**

10 **Plaintiff,**

Case No. CV18-00764

Dept. No. 3

11 **vs.**

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

15 **Defendants.**
16 _____ /

17 **ORDER GRANTING TEMPORARY RESTRAINING ORDER**

18 Currently before this Court is Plaintiff/Counter-Defendant JAY KVAM'S ("KVAM")
19 MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION
20 ("Motion") filed on November 30, 2018. The matter was submitted to this Court the same day.
21

22 As alleged by Kvam, an agreement was entered into on or about February 14, 2017 with
23 Defendants BRIAN MINEAU and LEGION INVESTMENTS, LLC ("Defendants"). The
24 agreement concerned a loan given by Kvam to Defendants to renovate a property. Kvam funded
25 \$93,781.31 toward the purchase and renovation of the property and was due to receive 7% annual
26 return on his investment. Kvam has now demanded his money back as a result of not having
27 received any interest payment and of the cessation of renovation activity on the property. Kvam has
28

1 asserted that he is entitled to receive a return of his investment prior to the sale of the property.

2 Defendants have disputed this entitlement.

3 The basis of Kvam's instant request for a temporary restraining order ("TRO") is the recent
4 sale of the property. Because the property was sold, Kvam argues, the dispute over when his
5 investment should be returned—before or after sale of the property—has become moot, and he is
6 due his investment under either theory. Kvam requests a TRO with regard to the sale proceeds, to
7 prevent Defendants from disposing of them before any claim he has to them has been adjudicated.

8
9 NRCp 65 recognizes three kinds of injunctive orders: (1) TRO's, (2) preliminary
10 injunctions, and (3) permanent injunctions. Generally, a temporary restraining order grants
11 injunctive relief on an emergency basis for a limited time until the court can hear the matter in a
12 motion for a preliminary injunction. *See* NRCp 65. Under Nevada law, a court may issue an
13 injunction when, it appears from the face of the complaint or affidavit, the commission of some act
14 during the litigation would produce great or irreparable injury to the plaintiff. NRS 33.010(2). In
15 order to issue a preliminary injunction or TRO, the moving party must demonstrate that without the
16 grant of an injunction, he will suffer irreparable harm because there is no adequate remedy at law.
17 *See Dixon v. Thatcher*, 103 Nev. 414, 415, 742 P.2d 1029, 1030 (1987). In addition, the movant
18 must also demonstrate a reasonable probability of success on the merits of his case. *Id.* The purpose
19 of such an order is to preserve the status quo. *Id.*

20
21 Injunctive relief is extraordinary relief, and irreparable harm must be articulated in specific
22 terms by the issuing order or be sufficiently apparent elsewhere in the record. *Foley*, 121 Nev. at 80,
23 109 P.3d at 762. For the purposes of injunctive relief, irreparable harm is harm for which
24 compensatory damages would be inadequate. *S.O.C. Inc., v. Mirage Casino-Hotel*, 117 Nev. Adv.
25 Rep 36, 23 P.3d 243 (2001); *Pickett v. Comanche Construction Inc.*, 108 Nev. 422, 426, 836 P.2d
26
27
28

1 42, 44 (1992); *Number One Rent-A-Car v. Ramada Inns, Inc.*, 94 Nev. 779, 780-781, 587 P.2d
2 1329, 1330 (1978). If an equitable remedy is "far superior" to a legal remedy or damages are
3 difficult to calculate, the existence of an adequate remedy at law will not preclude an injunction.
4 *Nevada Escrow Service v. Crockett*, 91 Nev. 201, 533 P.2d 471 (1975); *Harmon v. Tanner Motor*
5 *Tours of Nevada, Ltd.*, 179 Nev. 4, 377 P.2d 622 (1963).

6 The rights asserted by Kvam are certainly prejudiced by the sale of the property and the fact
7 that he has yet to be repaid even the principal amount of the loan. The relevant question here,
8 however, is whether compensatory damages, which is, ultimately, what Kvam is asking for, would
9 be inadequate. Kvam argues that "[i]t appears...Defendants are trying to make themselves judgment
10 proof or prepare for filing bankruptcy." Mot. 4. If this were the case, compensatory damages may
11 not be available to Kvam if Defendants are able to dispose of the sale proceeds as they see fit.
12

13 Kvam further requests that the Court set a nominal bond in the amount of \$100, as the
14 Defendants will sustain no damage if the injunctive relief is granted. A nominal bond is appropriate
15 at this time as the Court may always increase the amount of the bond during the pendency of the
16 injunction if the facts and circumstances so warrant.
17

18 The Court is satisfied that Kvam's rights to a return of his investment could be irreparably
19 harmed if the instant Motion is not granted. Kvam has also shown a reasonable likelihood of
20 success on the merits, as both parties agree that, if an enforceable contract exists, he is entitled
21 under the Terms of Agreement to receive a return of his investment at some point in the
22 proceedings.
23

24 Accordingly,

25 BRIAN MINEAU, LEGION INVESTMENTS, LLC, and any affiliated party/interested
26 organization are HEREBY ESTOPPED from disposing of any of the proceeds from the sale of the
27
28

1 property located at 7747 S. May Street, Chicago, Illinois 60620.

2 This TRO is to expire within 15 days from the filing of this Order. A hearing to address
3 injunctive relief is hereby scheduled for December 17 at 1:30 p.m.

4 Kvam is hereby required to place the sum of \$500.00 in the possession of the Court as
5 security for the payment of costs and damages as may be suffered by any party.

6 IT IS SO ORDERED.

7 Dated this 3rd day of December, 2018.

8 
9 JEROME M. POLAHA
10 DISTRICT JUDGE
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CERTIFICATE OF MAILING

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 3 day of December, 2018 I did the following:

☒ Electronically filed with the Clerk of the Court, using the eFlex system which constitutes effective service for all eFiled documents pursuant to the eFile User

Agreement:

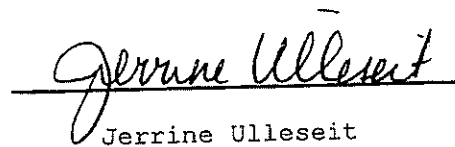
MARK HARLAN GUNDERSON, ESQ. for BRIAN MINEAU, LEGION INVESTMENTS, LLC

AUSTIN K. SWEET, ESQ. for BRIAN MINEAU, LEGION INVESTMENTS, LLC

MICHAEL L. MATUSKA, ESQ. for JAY KVAM

☐ Transmitted document to the Second Judicial District Court mailing system in a sealed envelope for postage and mailing by Washoe County using the United States

Postal Service in Reno, Nevada:


Jerrine Ulleseit

1 **CODE 4050**

2 GUNDERSON LAW FIRM

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7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

11
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF WASHOE**

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 3

16 vs.

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

20 Defendants / Counterclaimants.
21 _____/

22 **STIPULATION TO DEPOSIT FUNDS; ORDER**

23 On November 30, 2018, Plaintiff / Counterdefendant JAY KVAM ("Kvam") filed a *Motion*
24 *for Temporary Restraining Order and Preliminary Injunction* ("Motion"), requesting an order
25 restraining and enjoining Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
26 INVESTMENTS, LLC ("Legion") from diverting the funds received from the sale of the property
27 located at 7747 S. May Street, Chicago, Illinois (the "Property").

28 On December 3, 2018, this Court entered an *Order Granting Temporary Restraining Order*
29 ("Order"), estopping Mineau and Legion from disposing of the proceeds from the sale of the Property.

30 ///

31 ///

1 This Court's Order also set a hearing to address the injunctive relief requested in the Motion
2 on December 17, 2018, at 1:30 p.m. ("Hearing").

3 In lieu of pursuing the preliminary injunction and conducting the Hearing, IT IS
4 STIPULATED among the parties, by and through their respective counsel, that:

5 1. Pursuant to NRCP 67(a), Legion shall deposit TWENTY-FOUR THOUSAND FOUR
6 HUNDRED SEVENTY-THREE DOLLARS AND SEVENTY-SEVEN CENTS (\$24,473.77),
7 representing the proceeds received from the sale of the Property, with the clerk of the court within ten
8 (10) days of entry of the order approving this stipulation;

9 2. Upon proof that the funds have been deposited with the court, the Hearing shall be
10 vacated, the Order shall be deemed satisfied and terminated, the preliminary injunction aspect of the
11 Motion shall be deemed withdrawn without prejudice, and the clerk of court may return the \$500.00
12 bond posted pursuant to the Order to Kvam;

13 3. The deposited funds shall be invested by the clerk of court in an interest-bearing
14 instrument, subject to withdrawal, in whole or in part, at any time thereafter upon order by this Court
15 to dispose of the funds in a specified manner;

16 4. By entering into this stipulation, Legion and Mineau do not acknowledge the validity
17 or merits of the Motion or the claims or arguments made therein; and

18 5. By entering into this stipulation, no parties waive any rights or claims whatsoever,
19 including any claims they may have to ultimately receive the sum deposited with the court.

20
21 **AFFIRMATION**

22 The undersigned does hereby affirm that the preceding document filed in the Second Judicial
23

24 ///

25
26 ///

27
28 ///

1 District Court of the State of Nevada, County of Washoe, does not contain the social security number
2 of any person.

3 DATED this 10 day of December, 2018.

DATED this 19^L day of December, 2018.

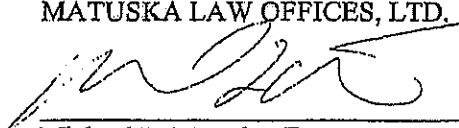
4 GUNDERSON LAW FIRM

MATUSKA LAW OFFICES, LTD.

5
6 By:


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

By:


Michael L. Matuska, Esq.
Nevada State Bar No. 5711
Attorneys for Jay Kvam

11
12 ORDER

13 IT IS SO ORDERED.

14 DATED this 11th day of Dec., 2018.

15
16
17 By:


DISTRICT JUDGE

1 **CODE 2540**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

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8 Reno, Nevada 89509

9 Telephone: 775.829.1222

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11
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF WASHOE**

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 3

16 vs.

17 BRIAN MINEAU; LEGION INVESTMENTS,

18 LLC; 7747 S. May Street, an Unincorporated

19 Joint Venture; and DOES I-X, inclusive,

20 Defendants / Counterclaimants.

21
22 **NOTICE OF ENTRY OF ORDER**

23 PLEASE TAKE NOTICE that a *Stipulation to Deposit Funds; Order* was entered on
24 December 12, 2018, a copy of which is attached as Exhibit "1."

25
26 **AFFIRMATION**

27 The undersigned does hereby affirm that the preceding document, **NOTICE OF ENTRY OF**
28 **ORDER**, filed in the Second Judicial District Court of the State of Nevada, County of Washoe, does

///

///

///

1 not contain the social security number of any person.

2 DATED this 12 day of December, 2018.

3 GUNDERSON LAW FIRM

4
5
6 By: 

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

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EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Stipulation to Deposit Funds; Order	4

Exhibit “1”

Exhibit “1”

1 **CODE 4050**
2 GUNDERSON LAW FIRM
3 Austin K. Sweet, Esq.
4 Nevada State Bar No. 11725
5 Mark H. Gunderson, Esq.
6 Nevada State Bar No. 2134
7 3895 Warren Way
8 Reno, Nevada 89509
9 Telephone: 775.829.1222
10 *Attorneys for Brian Mineau and Legion Investments*

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

11 JAY KVAM, Case No. CV18-00764

12 Plaintiff / Counterdefendant, Dept. No. 3

13
14 vs.

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

18 Defendants / Counterclaimants.
19 _____/

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STIPULATION TO DEPOSIT FUNDS; ORDER

20 On November 30, 2018, Plaintiff / Counterdefendant JAY KVAM ("Kvam") filed a *Motion*
21 *for Temporary Restraining Order and Preliminary Injunction* ("Motion"), requesting an order
22 restraining and enjoining Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
23 INVESTMENTS, LLC ("Legion") from diverting the funds received from the sale of the property
24 located at 7747 S. May Street, Chicago, Illinois (the "Property").

25 On December 3, 2018, this Court entered an *Order Granting Temporary Restraining Order*
26 ("Order"), estopping Mineau and Legion from disposing of the proceeds from the sale of the Property.

27 ///

28 ///

1 This Court's Order also set a hearing to address the injunctive relief requested in the Motion
2 on December 17, 2018, at 1:30 p.m. ("Hearing").

3 In lieu of pursuing the preliminary injunction and conducting the Hearing, IT IS
4 STIPULATED among the parties, by and through their respective counsel, that:

5 1. Pursuant to NRCP 67(a), Legion shall deposit TWENTY-FOUR THOUSAND FOUR
6 HUNDRED SEVENTY-THREE DOLLARS AND SEVENTY-SEVEN CENTS (\$24,473.77),
7 representing the proceeds received from the sale of the Property, with the clerk of the court within ten
8 (10) days of entry of the order approving this stipulation;

9 2. Upon proof that the funds have been deposited with the court, the Hearing shall be
10 vacated, the Order shall be deemed satisfied and terminated, the preliminary injunction aspect of the
11 Motion shall be deemed withdrawn without prejudice, and the clerk of court may return the \$500.00
12 bond posted pursuant to the Order to Kvam;

13 3. The deposited funds shall be invested by the clerk of court in an interest-bearing
14 instrument, subject to withdrawal, in whole or in part, at any time thereafter upon order by this Court
15 to dispose of the funds in a specified manner;

16 4. By entering into this stipulation, Legion and Mineau do not acknowledge the validity
17 or merits of the Motion or the claims or arguments made therein; and

18 5. By entering into this stipulation, no parties waive any rights or claims whatsoever,
19 including any claims they may have to ultimately receive the sum deposited with the court.

20
21 AFFIRMATION

22 The undersigned does hereby affirm that the preceding document filed in the Second Judicial
23

24 ///

25
26 ///

27
28 ///

1 District Court of the State of Nevada, County of Washoe, does not contain the social security number
2 of any person.

3 DATED this 10 day of December, 2018.

DATED this 19 day of December, 2018.

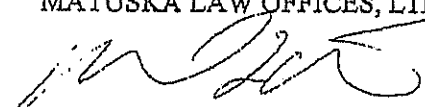
4 GUNDERSON LAW FIRM

MATUSKA LAW OFFICES, LTD.

6 By:


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

By:


Michael L. Matuska, Esq.
Nevada State Bar No. 5711
Attorneys for Jay Kvam

12 ORDER

14 IT IS SO ORDERED.

15 DATED this 11th day of Dec., 2018.

17 By:


DISTRICT JUDGE

1 **CODE 2610**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

11
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF WASHOE**

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 3

16 vs.

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

20 Defendants / Counterclaimants.
21 _____/

22 **NOTICE OF DEPOSIT OF PROPERTY PROCEEDS BY BRIAN MINEAU AND LEGION**
23 **INVESTMENTS, LLC**

24 TO: Plaintiff JAY KVAM, and his attorney of record Michael L. Matuska:

25 PLEASE TAKE NOTICE THAT on December 13, 2018, pursuant to the *Stipulation to Deposit*
26 *Funds; Order* filed in this matter on December 12, 2018, and pursuant to NRS 18.130(1), Defendants
27 BRIAN MINEAU and LEGION INVESTMENTS, LLC deposited with the Court in this matter a
28 check in the amount of \$24,473.77 representing the proceeds received from the sale of the Property
which is the subject matter of this case, receipt of which is attached as Exhibit "1". This amount is to
be invested by the clerk of the court in an interest-bearing instrument, subject to withdrawal, in whole
or in part, at any time thereafter upon order by the Court to dispose of the funds in a specified manner.

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AFFIRMATION

The undersigned does hereby affirm that the preceding document, **NOTICE OF DEPOSIT OF PROPERTY PROCEEDS BY BRIAN MINEAU AND LEGION INVESTMENTS, LLC**, 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 December, 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

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

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EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Copy of Second Judicial District Court Receipt #DCDC626746	2

Exhibit “1”

Exhibit “1”

XX

DUPLICATE

RECEIPT

Second Judicial District Court

Receipt Number: DCDC626746
Bond ID: TR0-18-00011
Date: 13-DEC-2018
Cashier: KTONBOW
Comment:

Payor: Austin K. Sweet, Esq.
Address: 3895 Warren Way
Reno, NV 89509

Description	Amount
Case: CV18-00764	
JAY KVAN VS BRIAN MINEAU, ET AL	
Party: SITE DEFINED TRUST DEPOSIT	
TR0 Cash Bond	-24,473.77
Total Fees:	0.00
Total Payment:	24,473.77
Amt. Tendered:	0.00
Change:	0.00

1 **CODE: 2490**
2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701
6 Attorneys for Plaintiff

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

9 JAY KVAM,

10 Plaintiff,

Case No. CV18-00764

11 v.

Dept. No. 3

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

15 Defendants.

16 **MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

17 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
18 Offices, Ltd., Michael L. Matuska, and hereby moves pursuant to NRCP 15(a) to file a First
19 Amended Complaint to add claims of fraud and breach of contract against Brian Mineau due to his
20 failure to fund 7747 S. May Street, an Unincorporated Joint Venture, as required by the Joint
21 Venture Agreement, and to make other changes to the complaint to reflect the recent sale of the
22 House on November 16, 2018.

23 This motion is made and based on the points and authorities attached hereto, the proposed
24 First Amended Complaint submitted herewith, and all other pleadings, exhibits and documents of
25 record.

26 Dated this 24th day of December, 2018.

27 MATUSKA LAW OFFICES, LTD.

28 *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

**POINTS AND AUTHORITIES IN SUPPORT OF
MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

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:

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.

In his responses to Interrogatories, Mineau admits that Kvam funded \$93,000 toward the purchase and renovation of the Property [he is \$784.31 short], but that Mineau did not provide any funding for the project. (See Response to Interrogatory No. 6, **Ex. “2”**). This admission creates obvious new causes of action, including breach of contract and fraud, including fraudulent inducement and concealment. Also, the House was sold on November 16, 2018 for a loss. Kvam therefore requests leave to file a First Amended Complaint given these new facts.

AFFIRMATION

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

Dated this 24th day of December, 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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 24th day of December 2018, I served a true and correct copy of the preceding document entitled **MOTION FOR LEAVE TO AMEND** as follows:

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

☒ **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	Response to Interrogatory No. 6
3	First Amended Verified Complaint

EXHIBIT 1
TERMS OF AGREEMENT
(Motion for Leave to File Amended Complaint)

EXHIBIT 1
TERMS OF AGREEMENT
(Motion for Leave to File Amended Complaint)

Terms of Agreement between Legion Investments LLC (its Members)

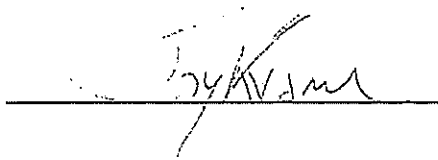
And Jay Kvam (Initial Funding Member of Same)

RE:

7747 S. May Street, Chicago Illinois.

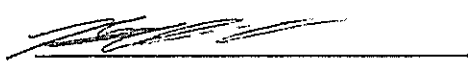
With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest 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



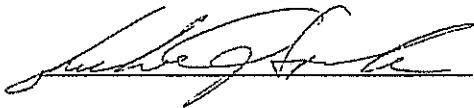
Date 2017-02-14

Brian Mineau



Date 2/13/2017

Michael J. Spinola



Date 2/13/17

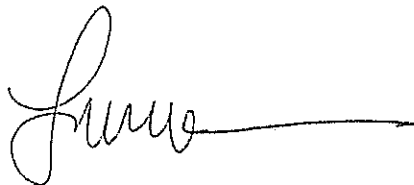
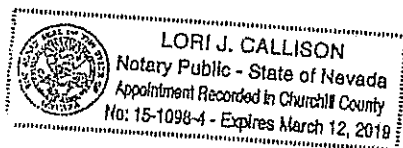


EXHIBIT 2
RESPONSE TO INTERROGATORY NO. 6
(Motion for Leave to File Amended Complaint)

EXHIBIT 2
RESPONSE TO INTERROGATORY NO. 6
(Motion for Leave to File Amended Complaint)

1 **DISC**

2 **GUNDERSON LAW FIRM**

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

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

13 JAY KVAM,

Case No. CV18-00764

14 Plaintiff / Counterdefendant,

Dept. No. 3

15 vs.

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

19 Defendants / Counterclaimants.

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

22 **PROPOUNDING PARTY:** Jay Kvam

23 **RESPONDING PARTY:** Brian Mineau and Legion Investments, LLC

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

///

///

///

1 **INTERROGATORY NO. 1:**

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

4 **RESPONSE TO INTERROGATORY NO. 1:**

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

9 **INTERROGATORY NO. 2:**

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

12 **RESPONSE TO INTERROGATORY NO. 2:**

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

15 **INTERROGATORY NO. 3:**

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

18 **RESPONSE TO INTERROGATORY NO. 3:**

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

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

25 **INTERROGATORY NO. 4:**

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

27 ///

28 ///

1 **RESPONSE TO INTERROGATORY NO. 4:**

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

4	March 23, 2017	\$20,000.00
5	April 14, 2017	\$20,000.00
6	May 18, 2017	\$9,000.00
7	May 26, 2017	\$20,000.00

8 **INTERROGATORY NO. 5:**

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

10 **RESPONSE TO INTERROGATORY NO. 5:**

11 None.

12 **INTERROGATORY NO. 6:**

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

15 **RESPONSE TO INTERROGATORY NO. 6:**

16	Jay Kvam		
	7565 Michaela Dr.		
17	Reno, NV 89511		
	Contributions:	February 13, 2017	\$44,000.00
18	March 23, 2017	\$20,000.00	
	April 14, 2017	\$20,000.00	
19	May 18, 2017	\$9,000.00	

20	Criterion NV LLC		
21	7560 Michaela Dr.		
	Reno, NV 89511		
22	Contributions:	March 26, 2017	\$20,000.00

23 **INTERROGATORY NO. 7:**

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

26 **RESPONSE TO INTERROGATORY NO. 7:**

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

28 ///

1 **INTERROGATORY NO. 8:**

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

3 **RESPONSE TO INTERROGATORY NO. 8:**

4 Brian Mineau has never been present at the Property.

5 **INTERROGATORY NO. 9:**

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

9 **RESPONSE TO INTERROGATORY NO. 9:**

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

14 **INTERROGATORY NO. 10:**

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

18 **RESPONSE TO INTERROGATORY NO. 10:**

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

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

14 **INTERROGATORY NO. 11:**

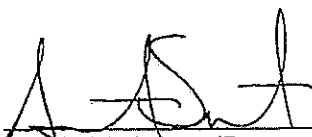
15 Describe all chattels identified in your Eighth Claim for Relief (Trespass to Chattels).

16 **RESPONSE TO INTERROGATORY NO. 11:**

17 Drywall, insulation, and copper plumbing.

18 DATED this 1 day of October, 2018.

19 GUNDERSON LAW FIRM

20
21 By: 
22 Austin K. Sweet, Esq.
23 Nevada State Bar No. 11725
24 Mark H. Gunderson, Esq.
25 Nevada State Bar No. 2134
26 3895 Warren Way
27 Reno, Nevada 89509
28 Telephone: 775.829.1222
Attorneys for Brian Mineau and Legion Investments

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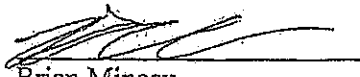
VERIFICATION

I, Brian Mineau, a Defendant and a Manager 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.

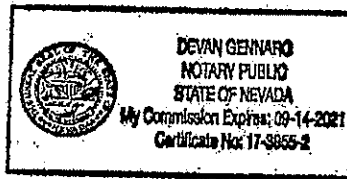
DATED this 1st day of October, 2018.


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



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


Kelly Gunderson

EXHIBIT 3
FIRST AMENDED VERIFIED COMPLAINT
(Motion for Leave to File Amended Complaint)

EXHIBIT 3
FIRST AMENDED VERIFIED COMPLAINT
(Motion for Leave to File Amended Complaint)

1 **CODE: 1090**

2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701
6 Attorneys for Plaintiff

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

9 JAY KVAM,

Plaintiff,

10 v.

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

Defendants.

**FIRST AMENDED VERIFIED
COMPLAINT**

14
15 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
16 Offices, Ltd., Michael L. Matuska, and hereby complains, alleges, and avers as follows:

17 **I.**
18 **PARTIES**

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

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

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

26 4. 7747 S. May Street, Chicago, Illinois, is an unincorporated joint venture formed
27 between KVAM, MINEAU, LEGION, and Michael Spinola, and is hereafter referred to "7747."

28 ///

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

II. GENERAL ALLEGATIONS

8. On or about February 2, 2017, KVAM entered an agreement with MINEAU and LEGION to participate in a joint venture, along with Michael Spinola (the “Agreement”). The purpose of the joint venture was to purchase, restore, and resell a house located at 7747 S. May Street, Chicago, Illinois (the “House”) for profit. The general terms of the Agreement were memorialized in writing and include the following:

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

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

3 c. MINEAU would manage the project;

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

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

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

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

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

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

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

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

17 e. \$9,000 on May 18, 2014 for the third draw.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. FIFTH CAUSE OF ACTION (Accounting)

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

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

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

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

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

1 fully set forth herein.

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

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

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

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

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

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

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

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

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

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

XI.
NINTH CAUSE OF ACTION
(Derivative Claim)

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

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

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

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

60. Because Defendants have already refused KVM's numerous requests to cure the multiple breaches of the Agreement and to comply with the Nevada Revised Statutes, it would be futile for him to delay the filing of this Complaint in order to attempt to secure Defendants'

1 agreement to initiate this action.

2 WHEREFORE, Plaintiff prays for relief as follows:

- 3 1. For an order declaring the rights and obligations of KHAM, MINEAU, LEGION,
4 and 7747;
5 2. For Court supervised winding up and an order appointing a receiver to secure any
6 remaining assets and to complete any remaining steps to winding up 7747;
7 3. For a temporary and permanent injunction enjoining MINEAU and LEGION from
8 any further involvement with 7747 and its assets;
9 4. For an order declaring that MINEAU and LEGION are liable for any debts of 7747
10 existing prior to or after the disassociation of KHAM and that they are further obligated to
11 indemnify KHAM against any liabilities;
12 5. For an equitable accounting;
13 6. For compensatory damages in an amount to be proven at trial in excess of \$15,000;
14 7. For punitive and exemplary damages in excess of \$100,000;
15 8. For an award of costs and attorney fees incurred in prosecuting this action;
16 9. For such other and further relief as the Court deems just in the premises.

17 **AFFIRMATION**

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

20 Dated this _____ day of December 2018.

22 MATUSKA LAW OFFICES, LTD.

23
24 By:

25 MICHAEL L. MATUSKA, SBN 5711
26 Attorneys for Plaintiff, JAY KHAM,
27 individually and derivatively on behalf
28 the unincorporated joint venture identified as 7747

VERIFICATION

STATE OF NEVADA)
COUNTY OF _____) ss.

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

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

JAY KVAM

SUBSCRIBED AND SWORN to before me,
this _____ day of December 2018,
by JAY KVAM.

NOTARY PUBLIC

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

JAY KVAM,

Plaintiff,

Case No. CV18-00764

Dept. No. 3

vs.

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

Defendants.

ORDER

Currently before the Court is Plaintiff/Counter-Defendant JAY KVAM'S ("KVAM")
MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT ("Motion"),
filed October 25, 2018. Defendant/Counter-Claimant BRIAN MINEAU ("Mineau") filed an
OPPOSITION on November 13, 2018, and Kvam filed a REPLY to the Opposition on November
19, 2018. This Court heard oral argument on the matter on December 17, 2018.

I. Background

This Motion stems from an executed agreement between the parties to purchase, restore, and
resell a house in Chicago. Kvam provided funding for the house, and, pursuant to the agreement,
was allegedly entitled to a return of 7% per annum on his investment. Mineau was to manage the

1 operation. Kvam brought the instant action claiming that he has not been paid interest and that the
2 project was abandoned. Mineau filed a Counterclaim, which is the subject of the instant Motion.
3 This Court previously dismissed Mineau's eighth and ninth counterclaims,¹ and ordered Mineau to
4 present to the Court a more definite statement of his fifth, tenth, and eleventh claims. The instant
5 Motion puts in question the remaining claims, as subject either to dismissal or summary judgment.
6 Those claims break down as follows:
7

- 8 1) Breach of Contract.
- 9 2) Breach of the Covenant of Good Faith and Fair Dealing.
- 10 3) Declaratory Relief.
- 11 4) Intentional interference with prospective economic advantage.
- 12 5) Deceptive trade practices.
- 13 6) Abuse of Process.
- 14 7) Trespass.
- 15 10) Fraud.
- 16 11) Negligence.

17 The Court will consider these claims in turn.
18

19 **II. Analysis**

20 **A. Legal Standards**

21 **i. Dismiss**

22 Under Nevada Rule of Civil Procedure 12(b)(5), a complaint will not be dismissed for
23 failure to state a claim unless "it appears beyond a reasonable doubt that the plaintiff could prove no
24 set of facts which, if accepted by the trier of fact, would entitle him or her to relief." *Simpson v.*
25
26

27
28 ¹ The parties make arguments regarding summary judgment on the eighth and ninth counterclaims, but these claims have already been dismissed. The Court will not consider these arguments.

1 *Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997); *Vacation Village v. Hitachi America*, 110
2 Nev. 481, 484, 874 P.2d 744, 746 (1994). There is a strong presumption against dismissing an
3 action for failure to state a claim. *Gilligan v. Jamco Development Corp.*, 108 F.3d 246, 249 (9th Cir.
4 1997). When determining whether to grant a moving party's motion to dismiss, all factual
5 allegations of the complaint must be accepted as true. *Vacation Village, Inc.*, 110 Nev. at 484, 874
6 P.2d at 746. The court must construe the pleading liberally and draw every fair inference in favor of
7 the nonmoving party. *Id.* at 484, 874 P.2d at 746. A motion to dismiss should not be granted unless
8 it appears beyond a doubt that a party could prove no set of facts that would entitle them to relief.
9 *Pankopf v. Peterson*, 124 Nev. 43, 45, 175 P.3d 910, 912 (2008) (citing *Vacation Village*, 110 Nev.
10 at 484). Specifically, "the test for determining whether the allegations of a complaint are sufficient
11 to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a
12 legally sufficient claim and the relief requested." *Id.* at 485.

15 **ii. Summary Judgment**

16 Under NRCP 56, a party seeking to recover upon a claim may move for summary judgment
17 upon all or any part of the claim. Such relief is appropriate when the pleadings, discovery and
18 exhibits show that there is no genuine dispute as to any material fact and that the moving party is
19 entitled to judgment as a matter of law. NRCP 56(c); *Nelson v. Calif. State Auto Ass'n Inter-Ins.*
20 *Bureau*, 114 Nev. 345, 956 P.2d 803 (1998). The burden on the moving party may be met by
21 showing that there is an absence of evidence to support any one or more of the prima facie elements
22 of the non-moving party's case. *See, NGA #2, LLC v. Rains*, 113 Nev. 1151, 1156 (1997) (citing
23 *Celotex Corp. v. Catrett*, 477 U.S. 317, 331, 106 S. Ct. 2548 (1986). Once the moving party has met
24 its burden to show that no genuine issue of material fact exists, the non-moving party must produce
25 specific facts supported by competent admissible evidence that demonstrates the presence of a
26
27
28

1 genuine issue of material fact for trial. *See, Elizabeth E. v. ADT Security Sys. W.*, 108 Nev. 889, 892
2 (1992). While the pleadings and other proof must be construed in a light most favorable to the non-
3 moving party, that party must do more than simply show that there is some metaphysical doubt as to
4 the operative facts in order to avoid entry of summary judgment, and is not entitled to build a case
5 on the gossamer threads of whimsy, speculation and conjecture. *Wood v. Safeway, Inc.*, 121 Nev.
6 724, 732, 121 P.3d 1026, 1031 (2005). The mere existence of some issues of fact does not
7 necessarily preclude summary judgment. *Scott v. Harris*. 550 U.S. 372 (2007). An issue of material
8 fact is “genuine” if the evidence is such that a reasonable jury, in applying the correct standard of
9 proof, could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S.
10 242, 248 (1986). A fact is “material” if it must be decided in order to resolve the substantive issue
11 of the claim or defense to which the motion is directed. *Id.*
12
13

14 NRCP 56(f) is potentially available to the non-moving party where further discovery is
15 required to present facts required to oppose summary judgment. The provision states,
16

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

23 NRCP 56(f).

24 B. Mineau's Claims

25 The Court will note from the outset that Mineau's First Amended Counterclaim (“FACC”)
26 included two new factual allegations incorporated into claims five, ten, and eleven pursuant to this
27 Court's Order for clarification. First, Mineau alleges that on or about March 24, 2018 the power to
28 the property had been turned off by Kvam, causing the pipes to freeze, burst, and leak. Second,
Mineau alleges that Kvam accessed the checking account of a company called Atlas and used

1 \$20,000 from the account to pay off an interest free credit card, depriving Atlas of the use of those
2 funds. As to this latter claim, Mineau's counsel at hearing could not articulate the date of the
3 transfer or the amount transferred, despite having clearly alleged in the pleading that it happened
4 March 6, 2018 and in the amount of \$20,000. Counsel asserted at argument that the confusion may
5 have stemmed from miscommunication between him and his client. At hearing on a motion for
6 summary judgment is a particularly inopportune time for such miscommunication, especially when
7 both the opposing party and the Court are seeking clarification on the issue. Atlas is not a party to
8 this litigation. Furthermore, the relationship between Atlas and the parties and the property that was
9 the subject of the agreement, if any, is entirely unclear. Mineau has provided no evidence clarifying
10 the connection either in his filings or at hearing, and as it appears to the Court, anything having to
11 do with Atlas is irrelevant to the adjudication of this case's issues. As such, the Court will proceed
12 without reference to the allegation regarding Atlas' assets.
13

14
15 Mineau believes that summary judgment is at this time premature, and invokes NRCP 56(f)
16 to allow for additional discovery before the Court considers summary judgment.
17

18 *First Claim – Breach of Contract*

19 The first claim for breach of contract is not extensively discussed in the parties' briefing, but
20 the Court did hear argument with regard to the factual allegations underlying the claim. Mineau
21 alleges, first of all, that Kvam breached the agreement by demanding the repayment of his
22 investment before repayment was due. However, paragraph eight of the FACC simultaneously
23 states that "[t]he Agreement does not include a defined maturity date or a defined rate of return."
24 FACC 2. It is unclear then how Mineau maintains that Kvam's demand for repayment was early. It
25 is true that the validity of the agreement and the specifics of its terms have not yet been determined,
26
27
28

1 but it is also clear that demanding repayment does not constitute a breach.² Kvam's obligation was
2 to fund the project and it is undisputed that he performed.

3 Mineau also alleges that Kvam shut off the power to the property sometime in March, which
4 caused the pipes to freeze, burst, and leak. Kvam counters with a copy of the utility bill for the
5 property, which is dated April 9, 2018. It is undisputed that Kvam told Mineau on or about April 14,
6 2018 that he was shutting off the power. At argument, counsel for Mineau claimed that a property
7 manager had contacted Mineau on March 24, 2018 and told him the power was off and the pipes
8 were leaking. However, no admissible evidence has been provided to support this contention.³
9 Facing summary judgment, Mineau failed to provide the Court with an affidavit, his own or the
10 property manager's, which would serve to combat the summary judgment motion and the utility bill
11 that directly contradicts Mineau's account. Mineau presented no reasons why an affidavit
12 containing "facts essential to justify the party's opposition" was not presented to the Court.
13 Mineau's NRCP 56(f) request cannot, therefore, be granted.
14

15 Finally, the April utility bill shows 0.0kWh usage for the eight months leading up to April
16 when Kvam notified Mineau that he was turning off the power. This suggests that nothing had
17 changed with regard to power usage at the property from August through March. Furthermore,
18 while the validity of the agreement has yet to be determined, nothing on the face of the agreement
19 suggests the Kvam had a responsibility to keep the power on, or that turning it off would constitute
20 a breach. And again, no evidence has been offered to show that the agreement did somehow
21 contemplate these obligations.
22
23
24

25
26 ² Mineau's counsel's affidavit in support of his NRCP 56(f) request asserts that they expect to learn, through further
27 discovery, the expectations of the parties with regard to the agreement. Opp. Ex. 1. Mineau could have opposed the
28 summary judgment motion by providing an affidavit stating his expectations and understanding of the agreement and
thereby put the question of Kvam's performance at issue; alternately, counsel, arguing pursuant to NRCP 56(f), could
have presented to the Court reasons why such an affidavit was unavailable.

³ Exhibit 2 to Mineau's Opposition purports to be a letter, dated May 22, 2018, from the property manager explaining
that on March 24 the electricity was not operating, pipes had burst, and water damage had occurred.

1 Mineau has failed to put forth evidence creating a genuine issue of material fact as to
2 whether or not Kvam breached the agreement. Therefore, summary judgment will be entered as to
3 his first claim.

4 *Second Claim – Breach of the Covenant of Good Faith and Fair Dealing*

5 The FACC states, “[b]y the actions described above, Kvam has breached the implied
6 covenant of good faith and fair dealing by performing in a manner that was unfaithful to the purpose
7 of the Agreement.” FACC 4. The “actions described above” presumably refer to the allegations
8 discussed above with regard to the first claim for breach of contract. They are equally, and for the
9 same reasons, unavailing here. Summary judgment will be entered as to Mineau’s second claim.
10

11 *Third Claim – Declaratory Relief*

12 Neither party has argued the issue of declaratory relief, even though Kvam requests
13 summary judgment be entered on it. Furthermore, the validity of the Agreement and the precise
14 meaning of its terms are matters yet to be adjudicated. The Court finds that this claim may go
15 forward.
16

17 *Fourth Claim – Intentional interference with prospective economic advantage*

18 The elements required for a claim of intentional interference with prospective economic
19 advantage are: (1) a prospective contractual relationship between the plaintiff and a third party; (2)
20 knowledge by the defendant of the prospective relationship; (3) intent to harm the plaintiff by
21 preventing the relationship; (4) the absence of privilege or justification by the defendant; and (5)
22 actual harm to the plaintiff as a result of the defendant's conduct. *In re Amerco Derivative Litig.*,
23 127 Nev. 196, 226, 252 P.3d 681, 702 (2011).
24
25

26 In this Court’s previous Order regarding Kvam’s first motion to dismiss, the Court stated
27 that it was sufficient for Mineau to identify the theory and basic facts of the claim to survive a
28

1 motion to dismiss. Now, however, the claim faces a motion for summary judgment and Mineau
2 must present facts that demonstrate a potential to create a genuine issue of material fact for trial.
3 Mineau has failed to do so. No third party has been identified that could have prospectively been
4 contracted with. It is not enough to simply rely on a hypothetical pool of property purchasers
5 because the accused party is charged with knowledge of the prospective relationship and
6 intentionally interfering with it. No third party has been adequately identified to support Mineau's
7 claim. Furthermore, the factual allegations supporting the claim are the same as those disposed of
8 above with regard to claims one and two.
9

10 While dismissal of this claim is not proper, summary judgment is. There is a set of facts that,
11 if true, would bolster the claim, but Mineau has presented no evidence that those facts exist in this
12 case. In the affidavit supporting Mineau's 56(f) request, his counsel does not claim further
13 discovery will reveal a proper third party to sustain this claim. Therefore, Mineau has presented no
14 evidence that would otherwise create a genuine issue of material fact as to Kvam's intentional
15 interference with prospective economic advantage and summary judgment is hereby entered on the
16 fourth claim.
17
18

19 *Fifth Claim – Deceptive Trade Practices*

20 In its previous Order deciding Kvam's first motion to dismiss, this Court noted that "Mineau
21 does not meet [the deceptive trade practices and fraud] standard regarding his pleadings." Aug. 29,
22 2018 Ord. 3. The Court ordered a more definite statement supporting this claim. Mineau added to
23 the factual allegations supporting this claim the Atlas transaction which the Court has found
24 irrelevant, and the allegation that "Kvam caused his process servers to harass, threaten, and
25 intimidate Mineau's family." FACC 6. Specifically, Mineau claims that Kvam's process servers
26 "raised their voices, threatened, and harassed" his wife." *Id.* Mineau cannot recover on a claim
27
28

1 alleging injury to another person.

2 Mineau claims that "Kvam used coercion, duress, and intimidation in an attempt to force
3 Mineau and Legion to pay him more than he is entitled under the Agreement." However, there is no
4 basis upon which this claim is properly made. The actions of a process server do not constitute
5 deceptive trade practices. This claim must be dismissed.
6

7 Mineau's fifth claim can alternatively be disposed of by summary judgment. Mineau has not
8 presented evidence of specific facts supporting the claim. If Mineau somehow could recover for the
9 injury of another, an affidavit sworn by his wife who allegedly experienced the harassment would
10 have sufficed to survive summary judgment, but Mineau has not endeavored to provide such
11 evidence. The claim thus presents a bald allegation.
12

13 Mineau's fifth claim for deceptive trade practices is dismissed.

14 *Sixth Claim – Abuse of Process*

15 Mineau's abuse of process claim challenges the very filing of the instant suit but describes
16 no conduct that suggests the complaint was "malicious, fraudulent, and oppressive." FACC 8. It is
17 unclear, then, on what basis Mineau believes the present action is being fraudulently prosecuted.
18 Filing a complaint does not become fraudulent just because the party opposing it does not believe it
19 has merit. Mineau argues that the Court already considered this claim on a motion to dismiss and
20 that it survived. This is true; however, the claim now faces a summary judgment attack and no
21 evidence in support of the claim containing a genuine issue of material fact has been presented.
22 Neither has Mineau's counsel indicated in the NRCP 56(f) affidavit that further discovery will assist
23 in generating evidence of abuse of process. The Court cannot rely on "metaphysical doubt" as to
24 Kvam's motivation in filing his complaint. Nothing in the record demonstrates a triable issue of fact
25 with regard to this claim, and summary judgment must therefore be entered against it.
26
27
28

Seventh Claim – Trespass

1
2 The facts alleged in support of this claim state, “Kvam caused his process servers to harass,
3 threaten, and intimidate Mineau’s family.” FACC 3. Specifically, Mineau claims that Kvam’s
4 process servers “raised their voices, threatened, and harassed” his wife.” *Id.* It is undisputed that
5 Mineau was the registered agent for Legion investments, and that his private residence was the
6 registered address at which he was required to receive process. For the purposes of serving process,
7 then, a process server must have access to the property. Though Mineau cannot recover for the
8 injury of his wife who is a non-party, actions engaged in by process servers at his residence beyond
9 the service of process *might* be shown to constitute trespass to Mineau’s *property*; but Mineau has
10 presented no affidavit sworn by his wife who allegedly experienced the harassment. Furthermore,
11 Mineau’s counsel’s NRCP 56(f) affidavit does not present a reason why such an affidavit was
12 unavailable.
13
14

15 Mineau’s seventh claim must be disposed of by summary judgment. Mineau has not
16 presented evidence of specific facts supporting this claim. The claim thus presents a bald allegation
17 unsupported by any evidence, let alone evidence that would allow a finder of fact to rule in favor of
18 Mineau.
19

Tenth Claim – Fraud

20
21 In its previous Order deciding Kvam’s first motion to dismiss, this Court noted that “Mineau
22 does not meet [the fraud] standard regarding his pleadings.” Aug. 29, 2018 Ord. 3. The Court
23 ordered a more definite statement supporting this claim. Mineau added to the factual allegations
24 supporting this claim the Atlas transaction which the Court has found irrelevant, and the allegation
25 that Kvam had cut off the electricity to the property prior to March 24. This latter allegation indeed
26 attempts to detail “the time, the place, the identity of the parties involved, and the nature of the
27
28

1 fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981) (discussing the
2 heightened pleading standard for fraud). Dismissal for failure to state a claim upon which relief can
3 be granted is, therefore, improper. However, Kvam also challenges this claim in his motion for
4 summary judgment.

5 Paragraph 12 of Mineau’s counsel’s NRCP 56(f) affidavit states, “[t]hrough discovery,
6 Mineau and Legion expect to learn how Kvam turned off the power to the Property, when he did so,
7 why he did so, why he did not notify Mineau, and under what authority he was allegedly acting.”
8 Mineau is already in possession of the utility bill and the corresponding usage report, and his
9 counsel was unable to identify at the hearing what additional evidence could be discovered to refute
10 it. As we have seen, the allegation itself is directly contradicted by the utility bill, and no affidavit
11 from the property manager that might bring the bill’s reliability into question has been presented.
12 Furthermore, Mineau’s counsel’s NRCP 56(f) request does not endeavor to explain why such an
13 affidavit was unavailable to counter the summary judgment motion. Summary judgment is granted
14 as to the tenth claim.
15

16 *Eleventh Claim – Negligence*

17 Mineau’s eleventh claim for negligence restates the irrelevant Atlas allegation and the
18 allegation that Kvam had cut off the electricity to the property prior to March 24. To the extent that
19 this claim relies on these allegations, summary judgment is granted for the same reasons described
20 in the analysis of the tenth claim, *supra*.
21

22 Mineau includes in his eleventh claim the allegation that Kvam’s process servers harassed
23 his wife. Again, Mineau cannot recover for the injury of another. Furthermore, the alleged actions
24 of Kvam’s process servers do not provide an appropriate basis for a negligence claim against Kvam.
25 Therefore, to the extent that it relies on the actions of Kvam’s process servers, the eleventh claim
26
27
28

1 for negligence is dismissed.

2 III. Conclusion

3 Based on the foregoing, dismissal of two and summary judgment on seven of Mineau's
4 claims is appropriate at this time. Mineau's repeated claim that summary judgment in this case is
5 premature is mistaken. NRCP 56(b) allows a defending party to move for summary judgment "at
6 any time." It is true that a district court can abuse its discretion by granting summary judgment too
7 early in the proceedings. *See, e.g., Halimi v. Blacketor*, 105 Nev. 105, 770 P.2d 531 (1989); *see also*
8 *Harrison v. Falcon Products, Inc.*, 103 Nev. 558, 746 P.2d 642 (1987); *see also Summerfield v.*
9 *Coca Cola Bottling Company of the Southwest*, 113 Nev. 1291, 948 P.2d 704 (1997). Here,
10 however, it is not too early.
11

12 A premature grant of summary judgment risks overlooking a factual dispute that may arise
13 in the course of litigation but is not readily apparent at the time of the case's disposal. The factual
14 disputes relied on by Mineau as a basis for his claims are either irrelevant (Atlas allegations) or
15 have been resolved by the utility bill that has *already been discovered*.⁴ To the extent that Mineau
16 could have, by way of affidavits, put other facts (harassment by process servers, the date the
17 electricity was turned off) in dispute in response to the summary judgment motion, he failed to do
18 so. Finally, in his attempt to use NRCP 56(f) as a tool for opposing summary judgment, Mineau
19 failed to explain why the evidence needed to oppose the motion (especially simple affidavits) was
20 unavailable, or to identify what the evidence he anticipates discovering would be. General
21 statements as to what a party expects to learn do not suffice.
22

23 Accordingly, and good cause appearing,
24
25

26
27 ⁴ Contrary to Mineau's counsel's assertion in his NRCP 56(f) affidavit, the parties *have* commenced some discovery. As
28 was brought out at the hearing, there has been at least one request for interrogatories as well as a request for production.
Furthermore, Kvam's exhibits to his motion, including the utility bill, were produced as the result of a discovery
request.

1 IT IS HEREBY ORDERED that Kvam's Motion to Dismiss Counterclaim and for Summary
2 Judgment is GRANTED IN PART AND DENIED IN PART.

3 IT IS HEREBY ORDERED that the fifth claim relief in the First Amended Counterclaim is
4 DISMISSED. To the extent that the eleventh claim relies on allegations concerning the actions of
5 process servers, that claim is also DISMISSED.

6 SUMMARY JUDGMENT is HEREBY GRANTED as to the first, second, fourth, sixth,
7 seventh, and tenth claims for relief in the First Amended Counterclaim, and also as to the eleventh
8 claim to the extent that it relies on allegations concerning Atlas and turning off the electricity.

9 The Motion is DENIED as to the third claim for relief in the First Amended Counterclaim.

10 IT IS SO ORDERED.

11 Dated this 9th day of January, 2019.

12
13
14 
15 JEROME M. POLAHA
16 DISTRICT JUDGE
17
18
19
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CERTIFICATE OF MAILING

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of
the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9 day of ~~December~~ ^{January}
2018 I did the following:

☒ Electronically filed with the Clerk of the Court, using the eFlex system which
constitutes effective service for all eFiled documents pursuant to the eFile User

Agreement:

MARK HARLAN GUNDERSON, ESQ. for BRIAN
MINEAU, LEGION INVESTMENTS, LLC

AUSTIN K. SWEET, ESQ. for BRIAN MINEAU,
LEGION INVESTMENTS, LLC

MICHAEL L. MATUSKA, ESQ. for JAY KVAM

☐ Transmitted document to the Second Judicial District Court mailing system in a
sealed envelope for postage and mailing by Washoe County using the United States

Postal Service in Reno, Nevada:


Jerrine Ulleseit

1 **CODE: 2540**

2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701
6 Attorneys for Plaintiff

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

9 JAY KVAM,

Plaintiff,

Case No. CV18-00764

10 v.

Dept. No. 3

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

Defendants.

14 **NOTICE OF ENTRY OF ORDER**

15 PLEASE TAKE NOTICE that on January 9, 2019, the Court entered its *Order* in the
16 above-mentioned matter, a copy of which is attached hereto as Exhibit "1."

17 **AFFIRMATION**

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

21 Dated this 10th day of January 2019.

22 MATUSKA LAW OFFICES, LTD.

23 

24 By:

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 10th day of January 2019, I served a true and correct copy of the preceding document entitled **Notice of Entry of Order** as follows:

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

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

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

☐ **BY EMAIL:** (as listed above)

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

☐ **BY FACSIMILE:**

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

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

/s/ SUZETTE TURLEY
SUZETTE TURLEY

EXHIBIT INDEX

EXHIBIT	DOCUMENT
1	Order

EXHIBIT 1
ORDER
(Notice of Entry of Order)

EXHIBIT 1
ORDER
(Notice of Entry of Order)

1
2
3
4
5
6 **IN THE SECOND JUDICIAL DISTRICT COURT OF**
7 **THE STATE OF NEVADA IN AND FOR THE**
8 **COUNTY OF WASHOE**

9 **JAY KVAM,**

10 **Plaintiff,**

Case No. CV18-00764

Dept. No. 3

11 **vs.**

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

15 **Defendants.**

16
17 **ORDER**

18 Currently before the Court is Plaintiff/Counter-Defendant JAY KVAM'S ("KVAM")
19 MOTION TO DISMISS COUNTERCLAIM, AND FOR SUMMARY JUDGMENT ("Motion"),
20 filed October 25, 2018. Defendant/Counter-Claimant BRIAN MINEAU ("Mineau") filed an
21 OPPOSITION on November 13, 2018, and Kvam filed a REPLY to the Opposition on November
22 19, 2018. This Court heard oral argument on the matter on December 17, 2018.

23
24 **I. Background**

25 This Motion stems from an executed agreement between the parties to purchase, restore, and
26 resell a house in Chicago. Kvam provided funding for the house, and, pursuant to the agreement,
27 was allegedly entitled to a return of 7% per annum on his investment. Mineau was to manage the
28

1 operation. Kvam brought the instant action claiming that he has not been paid interest and that the
2 project was abandoned. Mineau filed a Counterclaim, which is the subject of the instant Motion.
3 This Court previously dismissed Mineau's eighth and ninth counterclaims,¹ and ordered Mineau to
4 present to the Court a more definite statement of his fifth, tenth, and eleventh claims. The instant
5 Motion puts in question the remaining claims, as subject either to dismissal or summary judgment.
6 Those claims break down as follows:
7

- 8 1) Breach of Contract.
- 9 2) Breach of the Covenant of Good Faith and Fair Dealing.
- 10 3) Declaratory Relief.
- 11 4) Intentional interference with prospective economic advantage.
- 12 5) Deceptive trade practices.
- 13 6) Abuse of Process.
- 14 7) Trespass.
- 15 10) Fraud.
- 16 11) Negligence.
- 17
- 18

19 The Court will consider these claims in turn.

20 **II. Analysis**

21 **A. Legal Standards**

22 **i. Dismiss**

23 Under Nevada Rule of Civil Procedure 12(b)(5), a complaint will not be dismissed for
24 failure to state a claim unless "it appears beyond a reasonable doubt that the plaintiff could prove no
25 set of facts which, if accepted by the trier of fact, would entitle him or her to relief." *Simpson v.*
26

27
28 ¹ The parties make arguments regarding summary judgment on the eighth and ninth counterclaims, but these claims have already been dismissed. The Court will not consider these arguments.

1 *Mars Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997); *Vacation Village v. Hitachi America*, 110
2 Nev. 481, 484, 874 P.2d 744, 746 (1994). There is a strong presumption against dismissing an
3 action for failure to state a claim. *Gilligan v. Jamco Development Corp.*, 108 F.3d 246, 249 (9th Cir.
4 1997). When determining whether to grant a moving party's motion to dismiss, all factual
5 allegations of the complaint must be accepted as true. *Vacation Village, Inc.*, 110 Nev. at 484, 874
6 P.2d at 746. The court must construe the pleading liberally and draw every fair inference in favor of
7 the nonmoving party. *Id.* at 484, 874 P.2d at 746. A motion to dismiss should not be granted unless
8 it appears beyond a doubt that a party could prove no set of facts that would entitle them to relief.
9
10 *Pankopf v. Peterson*, 124 Nev. 43, 45, 175 P.3d 910, 912 (2008) (citing *Vacation Village*, 110 Nev.
11 at 484). Specifically, "the test for determining whether the allegations of a complaint are sufficient
12 to assert a claim for relief is whether the allegations give fair notice of the nature and basis of a
13 legally sufficient claim and the relief requested." *Id.* at 485.

15 **ii. Summary Judgment**

16 Under NRCP 56, a party seeking to recover upon a claim may move for summary judgment
17 upon all or any part of the claim. Such relief is appropriate when the pleadings, discovery and
18 exhibits show that there is no genuine dispute as to any material fact and that the moving party is
19 entitled to judgment as a matter of law. NRCP 56(c); *Nelson v. Calif. State Auto Ass'n Inter-Ins.*
20 *Bureau*, 114 Nev. 345, 956 P.2d 803 (1998). The burden on the moving party may be met by
21 showing that there is an absence of evidence to support any one or more of the prima facie elements
22 of the non-moving party's case. *See, NGA #2, LLC v. Rains*, 113 Nev. 1151, 1156 (1997) (citing
23 *Celotex Corp. v. Catrett*, 477 U.S. 317, 331, 106 S. Ct. 2548 (1986). Once the moving party has met
24 its burden to show that no genuine issue of material fact exists, the non-moving party must produce
25 specific facts supported by competent admissible evidence that demonstrates the presence of a
26
27
28

genuine issue of material fact for trial. *See, Elizabeth E. v. ADT Security Sys. W.*, 108 Nev. 889, 892 (1992). While the pleadings and other proof must be construed in a light most favorable to the non-moving party, that party must do more than simply show that there is some metaphysical doubt as to the operative facts in order to avoid entry of summary judgment, and is not entitled to build a case on the gossamer threads of whimsy, speculation and conjecture. *Wood v. Safeway, Inc.*, 121 Nev. 724, 732, 121 P.3d 1026, 1031 (2005). The mere existence of some issues of fact does not necessarily preclude summary judgment. *Scott v. Harris*. 550 U.S. 372 (2007). An issue of material fact is “genuine” if the evidence is such that a reasonable jury, in applying the correct standard of proof, could return a verdict for the non-moving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact is “material” if it must be decided in order to resolve the substantive issue of the claim or defense to which the motion is directed. *Id.*

NRCP 56(f) is potentially available to the non-moving party where further discovery is required to present facts required to oppose summary judgment. The provision states,

(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).

B. Mineau's Claims

The Court will note from the outset that Mineau's First Amended Counterclaim (“FACC”) included two new factual allegations incorporated into claims five, ten, and eleven pursuant to this Court's Order for clarification. First, Mineau alleges that on or about March 24, 2018 the power to the property had been turned off by Kvam, causing the pipes to freeze, burst, and leak. Second, Mineau alleges that Kvam accessed the checking account of a company called Atlas and used

1 \$20,000 from the account to pay off an interest free credit card, depriving Atlas of the use of those
2 funds. As to this latter claim, Mineau's counsel at hearing could not articulate the date of the
3 transfer or the amount transferred, despite having clearly alleged in the pleading that it happened
4 March 6, 2018 and in the amount of \$20,000. Counsel asserted at argument that the confusion may
5 have stemmed from miscommunication between him and his client. At hearing on a motion for
6 summary judgment is a particularly inopportune time for such miscommunication, especially when
7 both the opposing party and the Court are seeking clarification on the issue. Atlas is not a party to
8 this litigation. Furthermore, the relationship between Atlas and the parties and the property that was
9 the subject of the agreement, if any, is entirely unclear. Mineau has provided no evidence clarifying
10 the connection either in his filings or at hearing, and as it appears to the Court, anything having to
11 do with Atlas is irrelevant to the adjudication of this case's issues. As such, the Court will proceed
12 without reference to the allegation regarding Atlas' assets.

13
14
15 Mineau believes that summary judgment is at this time premature, and invokes NRCP 56(f)
16 to allow for additional discovery before the Court considers summary judgment.

17
18 *First Claim – Breach of Contract*

19 The first claim for breach of contract is not extensively discussed in the parties' briefing, but
20 the Court did hear argument with regard to the factual allegations underlying the claim. Mineau
21 alleges, first of all, that Kvam breached the agreement by demanding the repayment of his
22 investment before repayment was due. However, paragraph eight of the FACC simultaneously
23 states that "[t]he Agreement does not include a defined maturity date or a defined rate of return."
24 FACC 2. It is unclear then how Mineau maintains that Kvam's demand for repayment was early. It
25 is true that the validity of the agreement and the specifics of its terms have not yet been determined,
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28

1 but it is also clear that demanding repayment does not constitute a breach.² Kvam's obligation was
2 to fund the project and it is undisputed that he performed.

3 Mineau also alleges that Kvam shut off the power to the property sometime in March, which
4 caused the pipes to freeze, burst, and leak. Kvam counters with a copy of the utility bill for the
5 property, which is dated April 9, 2018. It is undisputed that Kvam told Mineau on or about April 14,
6 2018 that he was shutting off the power. At argument, counsel for Mineau claimed that a property
7 manager had contacted Mineau on March 24, 2018 and told him the power was off and the pipes
8 were leaking. However, no admissible evidence has been provided to support this contention.³
9 Facing summary judgment, Mineau failed to provide the Court with an affidavit, his own or the
10 property manager's, which would serve to combat the summary judgment motion and the utility bill
11 that directly contradicts Mineau's account. Mineau presented no reasons why an affidavit
12 containing "facts essential to justify the party's opposition" was not presented to the Court.
13 Mineau's NRCP 56(f) request cannot, therefore, be granted.
14
15

16 Finally, the April utility bill shows 0.0kWh usage for the eight months leading up to April
17 when Kvam notified Mineau that he was turning off the power. This suggests that nothing had
18 changed with regard to power usage at the property from August through March. Furthermore,
19 while the validity of the agreement has yet to be determined, nothing on the face of the agreement
20 suggests the Kvam had a responsibility to keep the power on, or that turning it off would constitute
21 a breach. And again, no evidence has been offered to show that the agreement did somehow
22 contemplate these obligations.
23
24

25
26 ² Mineau's counsel's affidavit in support of his NRCP 56(f) request asserts that they expect to learn, through further
27 discovery, the expectations of the parties with regard to the agreement. Opp. Ex. 1. Mineau could have opposed the
28 summary judgment motion by providing an affidavit stating his expectations and understanding of the agreement and
thereby put the question of Kvam's performance at issue; alternately, counsel, arguing pursuant to NRCP 56(f), could
have presented to the Court reasons why such an affidavit was unavailable.

³ Exhibit 2 to Mineau's Opposition purports to be a letter, dated May 22, 2018, from the property manager explaining
that on March 24 the electricity was not operating, pipes had burst, and water damage had occurred.

1 Mineau has failed to put forth evidence creating a genuine issue of material fact as to
2 whether or not Kvam breached the agreement. Therefore, summary judgment will be entered as to
3 his first claim.

4 *Second Claim – Breach of the Covenant of Good Faith and Fair Dealing*

5 The FACC states, “[b]y the actions described above, Kvam has breached the implied
6 covenant of good faith and fair dealing by performing in a manner that was unfaithful to the purpose
7 of the Agreement.” FACC 4. The “actions described above” presumably refer to the allegations
8 discussed above with regard to the first claim for breach of contract. They are equally, and for the
9 same reasons, unavailing here. Summary judgment will be entered as to Mineau’s second claim.
10

11 *Third Claim – Declaratory Relief*

12 Neither party has argued the issue of declaratory relief, even though Kvam requests
13 summary judgment be entered on it. Furthermore, the validity of the Agreement and the precise
14 meaning of its terms are matters yet to be adjudicated. The Court finds that this claim may go
15 forward.
16

17 *Fourth Claim – Intentional interference with prospective economic advantage*

18 The elements required for a claim of intentional interference with prospective economic
19 advantage are: (1) a prospective contractual relationship between the plaintiff and a third party; (2)
20 knowledge by the defendant of the prospective relationship; (3) intent to harm the plaintiff by
21 preventing the relationship; (4) the absence of privilege or justification by the defendant; and (5)
22 actual harm to the plaintiff as a result of the defendant's conduct. *In re Amerco Derivative Litig.*,
23 127 Nev. 196, 226, 252 P.3d 681, 702 (2011).
24
25

26 In this Court’s previous Order regarding Kvam’s first motion to dismiss, the Court stated
27 that it was sufficient for Mineau to identify the theory and basic facts of the claim to survive a
28

1 motion to dismiss. Now, however, the claim faces a motion for summary judgment and Mineau
2 must present facts that demonstrate a potential to create a genuine issue of material fact for trial.
3 Mineau has failed to do so. No third party has been identified that could have prospectively been
4 contracted with. It is not enough to simply rely on a hypothetical pool of property purchasers
5 because the accused party is charged with knowledge of the prospective relationship and
6 intentionally interfering with it. No third party has been adequately identified to support Mineau's
7 claim. Furthermore, the factual allegations supporting the claim are the same as those disposed of
8 above with regard to claims one and two.
9

10 While dismissal of this claim is not proper, summary judgment is. There is a set of facts that,
11 if true, would bolster the claim, but Mineau has presented no evidence that those facts exist in this
12 case. In the affidavit supporting Mineau's 56(f) request, his counsel does not claim further
13 discovery will reveal a proper third party to sustain this claim. Therefore, Mineau has presented no
14 evidence that would otherwise create a genuine issue of material fact as to Kvam's intentional
15 interference with prospective economic advantage and summary judgment is hereby entered on the
16 fourth claim.
17
18

19 *Fifth Claim – Deceptive Trade Practices*

20 In its previous Order deciding Kvam's first motion to dismiss, this Court noted that "Mineau
21 does not meet [the deceptive trade practices and fraud] standard regarding his pleadings." Aug. 29,
22 2018 Ord. 3. The Court ordered a more definite statement supporting this claim. Mineau added to
23 the factual allegations supporting this claim the Atlas transaction which the Court has found
24 irrelevant, and the allegation that "Kvam caused his process servers to harass, threaten, and
25 intimidate Mineau's family." FACC 6. Specifically, Mineau claims that Kvam's process servers
26 "raised their voices, threatened, and harassed" his wife." *Id.* Mineau cannot recover on a claim
27
28

1 alleging injury to another person.

2 Mineau claims that "Kvam used coercion, duress, and intimidation in an attempt to force
3 Mineau and Legion to pay him more than he is entitled under the Agreement." However, there is no
4 basis upon which this claim is properly made. The actions of a process server do not constitute
5 deceptive trade practices. This claim must be dismissed.

6 Mineau's fifth claim can alternatively be disposed of by summary judgment. Mineau has not
7 presented evidence of specific facts supporting the claim. If Mineau somehow could recover for the
8 injury of another, an affidavit sworn by his wife who allegedly experienced the harassment would
9 have sufficed to survive summary judgment, but Mineau has not endeavored to provide such
10 evidence. The claim thus presents a bald allegation.

11 Mineau's fifth claim for deceptive trade practices is dismissed.

12
13
14 *Sixth Claim – Abuse of Process*

15 Mineau's abuse of process claim challenges the very filing of the instant suit but describes
16 no conduct that suggests the complaint was "malicious, fraudulent, and oppressive." FACC 8. It is
17 unclear, then, on what basis Mineau believes the present action is being fraudulently prosecuted.
18 Filing a complaint does not become fraudulent just because the party opposing it does not believe it
19 has merit. Mineau argues that the Court already considered this claim on a motion to dismiss and
20 that it survived. This is true; however, the claim now faces a summary judgment attack and no
21 evidence in support of the claim containing a genuine issue of material fact has been presented.
22 Neither has Mineau's counsel indicated in the NRCP 56(f) affidavit that further discovery will assist
23 in generating evidence of abuse of process. The Court cannot rely on "metaphysical doubt" as to
24 Kvam's motivation in filing his complaint. Nothing in the record demonstrates a triable issue of fact
25 with regard to this claim, and summary judgment must therefore be entered against it.
26
27
28

Seventh Claim – Trespass

1
2 The facts alleged in support of this claim state, “Kvam caused his process servers to harass,
3 threaten, and intimidate Mineau’s family.” FACC 3. Specifically, Mineau claims that Kvam’s
4 process servers “raised their voices, threatened, and harassed” his wife.” *Id.* It is undisputed that
5 Mineau was the registered agent for Legion investments, and that his private residence was the
6 registered address at which he was required to receive process. For the purposes of serving process,
7 then, a process server must have access to the property. Though Mineau cannot recover for the
8 injury of his wife who is a non-party, actions engaged in by process servers at his residence beyond
9 the service of process *might* be shown to constitute trespass to Mineau’s *property*; but Mineau has
10 presented no affidavit sworn by his wife who allegedly experienced the harassment. Furthermore,
11 Mineau’s counsel’s NRCP 56(f) affidavit does not present a reason why such an affidavit was
12 unavailable.
13
14

15 Mineau’s seventh claim must be disposed of by summary judgment. Mineau has not
16 presented evidence of specific facts supporting this claim. The claim thus presents a bald allegation
17 unsupported by any evidence, let alone evidence that would allow a finder of fact to rule in favor of
18 Mineau.
19

Tenth Claim – Fraud

20
21 In its previous Order deciding Kvam’s first motion to dismiss, this Court noted that “Mineau
22 does not meet [the fraud] standard regarding his pleadings.” Aug. 29, 2018 Ord. 3. The Court
23 ordered a more definite statement supporting this claim. Mineau added to the factual allegations
24 supporting this claim the Atlas transaction which the Court has found irrelevant, and the allegation
25 that Kvam had cut off the electricity to the property prior to March 24. This latter allegation indeed
26 attempts to detail “the time, the place, the identity of the parties involved, and the nature of the
27
28

1 fraud or mistake.” *Brown v. Kellar*, 97 Nev. 582, 583-84, 636 P.2d 874, 874 (1981) (discussing the
2 heightened pleading standard for fraud). Dismissal for failure to state a claim upon which relief can
3 be granted is, therefore, improper. However, Kvam also challenges this claim in his motion for
4 summary judgment.

5 Paragraph 12 of Mineau’s counsel’s NRCP 56(f) affidavit states, “[t]hrough discovery,
6 Mineau and Legion expect to learn how Kvam turned off the power to the Property, when he did so,
7 why he did so, why he did not notify Mineau, and under what authority he was allegedly acting.”
8 Mineau is already in possession of the utility bill and the corresponding usage report, and his
9 counsel was unable to identify at the hearing what additional evidence could be discovered to refute
10 it. As we have seen, the allegation itself is directly contradicted by the utility bill, and no affidavit
11 from the property manager that might bring the bill’s reliability into question has been presented.
12 Furthermore, Mineau’s counsel’s NRCP 56(f) request does not endeavor to explain why such an
13 affidavit was unavailable to counter the summary judgment motion. Summary judgment is granted
14 as to the tenth claim.
15
16

17 *Eleventh Claim – Negligence*

18
19 Mineau’s eleventh claim for negligence restates the irrelevant Atlas allegation and the
20 allegation that Kvam had cut off the electricity to the property prior to March 24. To the extent that
21 this claim relies on these allegations, summary judgment is granted for the same reasons described
22 in the analysis of the tenth claim, *supra*.
23

24 Mineau includes in his eleventh claim the allegation that Kvam’s process servers harassed
25 his wife. Again, Mineau cannot recover for the injury of another. Furthermore, the alleged actions
26 of Kvam’s process servers do not provide an appropriate basis for a negligence claim against Kvam.
27 Therefore, to the extent that it relies on the actions of Kvam’s process servers, the eleventh claim
28

1 for negligence is dismissed.

2 III. Conclusion

3 Based on the foregoing, dismissal of two and summary judgment on seven of Mineau's
4 claims is appropriate at this time. Mineau's repeated claim that summary judgment in this case is
5 premature is mistaken. NRCP 56(b) allows a defending party to move for summary judgment "at
6 any time." It is true that a district court can abuse its discretion by granting summary judgment too
7 early in the proceedings. *See, e.g., Halimi v. Blacketor*, 105 Nev. 105, 770 P.2d 531 (1989); *see also*
8 *Harrison v. Falcon Products, Inc.*, 103 Nev. 558, 746 P.2d 642 (1987); *see also Summerfield v.*
9 *Coca Cola Bottling Company of the Southwest*, 113 Nev. 1291, 948 P.2d 704 (1997). Here,
10 however, it is not too early.
11

12 A premature grant of summary judgment risks overlooking a factual dispute that may arise
13 in the course of litigation but is not readily apparent at the time of the case's disposal. The factual
14 disputes relied on by Mineau as a basis for his claims are either irrelevant (Atlas allegations) or
15 have been resolved by the utility bill that has *already been discovered*.⁴ To the extent that Mineau
16 could have, by way of affidavits, put other facts (harassment by process servers, the date the
17 electricity was turned off) in dispute in response to the summary judgment motion, he failed to do
18 so. Finally, in his attempt to use NRCP 56(f) as a tool for opposing summary judgment, Mineau
19 failed to explain why the evidence needed to oppose the motion (especially simple affidavits) was
20 unavailable, or to identify what the evidence he anticipates discovering would be. General
21 statements as to what a party expects to learn do not suffice.
22

23 Accordingly, and good cause appearing,
24

25
26
27 ⁴ Contrary to Mineau's counsel's assertion in his NRCP 56(f) affidavit, the parties *have* commenced some discovery. As
28 was brought out at the hearing, there has been at least one request for interrogatories as well as a request for production.
Furthermore, Kvam's exhibits to his motion, including the utility bill, were produced as the result of a discovery
request.

1 IT IS HEREBY ORDERED that Kvam's Motion to Dismiss Counterclaim and for Summary
2 Judgment is GRANTED IN PART AND DENIED IN PART.

3 IT IS HEREBY ORDERED that the fifth claim relief in the First Amended Counterclaim is
4 DISMISSED. To the extent that the eleventh claim relies on allegations concerning the actions of
5 process servers, that claim is also DISMISSED.

6 SUMMARY JUDGMENT is HEREBY GRANTED as to the first, second, fourth, sixth,
7 seventh, and tenth claims for relief in the First Amended Counterclaim, and also as to the eleventh
8 claim to the extent that it relies on allegations concerning Atlas and turning off the electricity.

9 The Motion is DENIED as to the third claim for relief in the First Amended Counterclaim.

10 IT IS SO ORDERED.

11 Dated this 9th day of January, 2019.

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15 JEROME M. POLAHA
16 DISTRICT JUDGE
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CERTIFICATE OF MAILING

1 I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of
2 the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9 day of January
3 2018 I did the following:

4 ☒ Electronically filed with the Clerk of the Court, using the eFlex system which
5 constitutes effective service for all eFiled documents pursuant to the eFile User

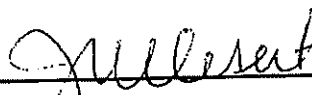
6 Agreement:

7 MARK HARLAN GUNDERSON, ESQ. for BRIAN
8 MINEAU, LEGION INVESTMENTS, LLC

9 AUSTIN K. SWEET, ESQ. for BRIAN MINEAU,
10 LEGION INVESTMENTS, LLC

11 MICHAEL L. MATUSKA, ESQ. for JAY KVAM

12 ☐ Transmitted document to the Second Judicial District Court mailing system in a
13 sealed envelope for postage and mailing by Washoe County using the United States
14 Postal Service in Reno, Nevada:

15 
16 Jerrine Ulleseit

1 **CODE 2645**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

11
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF WASHOE**

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 3

16 vs.

17 BRIAN MINEAU; LEGION INVESTMENTS,

18 LLC; 7747 S. May Street, an Unincorporated

19 Joint Venture; and DOES I-X, inclusive,

20 Defendants / Counterclaimants.

21 **OPPOSITION TO MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

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

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Kvam seeks leave to amend his *Complaint* on two grounds. First, Kvam argues that in his responses to Interrogatories, Mineau admits “that Mineau did not provide any funding for the project.” Motion at 2. Kvam claims that “This admission creates obvious new causes of action, including breach of contract and fraud, including fraudulent inducement and concealment.” *Id.*

Kvam's assertion that Mineau admitted in this response that he "did not provide any funding for the project" is simply inaccurate and cannot form the basis for granting Kvam leave to amend his complaint. NRCP 15. Kvam's request for leave to amend to add new causes of action for breach of contract, fraud, fraudulent inducement, and concealment should therefore be denied.

///

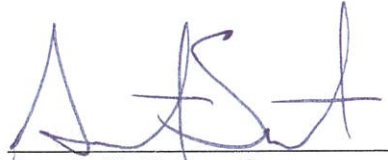
1 For these reasons, Kvam's motion should be granted only for the limited purpose of
2 supplementing his *Complaint* to set forth that "the House was sold on November 16, 2018 for a loss."
3 All other aspects of Kvam's motion should be denied.

4 **AFFIRMATION**

5 The undersigned does hereby affirm that the preceding document, **OPPOSITION TO**
6 **MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**, filed in the Second Judicial District
7 Court of the State of Nevada, County of Washoe, does not contain the social security number of any
8 person.

9 DATED this 14 day of January, 2019.

10 GUNDERSON LAW FIRM

11
12
13 By: 

14 Austin K. Sweet, Esq.
15 Nevada State Bar No. 11725
16 Mark H. Gunderson, Esq.
17 Nevada State Bar No. 2134
18 3895 Warren Way
19 Reno, Nevada 89509
20 Telephone: 775.829.1222
21 *Attorneys for Brian Mineau and Legion*
22 *Investments*
23
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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCp 5(b), I certify that I am an employee of the law office of Gunderson Law
3 Firm, and that on the 14 day of January, 2019, I deposited for mailing in Reno, Nevada AND
4 electronically filed a true and correct copy of the **OPPOSITION TO MOTION FOR LEAVE TO**
5 **FILE AMENDED COMPLAINT**, with the Clerk of the Court by using the electronic filing system
6 which will send a notice of electronic filing to the following:

7
8 Michael Matuska, Esq.
9 Matuska Law Offices, Ltd.
10 2310 South Carson Street, Suite 6
11 Carson City, Nevada 89701
12 *Attorneys for Jay Kvam*

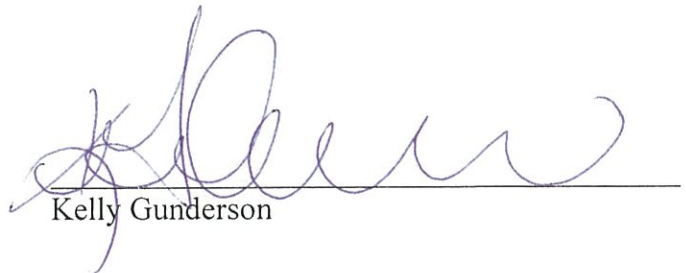
13 
14 Kelly Gunderson

EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Declaration of Brian Mineau	1
Exhibit "2"	Mutual of Omaha Bank Outgoing Domestic Wire Transfer Request	1

Exhibit “1”

Exhibit “1”

DECLARATION OF BRIAN MINEAU

I, BRIAN MINEAU, declare under penalty of perjury that the following is true and correct:

1. I am over the age of 18.
 2. I am a named defendant in this action.
 3. I am the manager of Legion Investments, LLC ("Legion").
 4. Michael Spinola and I are the principals of Criterion NV LLC.
 5. In 2017, Michael Spinola and I caused Criterion NV LLC to contribute \$20,000 to the project at 7747 S. May Street, Chicago, Illinois ("Property") on behalf of Legion.
 6. These funds were wired directly to the contractor, TNT Complete Facility Care Inc., as a construction draw for the project.
 7. A true and correct copy of the wire request evidencing this contribution is attached to the Motion as Exhibit "2."
 8. Jay Kvam also funded construction draws for the project by wiring money directly to the contractor, TNT Complete Facility Care Inc.
 9. The foregoing is true and correct and based upon my own personal knowledge.
- I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

Executed at 1613 this 14th day of January, 2019.

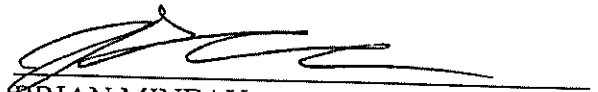

BRIAN MINEAU

Exhibit “2”

Exhibit “2”

Mutual of Omaha Bank
Outgoing Domestic Wire Transfer Request

Sequence #: _____
Effective Date: _____

SENDER INFORMATION – Complete all fields- MUST HAVE PHYSICAL ADDRESS- *REQUIRED FIELDS

*Name/ Business Name:	CRITERION NV LLC
*SSN/Tax ID#:	81-4026317
*Physical Address:	7560 MICHAELA DR
*City/State/Zip/ Country:	RENO NV 89511-1475
*From Account #:	██████7990
*WIRE AMOUNT \$: 20,000	

RECEIVING BANK INFORMATION – Complete all fields that apply

Bank Name:	Chase Bank	ABA (9 digits)	██████████
Bank Address:	9000 Haggerty- MI 1-8205	Acct #:	_____
City/State/Zip/Country: Belleville, MI 48111			

FOR FURTHER CREDIT INFORMATION – Complete If applicable

Bank Name:	_____	ABA (9 digits)	_____
Bank Address:	_____	Acct #:	_____
City/State/Zip/Country: _____			

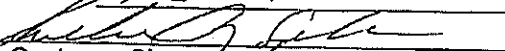
RECEIVING CUSTOMER INFORMATION – Complete all fields that apply- *REQUIRED INFO

* Name/s:	TNT COMPLETE FACILITY CARE INC	*Acct #:	██████████
*Address:	919 North LaFox,		
*City/State/Zip/Country:	South Elgin IL 60177	Advice Info	_____
*Relationship to Sender:	PROJECT MANAGER	*Purpose of Wire:	construction draw
Special Instructions: May Street			

The Bank shall not be liable for any error or delay due to any cause other than the Bank's own negligence. The Bank shall only be liable for the Customer's actual loss arising from such negligence, not to exceed the amount of the funds transferred which the Bank is unable to recover. In no event shall the Bank be liable for indirect or consequential damages. I have read the above information and request the wire transfer of funds as stated.

I authorize Mutual of Omaha Bank to debit the account listed above for the wire plus the applicable wire fee.

DATE: 5-26-17


Customer Signature

MICHAEL J. SPINDO
Printed Name

BANK USE ONLY

Employee Calling back:	Customer Identification:	Request made via:	Available funds:
Contact Name:	☐ ID	☐ In Person	Wire Fee:
Contact Phone:	☐ Wire Transfer Agreement	☐ Telephone	
Time:	☐ Signature Card	☐ Fax	
	☐ Known By:	☐ Email	
	☐ eBank Confirmation By:		

CREATED BY _____
EMPLOYEE # _____

VERIFIED BY _____
EMPLOYEE # _____

Revised 05/18/2015

1 **CODE: 3790**

2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701
6 Attorneys for Plaintiff

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

9 JAY KVAM,

10 Plaintiff,

Case No. CV18-00764

11 v.

Dept. No. 3

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

15 Defendants.

16 **REPLY TO OPPOSITION**

17 **TO MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

18 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
19 Offices, Ltd., Michael L. Matuska, and hereby replies to the Opposition of Brian Mineau and
20 Legion Investments, LLC (collectively, "Mineau") to the Motion for Leave to File Amended
21 Complaint ("Motion" and "Opposition," respectively).

22 Mineau's Opposition is difficult to characterize. He seems to contest two (2) factual issues
23 raised in Kvam's Motion rather than the [proposed] First Amended Complaint ("FAC") that was
24 provided as Ex. "3" to the Motion. Either way, the District Court does not resolve factual disputes
25 when ruling on a Motion for Leave, and Mineau's Opposition is therefore misplaced.

26 Leave to amend should be freely given when justice requires. *Cohen v. Mirage Resorts,*
27 *Inc.*, 119 Nev. 1, 23, 62 P.3d 720 (Nev. 2003). Here, the case is in its early stages, there have been
28 new developments, the request is not made in bad faith or with a dilatory motive, so the traditional
requirements for granting leave to amend are satisfied and leave to amend should be freely given.
Stephens v. S. Nev. Music Co., Inc., 89 Nev. 104, 105, 507 P.2d 138, 139 (Nev. 1973). The
District Court does not try the merits of the case in a Motion for Leave, as Mineau would ask this

1 Court to do.

2 The new cause of action for fraud in the FAC incorporates all the prior allegations in the
3 FAC and is based on Mineau's multiple, repeated and continuing breach of fiduciary, concealment
4 and fraud. For instance, the FAC alleges as follows:

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

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

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

11 51. MINEAU and LEGION misrepresented and concealed the true
12 facts in order to induce KVAM to execute the Agreement and invest in the
13 project.

14 52. KVAM relied to his detriment on the misrepresentations of
15 MINEAU and LEGION and would not have signed the Agreement and invested
16 in the project if he had known that MINEAU and LEGION lacked the intent and
ability to provide their funding and complete the project. KVAM only learned the
true facts after filing his lawsuit in this case.

17 53. The fraud and concealment perpetrated by MINEAU and LEGION
18 continued throughout their performance of the Agreement and after this lawsuit
19 was filed, and included concealment about the status of the project, problems with
the project, the listing and sale of the House, and the close of escrow and receipt
20 of funds.

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

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

25 In order to contest the allegation that Mineau failed to meet his funding requirement,
26 Mineau argues that:

27 Criterion NV LLC, a company affiliated with Mineau and Legion, contributed
\$20,000.00 to the project. See Motion at Ex. 2, p. 3. Mineau and Michael
28 Spinola are the principals of Criterion NV LLC and caused Criterion NV LLC to

1 contribute \$20,000.00 to the project on behalf of Legion. See Declaration of
2 Brian Mineau, attached as Exhibit "1." These funds were wired directly to the
3 contractor, TNT Complete Facility Care, Inc., as a construction draw for the
4 project. Id. *see also* Mutual of Omaha Outgoing Domestic Wire Transfer
5 Request, attached as Exhibit "2". (Opposition at 9-15).

6
7 Aside from the fact that these assertions do not affect the Motion for Leave to Amend,
8 Criterion is not a party to this lawsuit or the Terms of Agreement. This reference to Criterion is
9 strikingly similar to Mineau's failed attempt to invoke Atlas as a defense. Mineau's practice of
10 moving money around through different companies that are not parties to the Terms of Agreement
11 will likely be revealed as further evidence of fraudulent conduct.

12 Also, the terms "affiliated with" and "principals" are intentionally vague and misleading,
13 and in fact, have no application to limited liability companies. By statute, limited liability
14 companies identify members and managers, not "principals" or "affiliates." Brian Mineau's name
15 does not appear anywhere on his Exhibit "2." Criterion NV LLC is in default status with the
16 Nevada Secretary of State, and Michael Spinola is listed as the sole member/manager (Ex. "4").
17 Kvam has requested the records of any contributions, including bank statements, and also
18 requested any and all agreement between Mineau and Michael Spinola. To date, Mineau has
19 failed and refused to provide this information, and his refusal is the subject of pending meet and
20 confer efforts and a likely motion to compel. (See Meet and Confer Letter attached hereto as Ex.
21 "5" at Request Nos. 1, 18, 22 and 33). The only way Criterion can be "affiliated with" Brian
22 Mineau is if there is some type of agreement which has been withheld in violation of Nevada's
23 civil procedure discovery rules.

24 Moreover, any such affiliation does not diminish Kvam's allegations of fraud that Mineau
25 concealed his inability to provide his funding. In other words, Kvam expected to be a joint
26 venture with Mineau, not Criterion, and Mineau concealed these facts regarding who was paying
27 (if a payment was actually made). Mineau's supposed defense actually enhances Kvam's fraud
28 claims and adds new, previously unknown facts to his claim.

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WHEREFORE, Kvam respectfully requests leave to file his First Amended Complaint.

AFFIRMATION

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

Dated this 21 day of January, 2019.

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 21 day of January, 2019, I served a true and correct copy of the preceding document entitled **REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** as follows:

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

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

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

☐ **BY 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
4	Criterion NV LLC – NV Secretary of State
5	Meet and Confer Letter of January 15, 2019

EXHIBIT 4
CRITERION NV LLC – NV SECRETARY OF STATE
(Reply to Opposition to Motion for Leave
to File Amended Complaint)

EXHIBIT 4
CRITERION NV LLC – NV SECRETARY OF STATE
(Reply to Opposition to Motion for Leave
to File Amended Complaint)

CRITERION NV LLC

Business Entity Information			
Status:	Default	File Date:	10/01/2016
Type:	Domestic Limited-Liability Company	Entity Number:	E0431662016-1
Qualifying State:	NV	List of Officers Due:	10/31/2018
Managed By:	Managing Members	Expiration Date:	
Foreign Name:		On Admin Hold:	No
NV Business ID:	NV20161582266	Business License Exp:	10/31/2018

Additional Information	
	Central Index Key

Registered Agent Information			
Name:	MICHAEL SPINOLA	Address 1:	795 MANZANITA LANE
Address 2:		City:	RENO
State:	NV	Zip Code:	89509
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		
View all business entities under this registered agent ()			

Officers		☐ Include Inactive Officers	
Managing Member - MICHAEL J SPINOLA			
Address 1:	7560 MICHAELA DR	Address 2:	
City:	RENO	State:	NV
Zip Code:	89511	Country:	
Status:	Active	Email:	

Actions/Amendments
Click here to view 3 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

EXHIBIT 5
MEET AND CONFER LETTER of
JANUARY 15, 2019
(Reply to Opposition to Motion for Leave
to File Amended Complaint)

EXHIBIT 5
MEET AND CONFER LETTER of
JANUARY 15, 2019
(Reply to Opposition to Motion for Leave
to File Amended Complaint)



**MATUSKA
LAW OFFICES**

Michael L. Matuska, Attorney at Law

January 15, 2019

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 accept this letter regarding the incomplete responses of Brian Mineau and Legion Investments, LLC to the Plaintiff Jay Kvam's First Request for Production of Documents and Second Request for Production of Documents. I will call you to set a time to meet and confer if you have any questions about this letter or your clients' obligations under NRCP 34.

**PLAINTIFF JAY KVAM'S FIRST SET OF REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

REQUEST NO. 1:

Produce any and all agreements between any of the following persons: Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

Response:

Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence in this matter. This Request seeks irrelevant information concerning agreements to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents are being withheld on the basis of this objection.

Without waiving this objection, all responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody and control have been produced.

Discussion:

Mineau and Legion Investments only produced the February, 2017 Terms of Agreement. All other documents to which these parties are a party are within their care, custody and control and must be produced. These documents are relevant to establish the background of the parties, their relationship to each other, course of dealing, and the interpretation of the Terms of Agreement and expectations thereunder. In addition, the Terms of Agreement purports to make Kvam a member and he is entitled to the documents under NRS 86.241. Also, although Legion Investments purports to be managed by Brian Mineau, Michael Spinola has also signed documents as the member/manager of Legion Investments. It is unclear whether he draws his

775-350-7220 Phone
775-350-7222 Fax
mlm@matuskalawoffices.com

Licensed in Nevada and California

2310 South Carson Street, #6
Carson City, NV 89701
www.matuskalawoffices.com



authority from the February, 2017 Terms of Agreement or some other agreement that has not been produced.

REQUEST NO. 6:

Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

Legion Investments' tax returns are not confidential, and they need to be made available to the Plaintiff both for the Plaintiff's case-in-chief and for the claim of punitive damages. I had this exact issue in *Cain v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018). In that case, the Nevada Supreme Court relied on *Hetter v. District Court*, 110 Nev. 513, 874 P.2d 762, 766 (1994) and ruled that it was an abuse of discretion for the District Court to deny a motion to compel the discovery of tax returns, when the Plaintiffs had presented sufficient evidence of fraud, civil conspiracy and conversion, even if the evidence did not amount to clear and convincing evidence. Defendants also have a fiduciary duty to account to Kvam and provide him access to the books and records pursuant to NRS 87.4335. In addition, the finances, governance and operation of Legion Investments is a primary issue in this case, especially as it relates to an accounting for the project at 7747 May Street, Chicago, Illinois, and Defendants' failure and refusal to provide an accounting to date. It is necessary to review the returns for these reasons, and to see how and whether Legion Investments reported this investment, including any expenses, loans and proceeds. Discovery of the tax returns is also allowed for purposes of the claim to pierce the company's limited liability shield.

REQUEST NO. 7:

Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Legion Investments should have been providing Kvam with a Schedule K-1 or other tax reporting information, and Kvam needs this information for his own tax reporting requirements.



REQUEST NO. 8:

Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's and Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Mineau's Schedule E would show whether he declared the income and loss for the project at 7747 May Street, Chicago, Illinois on his own tax returns.

REQUEST NO. 9:

Produce all meeting minutes for Legion Investments, LLC.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

Legion Investment's meeting minutes are not confidential. Kvam needs the meeting minutes to see whether and if Legion Investments approved the February, 2017 Terms of Agreement, the project at 7747 May Street, Chicago, Illinois, and any other resolutions relevant to the project. The meeting minutes might also contain information which would relate to interpretation and construction of the Terms of Agreement, which is disputed, as well as the respective roles of the different parties in regard to the investment and the project at 7747 May Street, Chicago, Illinois.

REQUEST NO. 10:

Produce all resolutions of the members and/or managers of Legion Investments, LLC.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing documents are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 9, *supra*.



REQUEST NO. 11:

Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Legion Investment's balance sheets are not confidential and will show whether and how Legion Investments documented and reported its acquisition of the house at 7747 May Street, Chicago, Illinois, as well as the loan from Kvam.

REQUEST NO. 12:

Produce all income and expense statements, and/or profit and loss statements for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Legion Investment's income and expense statements are not confidential and will show whether and how Legion Investments documented and reported the loan from Kvam and expenses related to the project at 7747 May Street, Chicago, Illinois. Income and expense statements relate to the accounting, which is a primary issue in this case.

REQUEST NO. 13:

Produce all bank statements of Legion Investments, LLC accounts, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.



Discussion:

See Request No. 6, *supra*. In addition, the bank statements are necessary to verify the disposition of Kvam's loan proceeds, and other sources of income from the project at 7747 May Street, Chicago, Illinois, and expenses related to that project. The bank statements are also relevant to the issue of whether Kvam's loan proceeds and project funds were co-mingled with Legion Investments' other funds. The bank statements are also necessary to verify whether the wire transfer from Criterion Investments was received. LEG 121.

REQUEST NO. 14:

Produce all escrow and title records for the real property located at 7747 S. May Street, Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing statements.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

Discussion:

All of the requested documents are within Brian Mineau's control and should have been produced. Unfortunately, the only escrow documents produced to date were the Purchase and Sale Contract and Alta Settlement Statement for the November 16, 2018 escrow (LEG 131-138). Defendants did not produce any documents regarding the February, 2017 escrow.

REQUEST NO. 15:

Produce all contracts for work performed or to be performed at the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All contracts are within Defendant's possession, custody or control, but only one contract was produced at LEG 2-15.

REQUEST NO. 16:

Produce all invoices for materials purchased for the Property, or work performed or to be performed at the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



Discussion:

All invoices are within Defendant's possession, custody or control, but none were provided. To date, Defendants have not provided an accounting, and all invoices are therefore relevant to the income and expense accounting, particularly the invoices from the contractor(s) who worked on the project.

REQUEST NO. 17:

Produce copies of checks written to pay, or other evidence of payment for, invoices for materials purchased for the Property, or work performed or to be performed at the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All checks are within Defendant's possession, custody or control, but none were provided.

REQUEST NO. 18:

Produce any all documents, including copies of checks and bank statements, showing payments from any investor for the purchase or improvement of the Property, including but not limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All responsive documents are within Defendant's possession, custody or control, but none were provided.

REQUEST NO. 19:

Produce any and all reports provided by, or to, Brian Mineau or Legion Investments, LLC, regarding the status of the Property, materials to be used on the Property, or work performed or to be performed on the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

The reports would have been generated by Brian Mineau and are within Defendant's possession, custody or control, but none were provided.



REQUEST NO. 20:

Produce copies of all business or professional licenses ever held by Brian Mineau.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's business or professional licenses are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

Brian Mineau's business or professional licenses are not confidential and are relevant for background information and to determine his qualifications to manage a real estate project as well as to serve as a loan broker and duties owed to his lender and joint venture partners.

REQUEST NO. 21:

Produce copies of all utility bills for the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

Discussion:

All utility bills are in the care, custody or control of Brian Mineau and Legion Investments, but only a few, scattered bills have been provided. Although the January 9, 2019 Order dismissed the Defendants' counterclaims, including the counterclaims based on the false allegation that Kvam turned off the power and caused the pipes to burst, Defendants still have not provided an accounting, and all bills are therefore relevant to the income and expense accounting.

REQUEST NO. 22:

Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the Property, or any investment in or improvement to the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

Michael Spinola is a party to the February, 2017 Terms of Agreement. The documents responsive to this request are within Defendant's possession, custody or control, but none were provided. Other than the Terms of Agreement, the only document produced to date relevant to Michael Spinola is a redacted wire transfer signed by Michael Spinola on behalf of Criterion Investments LEG 121. There is no other correspondence with Michael Spinola. Defendants also failed to provide a bank statement or other document showing that funds were actually wired and



Austin K. Sweet, Esq.
January 15, 2019
Page 8 of 9

received. (See Request No. 18.)

REQUEST NO. 24:

Produce any drafts of the "Terms of Agreement" document that has been produced as "KVAM 403," and any correspondence referring to that document.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

Drafts of the Terms of Agreement are within Defendants' possession, custody and control, but have not been provided.

REQUEST NO. 33:

Produce any and all documents requesting a capital call or payment from any of the Investors for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spinola.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All documents relevant to this request are within Defendants' possession, custody and control, but have not been provided.

**PLAINTIFF JAY KVAM'S SECOND SET OF REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Jay Kvam's Second Request for Production of Documents contained a single request as follows:

REQUEST NO. 34:

Produce any and all documents regarding the escrow and sale of the Property, including but not limited to listing information, purchase and sale agreements, title reports, escrow instructions, escrow closing statements, and checks or other documents showing the distribution of the proceeds of sale.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



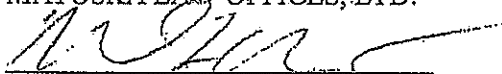
Austin K. Sweet, Esq.
January 15, 2019
Page 9 of 9

Discussion:

Unfortunately, this Response does not seem to be accurate. LEG 0121-0130 relate to Atlas Southside Investors and do not relate to the Property at 7747 S. May Street, Chicago, Illinois at all. The other documents include the Purchase and Sale Contract and the Settlement Statement. The Settlement Statement reports "\$24,473.77 Due to Seller." Please identify by date and Bates No. when and where the other requested documents have been produced, including: listing information, title reports, escrow instructions, checks or other documents showing the disposition of the proceeds of sale. The proceeds of sale obviously include "24,473.77 Due to Seller." Defendants need to provide the account statement showing the deposit of the funds. Defendants also need to provide the photos that went along with the listing agreement. To date, the only photos provided by the Defendants were six (6) grainy photos of the interior produced as LEG 0037-0042.

The requested documents should be received in this office no later than January 31, 2019. I will have to move forward with a motion to compel if they are not required by that date. You may be aware that Mr. Kvam will be entitled to recover his attorney's fees incurred in connection with the letter and the motion to compel.

Sincerely,

By: MATUSKA LAW OFFICES, LTD.

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

cc: Client

1 **CODE: 3790**

2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701
6 Attorneys for Plaintiff

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

9 JAY KVAM,

10 Plaintiff,

Case No. CV18-00764

11 v.

Dept. No. 3

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

15 Defendants.

16 **REPLY TO OPPOSITION**

17 **TO MOTION FOR LEAVE TO FILE AMENDED COMPLAINT**

18 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
19 Offices, Ltd., Michael L. Matuska, and hereby replies to the Opposition of Brian Mineau and
20 Legion Investments, LLC (collectively, "Mineau") to the Motion for Leave to File Amended
21 Complaint ("Motion" and "Opposition," respectively).

22 Mineau's Opposition is difficult to characterize. He seems to contest two (2) factual issues
23 raised in Kvam's Motion rather than the [proposed] First Amended Complaint ("FAC") that was
24 provided as Ex. "3" to the Motion. Either way, the District Court does not resolve factual disputes
25 when ruling on a Motion for Leave, and Mineau's Opposition is therefore misplaced.

26 Leave to amend should be freely given when justice requires. *Cohen v. Mirage Resorts,*
27 *Inc.*, 119 Nev. 1, 23, 62 P.3d 720 (Nev. 2003). Here, the case is in its early stages, there have been
28 new developments, the request is not made in bad faith or with a dilatory motive, so the traditional
requirements for granting leave to amend are satisfied and leave to amend should be freely given.
Stephens v. S. Nev. Music Co., Inc., 89 Nev. 104, 105, 507 P.2d 138, 139 (Nev. 1973). The
District Court does not try the merits of the case in a Motion for Leave, as Mineau would ask this

1 Court to do.

2 The new cause of action for fraud in the FAC incorporates all the prior allegations in the
3 FAC and is based on Mineau's multiple, repeated and continuing breach of fiduciary, concealment
4 and fraud. For instance, the FAC alleges as follows:

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

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

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

11 51. MINEAU and LEGION misrepresented and concealed the true
12 facts in order to induce KVAM to execute the Agreement and invest in the
13 project.

14 52. KVAM relied to his detriment on the misrepresentations of
15 MINEAU and LEGION and would not have signed the Agreement and invested
16 in the project if he had known that MINEAU and LEGION lacked the intent and
ability to provide their funding and complete the project. KVAM only learned the
true facts after filing his lawsuit in this case.

17 53. The fraud and concealment perpetrated by MINEAU and LEGION
18 continued throughout their performance of the Agreement and after this lawsuit
19 was filed, and included concealment about the status of the project, problems with
the project, the listing and sale of the House, and the close of escrow and receipt
20 of funds.

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

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

25 In order to contest the allegation that Mineau failed to meet his funding requirement,
26 Mineau argues that:

27 Criterion NV LLC, a company affiliated with Mineau and Legion, contributed
\$20,000.00 to the project. See Motion at Ex. 2, p. 3. Mineau and Michael
28 Spinola are the principals of Criterion NV LLC and caused Criterion NV LLC to

1 contribute \$20,000.00 to the project on behalf of Legion. See Declaration of
2 Brian Mineau, attached as Exhibit "1." These funds were wired directly to the
3 contractor, TNT Complete Facility Care, Inc., as a construction draw for the
4 project. Id. *see also* Mutual of Omaha Outgoing Domestic Wire Transfer
5 Request, attached as Exhibit "2". (Opposition at 9-15).

6
7 Aside from the fact that these assertions do not affect the Motion for Leave to Amend,
8 Criterion is not a party to this lawsuit or the Terms of Agreement. This reference to Criterion is
9 strikingly similar to Mineau's failed attempt to invoke Atlas as a defense. Mineau's practice of
10 moving money around through different companies that are not parties to the Terms of Agreement
11 will likely be revealed as further evidence of fraudulent conduct.

12 Also, the terms "affiliated with" and "principals" are intentionally vague and misleading,
13 and in fact, have no application to limited liability companies. By statute, limited liability
14 companies identify members and managers, not "principals" or "affiliates." Brian Mineau's name
15 does not appear anywhere on his Exhibit "2." Criterion NV LLC is in default status with the
16 Nevada Secretary of State, and Michael Spinola is listed as the sole member/manager (Ex. "4").
17 Kvam has requested the records of any contributions, including bank statements, and also
18 requested any and all agreement between Mineau and Michael Spinola. To date, Mineau has
19 failed and refused to provide this information, and his refusal is the subject of pending meet and
20 confer efforts and a likely motion to compel. (See Meet and Confer Letter attached hereto as Ex.
21 "5" at Request Nos. 1, 18, 22 and 33). The only way Criterion can be "affiliated with" Brian
22 Mineau is if there is some type of agreement which has been withheld in violation of Nevada's
23 civil procedure discovery rules.

24 Moreover, any such affiliation does not diminish Kvam's allegations of fraud that Mineau
25 concealed his inability to provide his funding. In other words, Kvam expected to be a joint
26 venture with Mineau, not Criterion, and Mineau concealed these facts regarding who was paying
27 (if a payment was actually made). Mineau's supposed defense actually enhances Kvam's fraud
28 claims and adds new, previously unknown facts to his claim.

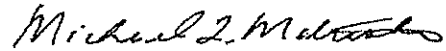
1 WHEREFORE, Kvam respectfully requests leave to file his First Amended Complaint.

2 **AFFIRMATION**

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

5 Dated this 21 day of January, 2019.

6 MATUSKA LAW OFFICES, LTD.

7 

8 By:

9 MICHAEL L. MATUSKA, SBN 5711
10 Attorneys for Plaintiff, JAY KVAM,
11 individually and derivatively on behalf of
12 the unincorporated joint venture identified as
13 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 21 day of January, 2019, I served a true and correct copy of the preceding document entitled **REPLY TO OPPOSITION TO MOTION FOR LEAVE TO FILE AMENDED COMPLAINT** as follows:

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

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

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

☐ **BY 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
4	Criterion NV LLC – NV Secretary of State
5	Meet and Confer Letter of January 15, 2019

EXHIBIT 4
CRITERION NV LLC – NV SECRETARY OF STATE
(Reply to Opposition to Motion for Leave
to File Amended Complaint)

EXHIBIT 4
CRITERION NV LLC – NV SECRETARY OF STATE
(Reply to Opposition to Motion for Leave
to File Amended Complaint)

CRITERION NV LLC

Business Entity Information			
Status:	Default	File Date:	10/01/2016
Type:	Domestic Limited-Liability Company	Entity Number:	E0431662016-1
Qualifying State:	NV	List of Officers Due:	10/31/2018
Managed By:	Managing Members	Expiration Date:	
Foreign Name:		On Admin Hold:	No
NV Business ID:	NV20161582266	Business License Exp:	10/31/2018

Additional Information	
Central Index Key	

Registered Agent Information			
Name:	MICHAEL SPINOLA	Address 1:	795 MANZANITA LANE
Address 2:		City:	RENO
State:	NV	Zip Code:	89509
Phone:		Fax:	
Mailing Address 1:		Mailing Address 2:	
Mailing City:		Mailing State:	
Mailing Zip Code:			
Agent Type:	Noncommercial Registered Agent		

[View all business entities under this registered agent \(\)](#)

Officers		☐ Include Inactive Officers	
Managing Member - MICHAEL J SPINOLA			
Address 1:	7560 MICHAELA DR	Address 2:	
City:	RENO	State:	NV
Zip Code:	89511	Country:	
Status:	Active	Email:	

Actions\Amendments
Click here to view 3 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

EXHIBIT 5
MEET AND CONFER LETTER of
JANUARY 15, 2019
(Reply to Opposition to Motion for Leave
to File Amended Complaint)

EXHIBIT 5
MEET AND CONFER LETTER of
JANUARY 15, 2019
(Reply to Opposition to Motion for Leave
to File Amended Complaint)



**MATUSKA
LAW OFFICES**

Michael L. Matuska, Attorney at Law

January 15, 2019

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 accept this letter regarding the incomplete responses of Brian Mineau and Legion Investments, LLC to the Plaintiff Jay Kvam's First Request for Production of Documents and Second Request for Production of Documents. I will call you to set a time to meet and confer if you have any questions about this letter or your clients' obligations under NRCPC 34.

**PLAINTIFF JAY KVAM'S FIRST SET OF REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

REQUEST NO. 1:

Produce any and all agreements between any of the following persons: Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

Response:

Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence in this matter. This Request seeks irrelevant information concerning agreements to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents are being withheld on the basis of this objection.

Without waiving this objection, all responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody and control have been produced.

Discussion:

Mineau and Legion Investments only produced the February, 2017 Terms of Agreement. All other documents to which these parties are a party are within their care, custody and control and must be produced. These documents are relevant to establish the background of the parties, their relationship to each other, course of dealing, and the interpretation of the Terms of Agreement and expectations thereunder. In addition, the Terms of Agreement purports to make Kvam a member and he is entitled to the documents under NRS 86.241. Also, although Legion Investments purports to be managed by Brian Mineau, Michael Spinola has also signed documents as the member/manager of Legion Investments. It is unclear whether he draws his



authority from the February, 2017 Terms of Agreement or some other agreement that has not been produced.

REQUEST NO. 6:

Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

Legion Investments' tax returns are not confidential, and they need to be made available to the Plaintiff both for the Plaintiff's case-in-chief and for the claim of punitive damages. I had this exact issue in *Cain v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018). In that case, the Nevada Supreme Court relied on *Hetter v. District Court*, 110 Nev. 513, 874 P.2d 762, 766 (1994) and ruled that it was an abuse of discretion for the District Court to deny a motion to compel the discovery of tax returns, when the Plaintiffs had presented sufficient evidence of fraud, civil conspiracy and conversion, even if the evidence did not amount to clear and convincing evidence. Defendants also have a fiduciary duty to account to Kvam and provide him access to the books and records pursuant to NRS 87.4335. In addition, the finances, governance and operation of Legion Investments is a primary issue in this case, especially as it relates to an accounting for the project at 7747 May Street, Chicago, Illinois, and Defendants' failure and refusal to provide an accounting to date. It is necessary to review the returns for these reasons, and to see how and whether Legion Investments reported this investment, including any expenses, loans and proceeds. Discovery of the tax returns is also allowed for purposes of the claim to pierce the company's limited liability shield.

REQUEST NO. 7:

Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Legion Investments should have been providing Kvam with a Schedule K-1 or other tax reporting information, and Kvam needs this information for his own tax reporting requirements.



REQUEST NO. 8:

Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's and Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Mineau's Schedule E would show whether he declared the income and loss for the project at 7747 May Street, Chicago, Illinois on his own tax returns.

REQUEST NO. 9:

Produce all meeting minutes for Legion Investments, LLC.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

Legion Investment's meeting minutes are not confidential. Kvam needs the meeting minutes to see whether and if Legion Investments approved the February, 2017 Terms of Agreement, the project at 7747 May Street, Chicago, Illinois, and any other resolutions relevant to the project. The meeting minutes might also contain information which would relate to interpretation and construction of the Terms of Agreement, which is disputed, as well as the respective roles of the different parties in regard to the investment and the project at 7747 May Street, Chicago, Illinois.

REQUEST NO. 10:

Produce all resolutions of the members and/or managers of Legion Investments, LLC.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing documents are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 9, *supra*.



REQUEST NO. 11:

Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Legion Investment's balance sheets are not confidential and will show whether and how Legion Investments documented and reported its acquisition of the house at 7747 May Street, Chicago, Illinois, as well as the loan from Kvam.

REQUEST NO. 12:

Produce all income and expense statements, and/or profit and loss statements for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Legion Investment's income and expense statements are not confidential and will show whether and how Legion Investments documented and reported the loan from Kvam and expenses related to the project at 7747 May Street, Chicago, Illinois. Income and expense statements relate to the accounting, which is a primary issue in this case.

REQUEST NO. 13:

Produce all bank statements of Legion Investments, LLC accounts, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.



Discussion:

See Request No. 6, *supra*. In addition, the bank statements are necessary to verify the disposition of Kvam's loan proceeds, and other sources of income from the project at 7747 May Street, Chicago, Illinois, and expenses related to that project. The bank statements are also relevant to the issue of whether Kvam's loan proceeds and project funds were co-mingled with Legion Investments' other funds. The bank statements are also necessary to verify whether the wire transfer from Criterion Investments was received. LEG 121.

REQUEST NO. 14:

Produce all escrow and title records for the real property located at 7747 S. May Street, Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing statements.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

Discussion:

All of the requested documents are within Brian Mineau's control and should have been produced. Unfortunately, the only escrow documents produced to date were the Purchase and Sale Contract and Alta Settlement Statement for the November 16, 2018 escrow (LEG 131-138). Defendants did not produce any documents regarding the February, 2017 escrow.

REQUEST NO. 15:

Produce all contracts for work performed or to be performed at the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All contracts are within Defendant's possession, custody or control, but only one contract was produced at LEG 2-15.

REQUEST NO. 16:

Produce all invoices for materials purchased for the Property, or work performed or to be performed at the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



Discussion:

All invoices are within Defendant's possession, custody or control, but none were provided. To date, Defendants have not provided an accounting, and all invoices are therefore relevant to the income and expense accounting, particularly the invoices from the contractor(s) who worked on the project.

REQUEST NO. 17:

Produce copies of checks written to pay, or other evidence of payment for, invoices for materials purchased for the Property, or work performed or to be performed at the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All checks are within Defendant's possession, custody or control, but none were provided.

REQUEST NO. 18:

Produce any all documents, including copies of checks and bank statements, showing payments from any investor for the purchase or improvement of the Property, including but not limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All responsive documents are within Defendant's possession, custody or control, but none were provided.

REQUEST NO. 19:

Produce any and all reports provided by, or to, Brian Mineau or Legion Investments, LLC, regarding the status of the Property, materials to be used on the Property, or work performed or to be performed on the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

The reports would have been generated by Brian Mineau and are within Defendant's possession, custody or control, but none were provided.



REQUEST NO. 20:

Produce copies of all business or professional licenses ever held by Brian Mineau.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's business or professional licenses are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

Brian Mineau's business or professional licenses are not confidential and are relevant for background information and to determine his qualifications to manage a real estate project as well as to serve as a loan broker and duties owed to his lender and joint venture partners.

REQUEST NO. 21:

Produce copies of all utility bills for the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession custody, or control have been produced.

Discussion:

All utility bills are in the care, custody or control of Brian Mineau and Legion Investments, but only a few, scattered bills have been provided. Although the January 9, 2019 Order dismissed the Defendants' counterclaims, including the counterclaims based on the false allegation that Kvam turned off the power and caused the pipes to burst, Defendants still have not provided an accounting, and all bills are therefore relevant to the income and expense accounting.

REQUEST NO. 22:

Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the Property, or any investment in or improvement to the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

Michael Spinola is a party to the February, 2017 Terms of Agreement. The documents responsive to this request are within Defendant's possession, custody or control, but none were provided. Other than the Terms of Agreement, the only document produced to date relevant to Michael Spinola is a redacted wire transfer signed by Michael Spinola on behalf of Criterion Investments LEG 121. There is no other correspondence with Michael Spinola. Defendants also failed to provide a bank statement or other document showing that funds were actually wired and



received. (See Request No. 18.)

REQUEST NO. 24:

Produce any drafts of the "Terms of Agreement" document that has been produced as "KVAM 403," and any correspondence referring to that document.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

Drafts of the Terms of Agreement are within Defendants' possession, custody and control, but have not been provided.

REQUEST NO. 33:

Produce any and all documents requesting a capital call or payment from any of the Investors for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spínola.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All documents relevant to this request are within Defendants' possession, custody and control, but have not been provided.

**PLAINTIFF JAY KVAM'S SECOND SET OF REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Jay Kvam's Second Request for Production of Documents contained a single request as follows:

REQUEST NO. 34:

Produce any and all documents regarding the escrow and sale of the Property, including but not limited to listing information, purchase and sale agreements, title reports, escrow instructions, escrow closing statements, and checks or other documents showing the distribution of the proceeds of sale.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



Austin K. Sweet, Esq.
January 15, 2019
Page 9 of 9

Discussion:

Unfortunately, this Response does not seem to be accurate. LEG 0121-0130 relate to Atlas Southside Investors and do not relate to the Property at 7747 S. May Street, Chicago, Illinois at all. The other documents include the Purchase and Sale Contract and the Settlement Statement. The Settlement Statement reports "\$24,473.77 Due to Seller." Please identify by date and Bates No. when and where the other requested documents have been produced, including: listing information, title reports, escrow instructions, checks or other documents showing the disposition of the proceeds of sale. The proceeds of sale obviously include "24,473.77 Due to Seller." Defendants need to provide the account statement showing the deposit of the funds. Defendants also need to provide the photos that went along with the listing agreement. To date, the only photos provided by the Defendants were six (6) grainy photos of the interior produced as LEG 0037-0042.

The requested documents should be received in this office no later than January 31, 2019. I will have to move forward with a motion to compel if they are not required by that date. You may be aware that Mr. Kvam will be entitled to recover his attorney's fees incurred in connection with the letter and the motion to compel.

Sincerely,

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

cc: Client

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

JAY KVAM,

Plaintiff,

Case No. CV18-00764

Dept. No. 3

vs.

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

Defendants.

ORDER

Currently before the Court is Plaintiff JAY KVAM'S ("Plaintiff") MOTION FOR LEAVE TO FILE AMENDED COMPLAINT ("Motion"), filed December 24, 2018. Defendant BRIAN MINEAU ("Defendant") filed an OPPOSITION on January 14, 2019. Plaintiff filed a REPLY to the Opposition on January 22, 2019, and the matter was submitted for the Court's consideration the same day.

NRCP 15(a) allows parties to amend pleadings by leave of court or by written consent of the adverse party. Because Defendant opposes the Motion, Plaintiff here requires leave of Court. Leave to amend shall be freely given where no evidence is of undue delay, bad faith, or dilatory motive is presented to the Court. *See, e.g., Stephens v. Southern Nev. Music Co.*, 89 Nev. 104, 507 P.2d 138

1 (1973). Of course, granting or denying the motion is within the discretion of the Court, but the
2 Court must give justification for its denial or it is an abuse of discretion. *Adamson v. Bowker*, 85
3 Nev. 115, 121, 450 P.2d 796, 800 (1969).

4 The Court finds no undue delay, bad faith, or dilatory motive on Plaintiff's part. Defendant
5 contends that the amendments Plaintiff seeks to make are premised on a false allegation that
6 Defendant did not provide funding for the real-estate venture at the center of this dispute. Defendant
7 offers as proof a wire transfer request from an entity called Criterion NV LLC. The Court is not
8 informed as to this entity's relation to the above-entitled matter. Furthermore, the transfer request is
9 signed by a Michael J. Spinola, who is apparently the sole registered agent and managing member
10 of the LLC. The document does not identify Defendant as having any involvement in the transfer.
11 In any event, the Court is not as yet sitting as fact-finder in this matter, and absent a showing of
12 undue delay, bad faith, or dilatory motive the Court cannot deny Plaintiff leave to amend.
13
14

15 Accordingly, and good cause appearing,

16 IT IS HEREBY ORDERED that Plaintiff's Motion for Leave to File Amended Complaint is
17 GRANTED.

18 Dated this 29th day of January, 2019.

19
20
21 
22 JEROME M. POLAHA
23 DISTRICT JUDGE
24
25
26
27
28

CERTIFICATE OF MAILING

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of
the STATE OF NEVADA, COUNTY OF WASHOE; that on the 29 day of January,
2018 I did the following:

☒ Electronically filed with the Clerk of the Court, using the eFlex system which
constitutes effective service for all eFiled documents pursuant to the eFile User
Agreement:

MARK HARLAN GUNDERSON, ESQ. for BRIAN
MINEAU, LEGION INVESTMENTS, LLC

AUSTIN K. SWEET, ESQ. for BRIAN MINEAU,
LEGION INVESTMENTS, LLC

MICHAEL L. MATUSKA, ESQ. for JAY KVAM

☐ Transmitted document to the Second Judicial District Court mailing system in a
sealed envelope for postage and mailing by Washoe County using the United States
Postal Service in Reno, Nevada:


Jerrine Ulleseit

1 **CODE: 1090**

2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701
6 Attorneys for Plaintiff

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

9 JAY KVAM,

Plaintiff,

10 v.

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

13 Defendants.

Case No. CV18-00764

Dept. No. 3

**FIRST AMENDED VERIFIED
COMPLAINT**

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

16 **I.**
17 **PARTIES**

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

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

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

25 4. 7747 S. May Street, Chicago, Illinois, is an unincorporated joint venture formed
26 between KVAM, MINEAU, LEGION, and Michael Spinola, and is hereafter referred to "7747."

27 ///

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

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

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

21 8. On or about February 2, 2017, KVAM entered an agreement with MINEAU and
22 LEGION to participate in a joint venture, along with Michael Spinola (the "Agreement"). The
23 purpose of the joint venture was to purchase, restore, and resell a house located at 7747 S. May
24 Street, Chicago, Illinois (the "House") for profit. The general terms of the Agreement were
25 memorialized in writing and include the following:

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

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

3 c. MINEAU would manage the project;

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

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

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

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

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

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

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

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

17 e. \$9,000 on May 18, 2014 for the third draw.

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

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

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

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

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

1 16. The renovation stalled, MINEAU and LEGION failed and refused to provide a
2 completion date or budget, and the House was eventually sold for a loss on November 16, 2018.
3 MINEAU and LEGION did not inform KVAM of the sale.

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

8 18. KVAM is now disassociated from 7747.

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

11
12 **III.**
13 **FIRST CAUSE OF ACTION**
 (Declaration of Joint Venture)

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

16 21. There is an actual, justiciable, present controversy between KVAM, MINEAU, and
17 LEGION on the question of whether the Agreement identified in Par. 7 constitutes a joint venture
18 agreement, an agreement for MINEAU to transfer his membership interest in LEGION, or some
19 other type of agreement.

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

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

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

27 //
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. FIFTH CAUSE OF ACTION (Accounting)

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

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

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

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

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

1 fully set forth herein.

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

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

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

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

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

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

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

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

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

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

51. MINEAU and LEGION misrepresented and concealed the true facts in order to induce KVAM to execute the Agreement and invest in the project.

52. KVAM relied to his detriment on the misrepresentations of MINEAU and LEGION and would not have signed the Agreement and invested in the project if he had known that MINEAU and LEGION lacked the intent and ability to provide their funding and complete the project. KVAM only learned the true facts after filing his lawsuit in this case.

53. The fraud and concealment perpetrated by MINEAU and LEGION continued throughout their performance of the Agreement and after this lawsuit was filed, and included concealment about the status of the project, problems with the project, the listing and sale of the House, and the close of escrow and receipt of funds.

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

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

XI. NINTH CAUSE OF ACTION (Derivative Claim)

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

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

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

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

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

1 agreement to initiate this action.

2 WHEREFORE, Plaintiff prays for relief as follows:

- 3 1. For an order declaring the rights and obligations of KVAM, MINEAU, LEGION,
4 and 7747;
- 5 2. For Court supervised winding up and an order appointing a receiver to secure any
6 remaining assets and to complete any remaining steps to winding up 7747;
- 7 3. For a temporary and permanent injunction enjoining MINEAU and LEGION from
8 any further involvement with 7747 and its assets;
- 9 4. For an order declaring that MINEAU and LEGION are liable for any debts of 7747
10 existing prior to or after the disassociation of KVAM and that they are further obligated to
11 indemnify KVAM against any liabilities;
- 12 5. For an equitable accounting;
- 13 6. For compensatory damages in an amount to be proven at trial in excess of \$15,000;
- 14 7. For punitive and exemplary damages in excess of \$100,000;
- 15 8. For an award of costs and attorney fees incurred in prosecuting this action;
- 16 9. For such other and further relief as the Court deems just in the premises.

17 **AFFIRMATION**

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

20 Dated this 31th day of January, 2019.

21
22 MATUSKA LAW OFFICES, LTD.

23 *Michael L. Matuska*

24 By:

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

VERIFICATION

STATE OF NEVADA)
COUNTY OF Washoe) ss.

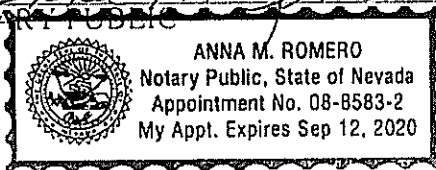
JAY KVAM, being first duly sworn, deposes and says:

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

Jay Kvam
JAY KVAM

SUBSCRIBED AND SWORN to before me,
this 30th day of January, 2019,
by JAY KVAM.

Anna M. Romero
NOTARY PUBLIC



CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 31st day of January, 2019, I served a true and correct copy of the preceding document entitled **FIRST AMENDED VERIFIED COMPLAINT** as follows:

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

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

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

☐ **BY EMAIL:** (as listed above)

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

☐ **BY FACSIMILE:**

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

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

/s/ SUZETTE TURLEY
SUZETTE TURLEY

1 **CODE 1140**

2 **GUNDERSON LAW FIRM**

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

11
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF WASHOE**

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 3

16 vs.

17 BRIAN MINEAU; LEGION INVESTMENTS,

18 LLC; 7747 S. May Street, an Unincorporated

19 Joint Venture; and DOES I-X, inclusive,

20 Defendants / Counterclaimants.

21 **ANSWER TO FIRST AMENDED VERIFIED COMPLAINT**

22 BRIAN MINEAU ("Mineau") and LEGION INVESTMENTS, LLC ("Legion"), by and
23 through their counsel of record, Austin K. Sweet, Esq., and Mark H. Gunderson, Esq., answer the
24 First Amended Verified Complaint ("Complaint") filed by JAY KVAM ("Kvam") as follows:

25 1. Mineau and Legion admit the allegations set forth in Paragraphs 1 through 3 of the
26 Complaint.

27 2. Mineau and Legion deny the allegations set forth in Paragraphs 4 through 7 of the
28 Complaint.

3. Mineau and Legion admit that, in February 2017, Kvam and Legion entered into an
agreement (the "Agreement") involving a property located at 7747 S. May Street, Chicago, Illinois
(the "House"). The Agreement speaks for itself. Mineau and Legion deny all other allegations set
forth in Paragraph 8 of the Complaint, including all subparts.

- 1 4. Mineau and Legion deny the allegations set forth in Paragraph 9 of the Complaint.
- 2 5. Mineau and Legion admit that Kvam funded \$93,781.31 pursuant to the Agreement.
- 3 Mineau and Legion deny all other allegations set forth in Paragraph 10 of the Complaint, including
- 4 all subparts.
- 5 6. Mineau and Legion deny the allegations set forth in Paragraph 11 of the Complaint.
- 6 7. Mineau and Legion admit that Kvam has not received any annual interest payments
- 7 pursuant to the Agreement. Mineau and Legion deny all other allegations set forth in Paragraph 12
- 8 of the Complaint.
- 9 8. Mineau and Legion admit that the House is owned by Legion and that Mineau is
- 10 Legion's sole member. Mineau and Legion deny all other allegations set forth in Paragraph 13 of the
- 11 Complaint.
- 12 9. Mineau and Legion deny the allegations set forth in Paragraphs 14 through 29 of the
- 13 Complaint.
- 14 10. Mineau and Legion admit that Kvam has demanded repayment of the monies funded
- 15 pursuant to the Agreement and that Legion has failed and refused to make such payments at this time.
- 16 Mineau and Legion deny all other allegations set forth in Paragraph 30 of the Complaint.
- 17 11. Mineau and Legion deny the allegations set forth in Paragraphs 31 through 60 of the
- 18 Complaint.
- 19 12. To the extent any allegations set forth in the Complaint are not specifically addressed
- 20 in this Answer, such allegations are denied.

21 **AFFIRMATIVE DEFENSES**

- 22 1. Kvam has failed to state a claim upon which relief can be granted.
- 23 2. To the extent any joint venture exists, this Court lacks subject matter jurisdiction to
- 24 resolve any dispute involving such a joint venture.
- 25 3. To the extent any joint venture exists, this Court lacks personal jurisdiction over such
- 26 a joint venture.
- 27 4. The Agreement is vague and ambiguous.
- 28 5. The Agreement lacks essential terms and is therefore not an enforceable contract.

- 1 6. Kvam's claims are barred by the parol evidence rule.
- 2 7. Kvam's claims are barred by the statute of frauds.
- 3 8. Mineau's and/or Legion's performance under the Contract was excused because
- 4 Kvam's actions made Mineau's and/or Legion's performance impossible.
- 5 9. Kvam has failed to exhaust his statutory remedies.
- 6 10. Kvam's claims are barred by the doctrine of waiver.
- 7 11. Kvam's claims are barred by the doctrine of release.
- 8 12. Kvam's claims are barred by the doctrine of estoppel.
- 9 13. Kvam's claims are barred by the doctrine of laches.
- 10 14. Kvam's claims are barred by the doctrine of unclean hands.
- 11 15. Kvam has suffered no damages for which Mineau or Legion can be held liable.
- 12 16. Kvam's claims are mitigated by assumption of the risk.
- 13 17. Kvam has failed to join all necessary parties to this action.
- 14 18. Kvam's damages, if any, were caused by the negligence of others.
- 15 19. Kvam's damages, if any, were caused by his own actions.
- 16 20. Kvam's damages, if any, were caused by the acts or omissions of others.
- 17 21. Kvam failed to mitigate his damages.
- 18 22. Kvam's damages, if any, resulted from an independent, intervening cause over which
- 19 Mineau and Legion had no control.
- 20 23. Mineau's and Legion's contractual obligations, if any, were excused because Kvam
- 21 breached the Contract first.
- 22 24. Mineau's or Legion's conduct was not wrongful, fraudulent, oppressive, or malicious.
- 23 25. Any and all actions taken by Mineau and Legion were just, fair, privileged, with good
- 24 cause, in good faith, and without malice.
- 25 26. Mineau and Legion reserve the right to assert additional affirmative defenses after
- 26 further investigation and discovery.

27 WHEREFORE, Mineau and Legion pray for relief as follows:

- 28 1. That Kvam take nothing by way of the Complaint;

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


Kelly Gunderson

1 **CODE: 2270**
2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701

6 Attorneys for Plaintiff

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

9 JAY KVAM,

10 Plaintiff,

Case No. CV18-00764

11 v.

Dept. No. 3

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

Defendants.

15 **PLAINTIFF'S FIRST MOTION TO COMPEL**

16 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
17 Offices, Ltd., Michael L. Matuska, pursuant to NRCP 26, NRCP 34, and NRCP 37, and hereby
18 moves this Court for an Order compelling responses to Plaintiff's Requests for Production of
19 Documents, specifically, Request Nos. 1, 6, 7, 8, 9, 10, 11, 12, 13, and 20.

20 This motion is made and based on the points and authorities attached hereto, the
21 Declaration of Michael L. Matuska submitted herewith, and all other documents, exhibits and
22 pleadings of record.

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

25 ///

26 ///

27 ///

28 ///

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

1 Dated this 15th day of March 2019.

3 MATUSKA LAW OFFICES, LTD.

5 By:

Michael L. Matuska

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

9 **POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO COMPEL**

10 **I. BACKGROUND**

11 This case concerns the February 17, 2017 Terms of Agreement to buy, fix and resell
12 property at 7747 May Street, Chicago, Illinois (the "Property"). The Terms of Agreement state as
13 follows:
14

15 Terms of Agreement between Legion Investments LLC (its Members) and
16 Jay Kvam (Initial Funding Member of Same)
Re: 7747 May Street, Chicago, Illinois.

17 With Regards to acquisition of the aforementioned property, it is understood that
18 the membership of Legion Investments LLC for this acquisition is Brian Mineau,
19 Jay Kvam and Michael Spinola. All parties are entitled to 33.33% of net profit,
20 after all expenses are accounted for, to include interest due on funds dispersed.
21 Initial purchase is being funded by Kvam, who is there by assigned any remedies
22 due should the transaction fail in anyway. Initial funder will be due a 7% annual
23 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.

24 Jay Kvam, Brian Mineau and Michael Spinola are all parties to the Terms of Agreement,
25 and based on the face of the Terms of Agreement, members of Legion Investments, LLC. Despite
26 the foregoing, Mineau has never accounted to Kvam. At the time Kvam filed the Verified
27 Complaint on April 11, 2018 (#6624468), he had invested \$93,784.31 in the project through a
28 series of five (5) wire transfers as follows:

- i. \$44,000 on February 13, 2017 for the purchase money
- ii. \$784.31 on February 13, 2017 for closing costs
- iii. \$20,000 on March 23, 2017 for the first draw
- iv. \$20,000 on April 14, 2017 for the second draw
- v. \$9,000 on May 18, 2014 for the third draw.¹

Although Kvam funded the purchase and construction work, Legion took title to the property and Mineau signed the construction contract and acted as the project manager. Unfortunately, the project had experienced multiple difficulties and delays, did not have a completion date, Kvam did not know whether Mineau and Legion funded their share of the project draws, they had refused Kvam's request for information, and Mineau seemed to be denying the joint venture agreement. As such, the Complaint contained causes of action as follows:

- i. Declaration of Joint Venture;
- ii. Rescission or Reformation of Agreement;
- iii. Breach of Loan Agreement;
- iv. Tortious Breach of Covenant of Good Faith and Fair Dealing;
- v. Court Supervision of Dissolution and Winding Up and Appointment of Receiver; and
- vi. Temporary and Permanent Injunction.

The above listed claims were asserted individually by Jay Kvam and derivatively on behalf of the joint venture. Mineau and Legion asserted various counterclaims which were ultimately dismissed. (See Order dated January 9, 2019, #7059540).

The Property sold for a loss on November 16, 2018. (See Closing Statement attached hereto as **Ex. "1"**, showing net proceeds of \$24,473.77). Mineau signed the sales agreement, escrow papers and deed. He did not inform Kvam of the sale or disclose what happened to the

¹ These payments are not contested and are supported by Kvam's multiple affidavits already on file, including Affidavit of Jay Kvam in Support of Motion for Dissolution (#6771116) and Affidavit of Jay Kvam in Support of Reply to Opposition to Motion to Dismiss and For Summary Judgment (#6983487). Defendants have also admitted these payments. See Responses to First Set of Interrogatories, Response No. 4, provided as Exhibit "3" to Kvam's Motion to Dismiss Counterclaim and For Summary Judgment (#6948019).

1 proceeds. Mineau did not keep a separate bank account for the project and Kvam does not even
2 know what account the proceeds of sale went to. Kvam was left to find out about the sale on his
3 own, and moved for a temporary restraining order and preliminary injunction on November 30,
4 2018 to prevent the loss of the sale proceeds. (#7000744). Facing no other options, Mineau and
5 Legion stipulated to deposit the funds with the clerk of the court, which they have done
6 (#7021308).

7 Kvam was recently granted leave to file his First Amended Complaint ("FAC") to add an
8 additional cause of action for fraud and concealment (#7095466). The causes of action at issue in
9 the FAC are as follows:

- 10 1. Declaration of Joint Venture
- 11 2. Rescission or Reformation of Agreement
- 12 3. Breach of Contract
- 13 4. Breach of Implied Covenant of Good Faith and Fair Dealing
- 14 5. Accounting
- 15 6. Court supervised dissolution and winding up
- 16 7. Temporary and Permanent Injunction
- 17 8. Fraud and Concealment

18 Kvam has predictably requested agreements between the various parties, records from
19 Legion, and other financial and accounting records, including tax records. (See Request for
20 Production of Documents, **Ex. "2"**). Mineau's responses contained mostly objections, but
21 referred to various documents being withheld even though he never provided a privilege log (See
22 **Ex. "3"** and Declaration of Michael L. Matuska, submitted herewith). Kvam's counsel sent a
23 meet and confer letter to Mineau's counsel on January 15, 2019 (See **Ex. "4"**), and subsequently
24 on February 7, 2019, spent 1 ½ hours in a meet and confer session in Mr. Sweet's office. (See
25 Declaration of Michael L. Matuska, submitted herewith). The meet and confer session concluded
26 with the agreement that, at least for now, Kvam would limit his requests to the time frame
27 beginning January 1, 2017 (roughly to coincide with the Terms of Agreement) and Mineau would
28 provide additional information in two (2) weeks. (See Declaration of Michael L. Matuska).

1 Unfortunately Mineau provided only supplemental responses which contained largely the
2 same objections (Ex. "5"), a series of profit and loss statements with no source documents, and a
3 listing agreement for the property at 7747 May Street, Chicago, Illinois (the "Property") to give
4 the impression that Mineau dutifully listed the property for sale when in fact the listing agreement
5 is unsigned, Mineau has never provided the MLS information, and it is unclear whether the
6 property was actually listed.

7 It is not even clear if the profit and loss statements provided with the supplement are for
8 Legion or Mineau, but instead suggest that Legion and Mineau comingled funds on this project.

9 **II. MINEAU HAS PROVIDED INCOMPLETE RESPONSES TO KVAM'S**
10 **REQUESTS FOR PRODUCTION OF DOCUMENTS**

11 Tax returns are not to be had for the mere asking. *See Cain v. Price*, 134 Nev. Adv. Op. 26
12 (Nev. April 12, 2018). In that case, the Nevada Supreme Court ruled that "While that evidence
13 might not amount to 'clear and convincing evidence' that Price and Shackelford committed
14 'oppression, fraud, or malice,' NRS 42.005(1), such alleged misuse of funds contrary to the [joint
15 venture agreement] constitutes 'some factual basis' for those claims such that discovery was
16 property." *Cain v. Price* relied on the earlier case of *Hetter v. Eighth Judicial District Court*, 110
17 Nev. 513 (1994).

18 The case for production of the requested records in the instant case is even more
19 compelling than in *Cain v. Price* and *Hetter v. Eighth Judicial District Court* in which the
20 requested discovery was solely for the case on punitive damages. In this case, the financial
21 information and tax information is relevant both to Kvam's case-in-chief and his case on punitive
22 damages. The requested information is necessary to determine income and expenses from the
23 joint venture. But because Mineau contests Kvam's interpretation of the Terms of Agreement, the
24 requested information is relevant to determine how Mineau and Legion characterized and reported
25 the joint venture on their tax returns. The absence of any such reporting is potential evidence,
26 also, and would confirm Kvam's position that the individuals did not report this investment on
27 their individual tax returns, but rather, that this investment should have been treated as a joint
28 venture and reported on an IRS Form 1065 Partnership Tax Return.

NRCP 26(b) provides in pertinent part, as follows:

(b) Discovery Scope and Limits.

(1) **Scope.** Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows: Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claims or defenses and proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. Information within this scope of discovery need not be admissible in evidence to be discoverable.

Though relevant both to compensatory and punitive damages, Mineau has refused to provide tax returns and related financial information in response to Kvam's document requests. The requests at issue are as follows. Request No. 1 should be most interesting to this court following the March 6, 2019 Order (# 7151158) as that request concerns the missing agreement(s) between Mineau, Spinola and Criterion.

The tax information requested by Kvam is limited to Legion's tax returns and Mineau's Schedule E, which should show income from the limited liability company. Additional information may need to be requested in the future.

REQUEST NO. 1:

Produce any and all agreements between any of the following persons: Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

Response:

Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence in this matter. This Request seeks irrelevant information concerning agreements to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents are being withheld on the basis of this objection.

Without waiving this objection, all responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody and control have been produced.

//

1 **Supplemental Response**

2 Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of
3 admissible evidence in this matter. This Request seeks irrelevant information concerning
4 agreements to which Jay Kvam is not a party and therefore have no bearing on this litigation.
5 Documents which are responsive to Request No. 1, but to which Jay Kvam is not a party, are
6 being withheld on the basis of this objection.
7

8 Without waiving this objection, all responsive materials in Brian Mineau's and Legion
9 Investments, LLC's possession, custody and control have been produced.

10 **Discussion:**

11 First, Mineau's statement that he is withholding certain documents responsive to Request
12 No. 1 is inconsistent with his statement that all responsive materials in Mineau's possession
13 custody and control have been produced. The problem with these ambiguous statements is
14 compounded by the fact that Mineau has not provided a privilege log, or any identifying
15 information whatsoever, in his responses. When read together, in the absence of a privilege log,
16 Mineau's responses seem intentionally vague. Even if this Court should conclude that agreements
17 between the parties to the Terms of Agreement are not discoverable, Kvam is entitled to clear
18 responses, and to additional information regarding the documents Mineau seeks to withhold.
19

20 Second, Mineau has provided inconsistent information regarding the source of the alleged
21 \$20,000 wire transfer. Mineau claimed in his Opposition to [Plaintiff's] Motion for Leave to File
22 Amended Complaint as follows: "Criterion NV LLC, a company affiliated with Mineau and
23 Legion, contributed \$20,000.00 to the project. (See Motion at Ex. 2, p. 3). Mineau and Spinola
24 are the principals of Criterion NV LLC and caused Criterion NV LLC to contribute \$20,000.00 to
25 the project on behalf of Legion." (Opposition # 7067328 at 2:9-12). In support of these
26 allegations, Mineau produced a wire transfer from Criterion.
27
28

1 However, in the recently provided profit and loss statements, Mineau claims that he gave
2 Spinola \$20,000 cash to wire to the contractor, because Mineau was out of town (See Ex. "6").
3 Despite placing this wire transfer and Criterion at issue, Mineau has not produced any agreement
4 with Michael Spinola and Criterion.

5 Limited liability companies in Nevada operate within the framework of NRS Chapter 86,
6 which recognizes members and managers, not principals or affiliates. Michael Spinola is listed as
7 the sole managing member of Criterion on the Nevada Secretary of State's website, not Mineau or
8 Legion. Likewise, Mineau is not a signatory on Criterion's bank account at Mutual of Omaha. In
9 fact, based on the records produced to date, there is nothing to support Mineau's assertion that the
10 \$20,000 wire from Criterion was made on behalf of Legion. Mineau placed Criterion and this
11 wire transfer at issue and must produce his agreements with Michael Spinola and Criterion.

12 These requested documents are also relevant to establish the background of the parties,
13 their relationship to each other, course of dealing, and the interpretation of the Terms of
14 Agreement and expectations thereunder. In addition, the Terms of Agreement purports to make
15 Kvam a member and he is entitled to the company's documents under NRS 86.241. Also,
16 although Legion Investments purports to be managed by Brian Mineau, Michael Spinola has also
17 signed documents as the member/manager of Legion Investments. It is unclear whether he draws
18 his authority from the February, 2017 Terms of Agreement or some other agreement that has not
19 been produced. The Court should compel production of all such agreements.

20 **REQUEST NO. 6:**

21 Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014
22 [Amended by agreement to a request for documents since January 1, 2017].

23 **Response:**

24 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
25

1 information that is not likely to lead to the discovery of admissible evidence in this matter, as
2 Legion Investments, LLC's financial and tax records are confidential and have no bearing on this
3 litigation. Documents are being withheld on this basis.

4 **Supplemental Response:**

5 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
6 information that is not likely to lead to the discovery of admissible evidence in this matter, as
7 Legion Investments, LLC's financial and tax records are confidential and have no bearing on this
8 litigation. Documents are being withheld on this basis.

9 **Discussion:**

10 Legion is a party to the Terms of Agreement, Legion took title to the property at 7747 May
11 Street, Chicago, Illinois, and on the face of the Terms of Agreement, Kvam is a member. Legion
12 sold the property, and must be declaring a profit or a loss. Legion's tax returns are not
13 confidential, and they need to be made available to the Plaintiff both for the Plaintiff's case-in-
14 chief and for the claim of punitive damages. The Nevada Supreme Court considered this exact
15 issue recently, in *Cain v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018). In that case, the
16 Nevada Supreme Court relied on *Hetter v. District Court*, 110 Nev. 513, 874 P.2d 762, 766 (1994)
17 and ruled that it was an abuse of discretion for the District Court to deny a motion to compel the
18 discovery of tax returns, when the Plaintiffs had presented sufficient evidence of fraud, civil
19 conspiracy and conversion, even if the evidence did not amount to clear and convincing evidence.
20
21

22 In addition to the direct relevance of Legion's tax returns, Defendants also have a fiduciary
23 duty to account to Kvam and provide him access to Legion's books and records pursuant to NRS
24 87.4335.
25

26 In addition, the finances, governance and operation of Legion Investments is a primary
27 issue in this case, especially as it relates to an accounting for the project at 7747 May Street,
28

1 Chicago, Illinois, and Defendants' failure and refusal to provide an accounting to date. It is
2 necessary to review the returns for these reasons, and to see how and whether Legion Investments
3 reported this investment, including any expenses, loans and proceeds.

4 Discovery of the tax returns is also allowed for purposes of the claim to pierce the
5 company's limited liability shield.
6

7 **REQUEST NO. 7:**

8 Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.
9 [Amended by agreement to a request for documents since January 1, 2017]

10 **Response:**

11 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
12 information that is not likely to lead to the discovery of admissible evidence in this matter, as
13 Legion Investments, LLC's financial and tax records are confidential and have no bearing on this
14 litigation. Documents are being withheld on this basis.
15

16 **Supplemental Response:**

17 Same.

18 **Discussion:**

19 See Request No. 6, *supra*. In addition, Legion Investments should have been providing
20 Kvam with a Schedule K-1 or other tax reporting information, and Kvam needs this information
21 for his own tax reporting requirements.
22

23 **REQUEST NO. 8:**

24 Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its
25 creation on July 2, 2014. [Amended by agreement to a request for documents since January 1,
26 2017]

27 //
28

1 **Response:**

2 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
3 information that is not likely to lead to the discovery of admissible evidence in this matter, as
4 Brian Mineau's and Legion Investments, LLC's financial and tax records are confidential and
5 have no bearing on this litigation. Documents are being withheld on this basis.
6

7 **Supplemental Response:**

8 Same.

9 **Discussion:**

10 Kvam could have requested Mineau's entire 1040 tax return, as it relates to punitive
11 damages, but has not yet done so. Profit and Loss from sources other than W-2 income (i.e., real
12 estate investment and limited liability companies) is reported on Schedule E of the individual's
13 income tax return. Kvam limited his request (at this time) solely to Mineau's Schedule E.
14 Mineau's Schedule E is relevant for the reasons set forth in the discussion regarding Request No.
15 6, *supra*. In addition, Mineau's Schedule E would show whether he declared the income and loss
16 for the project at 7747 May Street, Chicago, Illinois on his own tax returns. This relates to the
17 interpretation of the Terms of Agreement which is one of the primary issues in this case. These
18 documents also may clear up some of the intentionally vague or ambiguous responses by
19 Defendants thus far.
20
21

22 Mineau's Schedule E would also reflect any income from Criterion, if he is in fact a
23 "principal" of that company as he claims to be.

24 Mineau's tax returns and Schedule E would be relevant to the question of whether he com-
25 mingled project funds and would therefore relate to the alter ego allegation.

26 **REQUEST NO. 9:**

27 Produce all meeting minutes for Legion Investments, LLC.
28

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Supplemental Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Without waving this objection, there are no meeting minutes for Legion Investments, LLC which mention Jay Kvam or the real property located at 7747 S. May Street, Chicago, Illinois.

Discussion:

Legion Investment's meeting minutes are not confidential. Kvam is a member based on the face of the Terms of Agreement.

Kvam needs the meeting minutes to see whether and if Legion Investments approved the February, 2017 Terms of Agreement, the project at 7747 May Street, Chicago, Illinois, and any other resolutions relevant to the project, or to Kvam's claims in this case.

The meeting minutes might also contain information which would relate to interpretation and construction of the Terms of Agreement, which is disputed, as well as the respective roles of the different parties in regard to the investment and the project at 7747 May Street, Chicago, Illinois.

The meeting minutes might also reflect any agreements with Criterion, which Mineau has raised as an issue.

1 This is a fraud case, and Kvam does not have to take the word of Mineau or his attorney on
2 what is or is not contained in the meeting minutes. In fact, Mineau's evasive answer suggests that
3 there is information in the meeting minutes that would relate to Criterion or to some other aspect
4 of this case.

5 The absence of any meeting minutes is also relevant to the issue of alter ego.

6 **REQUEST NO. 10:**

7 Produce all resolutions of the members and/or managers of Legion Investments, LLC.

8 **Response:**

9 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
10 information that is not likely to lead to the discovery of admissible evidence in this matter, as
11 Legion Investments, LLC's internal governing documents are confidential and have no bearing on
12 this litigation. Documents are being withheld on this basis.

13 **Supplemental Response:**

14 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
15 information that is not likely to lead to the discovery of admissible evidence in this matter, as
16 Legion Investments, LLC's internal governing documents are confidential and have no bearing on
17 this litigation. Documents are being withheld on this basis.

18 Without waving this objection, there are no resolutions for Legion Investments, LLC
19 which mention Jay Kvam or the real property located at 7747 S. May Street, Chicago, Illinois.

20 **Discussion:**

21 See Request No. 9, *supra*.

22 **REQUEST NO. 11:**

23 Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

24 [Amended by agreement to a request for documents since January 1, 2017]

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Supplemental Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Without waiving this objection, Legion Investments, LLC's financial statements relating to the real property located at 7747 S. May Street, Chicago, Illinois have been produced.

Discussion:

This supplemental response is intentionally misleading and fraudulent. In standard accounting jargon, the term "financial statements" encompasses both balance sheets (which show assets, liability and owner's equity) and profit and loss statements (which show income and expenses). Mineau has produced only some recently created profit and loss statements (discussed below), with no source documents. In Request No. 11, Kvam specifically requested Balance Sheets. Those have not been provided.

See Discussion regarding Request No. 6, *supra*. In addition, Legion Investment's balance sheets are not confidential and will show whether and how Legion Investments documented and reported its acquisition of the house at 7747 May Street, Chicago, Illinois, as well as the loan from Kvam. These are the central issues in this case.

REQUEST NO. 12:

Produce all income and expense statements, and/or profit and loss statements for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Supplemental Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Without waiving this objection, Legion Investments, LLC's financial statements relating to the real property located at 7747 May Street, Chicago, Illinois, have been produced.

Discussion:

This response is intentionally misleading and false. Request No. 12 was not limited to financial statements only concerning this property, and the financial statements provided were not reported in the normal course of business, but were developed solely for this response. Moreover, the so-called financial statements were provided without source documents (invoices, receipts, bank statements and checks) and do not even show the sale of the Property in November, 2018. As such, Mineau still has not produced any documents to show who or which entity received the proceeds of sale, which account it went to, and how it was reported.

//

Produce all bank statements of Legion Investments, LLC accounts, since its creation on July 2, 2014. [Amended by agreement to a request for documents since January 1, 2017]

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Same.

See discussion regarding Request No. 6, *supra*. In addition, the bank statements are necessary to verify the payments listed on Legion's recently produced balance statements, the source of the funds used for the \$20,000 wire transfer to the contractor through the Criterion account, and where the proceeds of sale were deposited.

Produce copies of all business or professional licenses ever held by Brian Mineau.

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's business or professional licenses are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential

1 information that is not likely to lead to the discovery of admissible evidence in this matter, as
2 Brian Mineau's business or professional licenses are confidential and have no bearing on this
3 litigation. Documents are being withheld on this basis.

4 Without waiving this objection, Brian Mineau's professional license relating to real estate
5 has been produced.
6

7 **Discussion:**

8 This response is intentionally misleading and false. Mineau has not produced any licenses.
9 Brian Mineau's business or professional licenses are not confidential and are relevant for
10 background information and to determine his qualifications to manage a real estate project as well
11 as to serve as a loan broker and duties owed to his lender and joint venture partners.

12 **III. ATTORNEY'S FEES**

13 NRCP 37 provides in pertinent part as follows:
14

15 **(3) Evasive or Incomplete Disclosure, Answer or Response.** For
16 purposes of this subdivision an evasive or incomplete disclosure, answer
or response is to be treated as a failure to disclose, answer or respond.

17 **(4) Expenses and Sanctions.**

18 (A) If the motion is granted or if the disclosure or requested discovery
19 is provided after the motion was filed, the court shall, after affording an
20 opportunity to be heard, require the party or deponent whose conduct
21 necessitated the motion or the party or attorney advising such conduct or
22 both of them to pay to the moving party the reasonable expenses
23 incurred in making the motion, including attorney's fees, unless the
24 court finds that the motion was filed without the movant's first making a
good faith effort to obtain the disclosure or discovery without court
25 action, or that the opposing party's nondisclosure, response or objection
26 was substantially justified, or that other circumstances make an award of
27 expenses unjust.
28

Before filing a motion to compel, NRCP 37 requires a good faith effort to meet and confer.
Plaintiffs made extensive efforts to meet and confer and avoid the need to file this motion. The
foregoing recital, along with the Affidavit of Michael L. Matuska provided herewith, certifies
these good faith efforts.

1 Kvam is entitled to recover his attorney's fees incurred in connection with the present
2 Motion to Compel.

3 **IV. CONCLUSION**

4 Based on the foregoing, Brian Mineau and Legion Investments, LLC should be compelled
5 to provide full and complete responses to Kvam's Requests for Production, Request Nos. 1, 6, 7,
6 8, 9, 10, 11, 12, 13, and 20, and to pay \$2,485.00 in attorney's fees (See Ex. "7").
7

8 Dated this 15th day of March 2019.

9 MATUSKA LAW OFFICES, LTD.

10 *Michael L. Matuska*

11 By:

12 MICHAEL L. MATUSKA, SBN 5711
13 Attorneys for Plaintiff, JAY KVAM,
14 individually and derivatively on behalf the
15 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 15th day of March, 2019, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S FIRST MOTION TO COMPEL** as follows:

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

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

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

☐ **BY EMAIL:** (as listed above)

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

☐ **BY FACSIMILE:**

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

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

/s/ SUZETTE TURLEY
SUZETTE TURLEY

EXHIBIT INDEX

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EXHIBIT 1
CLOSING STATEMENT
(Plaintiff's First Motion to Compel)

EXHIBIT 1
CLOSING STATEMENT
(Plaintiff's First Motion to Compel)

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 Property Taxes 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
Daniel Shonick as Agent 11-16-18
THOUSAND OAKS MANAGEMENT LLC Date

Seller:

[Signature] 11-16-18
LEGION INVESTMENTS, LLC Date

[Signature]
Escrow Officer

Michael B. Brown

11/16/2018
Date

EXHIBIT 2
PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS
(Plaintiff's First Motion to Compel)

EXHIBIT 2
PLAINTIFF'S REQUEST FOR PRODUCTION OF DOCUMENTS
(Plaintiff's First Motion to Compel)

1 **DISC**

2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
4 2310 South Carson Street, Suite 6
5 Carson City, NV 89701
6 (775) 350-7220

7 Attorneys for Plaintiff/ Counter-Defendant

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

10 JAY KVAM,

Plaintiff,

Case No. CV18-00764

11 v.

Dept. No. 3

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

14 Defendants.

15 **PLAINTIFF JAY KVAM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**
16 **TO DEFENDANTS BRIAN MINEAU AND LEGION INVESTMENTS, LLC**

17 TO: Defendants BRIAN MINEAU and LEGION INVESTMENTS, LLC, and their
18 attorney of record:

19 COMES NOW Plaintiff, JAY KVAM, by and through his attorneys of record, Michael L.
20 Matuska, Esq., and MATUSKA LAW OFFICES, LTD., and propounds upon Defendants,
21 BRIAN MINEAU, and LEGION INVESTMENTS, this First Request for Production of
22 Documents.
23

24 Pursuant to the provisions of NRCP 34, you are required to provide the below-requested
25 documents at MATUSKA LAW OFFICES, LTD., 2310 South Carson Street, Suite 6, Carson
26 City, Nevada 89701, (775) 350-7220, within thirty (30) days hereof.
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1 needed to open and view each DOCUMENT, OR (b) a copy of the software needed to open and
2 view the document, and (c) instructions and all other materials necessary to open, use, OR
3 interpret each DOCUMENT. To obtain electronic DOCUMENTS in an efficient manner will
4 require our consultant to have access to electronic hardware in your possession, custody, OR
5 control. Plaintiff requests that YOU meet and confer with its attorneys, prior to production, to
6 develop a mutually-acceptable plan for the production and copying of electronic DOCUMENTS.
7

8 4. Legible photocopies of front and back of each DOCUMENT will be accepted, in
9 lieu of production of the originals, provided such photocopies fully and accurately depict any and
10 all information available from the originals and, if not, the originals must be produced.

11 5. If a privilege OR work-product protection (INCLUDING an asserted statutory OR
12 protective order prohibition against disclosure) is claimed with respect to any responsive
13 DOCUMENT such that YOU will not produce the entire DOCUMENT without any redactions,
14 omissions, interlineations, OR changes, specify the privilege OR work-product protection(s)
15 YOU claim, and IDENTIFY the DOCUMENT. If a claimed privilege OR work-product
16 protection applies only to a particular phrase, sentence, paragraph, OR section of a responsive
17 DOCUMENT, produce the DOCUMENT with the projected portion redacted and a legend OR
18 privilege log indicating that the withheld portion is the subject of a claimed privilege OR work-
19 product protection. If YOU withhold any DOCUMENT covered by this Request by reason of a
20 claim of privilege, furnish a list at the time the DOCUMENTS are produced IDENTIFYING any
21 such DOCUMENT for which the privilege is claimed, together with the following information,
22 with respect to any such DOCUMENT withheld: author(s), recipient(s), sender, indicated OR
23 blind copies, date, general subject matter, basis on which privilege is claimed, and the specific
24 requests to which the DOCUMENT was responsive. For each DOCUMENT withheld under a
25 claim that it constitutes OR contains attorney work product, also state whether YOU assert that
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1 the DOCUMENT was prepared in anticipation of OR for litigation and, if so, DESCRIBE the
2 anticipated litigation.

3 6. YOU are required to produce DOCUMENTS as they are kept in the usual course
4 of business OR grouped by the request to which they respond.

5 7. If YOU object to any request OR any portion thereof, please state the nature and
6 basis of YOUR objection. If YOU find objectionable only a portion of a request, please respond
7 fully to the non-objectionable portion thereof.

8 8. If responsive information appears on one OR more pages of a multi-page
9 DOCUMENT, please provide the entire DOCUMENT, INCLUDING any exhibits OR
10 attachments thereto. Except under a claim of privilege OR work product, YOU should not alter,
11 deface, mask, OR redact any DOCUMENT before production.

12 9. The use of the singular in any request shall INCLUDE the plural and the plural
13 shall include the singular.

14 10. The use of any gender in any request shall INCLUDE the masculine, feminine OR
15 neuter genders.

16 DEFINITIONS

17 "DOCUMENT" as used herein, is defined as any and all internal or inter-office electronic mail,
18 text or other electronic messages, drafts, hand-written notes, records, reports, statements, voice-
19 mail messages, or hand-written messages, declarations, affidavits, papers, letters, notes,
20 drawings, graphs, charts, memoranda, transcripts, summaries, correspondence, photographs,
21 phonographs, phonorecords, pleadings, plans, blueprints, OR "writings" and "recordings", OR
22 other data compilations from which information can be obtained OR translated, if necessary, by
23 the responding party through detection devices into reasonably useable forms, whether printed,
24 written, typed, OR stored electronically as data, whether in YOUR possession, under YOUR
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1 control, which YOU have access to, OR which YOU know of, INCLUDING all copies, no
2 matter who OR by whom prepared, and all drafts prepared in connection with such
3 DOCUMENTS, whether or not ever used OR conveyed for any purpose, an INCLUDES any
4 written, graphic, OR recorded matter, however produced OR reproduced, of any kind OR
5 description, whether sent OR received, OR neither, INCLUDING drafts, originals, non-identical
6 copies and information stored magnetically, electronically, photographically, OR otherwise. Any
7 DOCUMENT shall INCLUDE the original and any copies, reproductions, OR facsimiles thereof
8 that is in any way different from the original. In addition, this includes, but is not limited to, any
9 electronically stored data on magnetic or optical storage media as an "active" file or files (readily
10 readable by one or more computer applications or forensics software); any "deleted" but
11 recoverable electronic files on said media; any electronic file fragments (files that have been
12 deleted and partially overwritten with new data); and slack (data fragments stored randomly from
13 random access memory on a hard drive during normal operation of a computer [RAM slack] or
14 residual data left on the hard drive after new data has overwritten some but not all previously
15 stored data).

18 1. "INCLUDE" OR "INCLUDING" OR "INCLUDES" as used herein, are defined
19 as encompassing OR within the scope of the stated request and should not be limited to just the
20 items specified.

21 2. "OR" as used herein, is defined as "and," "or," and "and/or" concurrently and/or
22 as necessary in order to bring within the scope of a request all responses which might otherwise
23 be construed to be outside its scope.

24 3. "PERSON" as used herein, is defined as, and shall INCLUDE a human being,
25 natural person, corporation, partnership, association, trust, unincorporated organization, any
26 nongovernmental legal entity, OR any form of business OR social organization.
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4. The term "YOU" as use herein, I defined as he answering Defendant; the term "YOUR" a used herein, is the possessive adjective of YOU.

5. "PROPERTY" means the house located at 7747 May Street, Chicago, Illinois.

PLEASE TAKE NOTICE that if YOU fail to identify or produce the requested documents, or object without substantial justification, Plaintiff may move the Court for an order for compliance wherein reasonable expenses and attorneys' fees may be required.

PLEASE TAKE FURTHER NOTICE that Plaintiff will object to the evidentiary admission of any DOCUMENTS predating the date of the scheduled production, if a copy of such DOCUMENT is not produced as required herein or under Nevada Rule of Civil Procedure 34.

REQUESTS FOR PRODUCTION

REQUEST NO. 1:

Produce any and all agreements between any of the following persons: Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

REQUEST NO. 2:

Produce the Articles of Organization for Legion Investments, LLC, including any amendments.

REQUEST NO. 3:

Produce the Operating Agreement for Legion Investments, LLC, including any amendments.

REQUEST NO. 4:

Produce the Articles of Organization for Atlas Investors Southside, LLC, including any

1 amendments.

2 **REQUEST NO. 5:**

3 Produce the Operating Agreement for Atlas Investors Southside, LLC, including any
4 amendments.

5 **REQUEST NO. 6:**

6
7 Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

8 **REQUEST NO. 7:**

9 Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2,
10 2014.

11 **REQUEST NO. 8:**

12 Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its
13 creation on July 2, 2014.

14 **REQUEST NO. 9:**

15
16 Produce all meeting minutes for Legion Investments, LLC.

17 **REQUEST NO. 10:**

18 Produce all resolutions of the members and/or managers of Legion Investments, LLC.

19 **REQUEST NO. 11:**

20 Produce all balance sheets for Legion Investments, LLC, since its creation on July 2,
21 2014.

22 **REQUEST NO. 12:**

23
24 Produce all income and expense statements, and/or profit and loss statements for Legion
25 Investments, LLC, since its creation on July 2, 2014.

26 **REQUEST NO. 13:**

27 Produce all bank statements of Legion Investments, LLC accounts, since its creation on
28

1 July 2, 2014.

2 **REQUEST NO. 14:**

3 Produce all escrow and title records for the real property located at 7747 S. May Street,
4 Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing
5 statements.
6

7 **REQUEST NO. 15:**

8 Produce all contracts for work performed or to be performed at the Property.

9 **REQUEST NO. 16:**

10 Produce all invoices for materials purchased for the Property, or work performed or to be
11 performed at the Property.

12 **REQUEST NO. 17:**

13 Produce copies of checks written to pay, or other evidence of payment for, invoices for
14 materials purchased for the Property, or work performed or to be performed at the Property.
15

16 **REQUEST NO. 18:**

17 Produce any all documents, including copies of checks and bank statements, showing
18 payments from any investor for the purchase or improvement of the Property, including but not
19 limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.
20

21 **REQUEST NO. 19:**

22 Produce any and all reports provided by, or to, Brian Mineau or Legion Investments,
23 LLC, regarding the status of the Property, materials to be used on the Property, or work
24 performed or to be performed on the Property.

25 **REQUEST NO. 20:**

26 Produce copies of all business or professional licenses ever held by Brian Mineau.
27
28

1 **REQUEST NO. 21:**

2 Produce copies of all utility bills for the Property.

3 **REQUEST NO. 22:**

4 Produce copies of correspondence between Brian Mineau and Michael Spinola regarding
5 the Property, or any investment in or improvement to the Property.

6 **REQUEST NO. 23:**

7 Produce all photographs of the Property.

8 **REQUEST NO. 24:**

9 Produce any drafts of the "Terms of Agreement" document that has been produced as
10 "KVAM 403," and any correspondence referring to that document.

11 **REQUEST NO. 25:**

12 Produce any document supporting your contention that Jay Kvam cut power to the
13 Property.

14 **REQUEST NO. 26:**

15 Produce any document supporting your contention in paragraph 14 of the Counterclaim
16 that Kvam demanded to be "bought out" of the agreement.

17 **REQUEST NO. 27:**

18 Produce any document supporting your contention in paragraph 15 of the Counterclaim
19 that Kvam undertook efforts to interfere with Mineau's business investments or harm Mineau's
20 business relationships.

21 **REQUEST NO. 28:**

22 Produce all documents supporting your contentions in paragraph 16 of the Counterclaim
23 that Kvam wrongfully and fraudulently accessed Atlas' bank accounts and engaged in
24 unauthorized and fraudulent online banking transactions.

1 **REQUEST NO. 29:**

2 Produce any documents supporting your contention in paragraph 18 of the Counterclaim
3 that Mr. Kvam caused process servers to harass, threaten, or intimidate Mr. Mineau's family.

4 **REQUEST NO. 30:**

5 Produce any and all documents supporting your contention in Paragraph 39 of the
6 Counterclaim that Mineau and Legion enjoyed prospective economic relationships with various
7 third parties involving the marketing and sale of the House.
8

9 **REQUEST NO. 31:**

10 Produce all documents supporting your contentions in paragraph 41 of the Counterclaim
11 that Kvam intended to harm Mineau and Legion by preventing and/or interfering with those
12 relationships.
13

14 **REQUEST NO. 32:**

15 Produce all documents supporting your contentions in paragraph 43 of the Counterclaim
16 that Mineau's and Legion's prospective business relationships have been damaged.

17 **REQUEST NO. 33:**

18 Produce any and all documents requesting a capital call or payment from any of the
19 Investors for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spinola.
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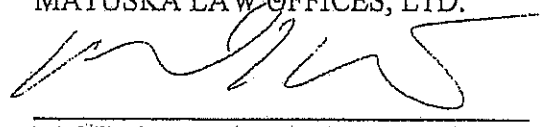
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AFFIRMATION

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 29th of August, 2018

MATUSKA LAW OFFICES, LTD.

By: 

MICHAEL L. MATUSKA, SBN 5711
2310 South Carson Street, Suite 6
Carson City, NV 89701
(775) 350-7220
Attorneys for Plaintiff /Counter-Defendant

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PLAINTIFF JAY KVM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS
TO DEFENDANTS BRIAN MINEAU AND LEGION INVESTMENTS, LLC

	personally delivering
	delivery via internal Messenger Service
	sending via Federal Express or other overnight delivery service
X	depositing for mailing in the U.S. mail with sufficient postage affixed thereto
	delivery via facsimile machine to fax no.
	delivery via electronic mail to:
	delivery via eflex

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

Suzanne Dineen
An employee of MATUSKA LAW OFFICES, LTD.

EXHIBIT 3
MINEAU'S RESPONSES TO
REQUEST FOR PRODUCTION OF DOCUMENTS
(Plaintiff's First Motion to Compel)

EXHIBIT 3
MINEAU'S RESPONSES TO
REQUEST FOR PRODUCTION OF DOCUMENTS
(Plaintiff's First Motion to Compel)

1 **DISC**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

11
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF WASHOE**

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 3

16 vs.

17 BRIAN MINEAU; LEGION INVESTMENTS,

18 LLC; 7747 S. May Street, an Unincorporated

19 Joint Venture; and DOES I-X, inclusive,

20 Defendants / Counterclaimants.

21
22 **BRIAN MINEAU AND LEGION INVESTMENTS' RESPONSES TO**
23 **PLAINTIFF JAY KVAM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

24 **PROPOUNDING PARTY:** Jay Kvam

25 **RESPONDING PARTY:** Brian Mineau and Legion Investments, LLC

26 Pursuant to NRCP 16.1, Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and
27 LEGION INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K.
28 Sweet, Esq., and Mark H. Gunderson, Esq., and pursuant to Rule 34 of the Nevada Rules of Civil
Procedure, responds to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s Request for Production
to Mineau and Legion ("Requests") as follows:

///

///

///

1 **REQUEST NO. 1:**

2 Produce any and all agreements between any of the following persons: Jay Kvam, Brian
3 Mineau, Michael Spinola, or Legion Investments, LLC.

4 **RESPONSE TO REQUEST NO. 1:**

5 Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of
6 admissible evidence in this matter. This Request seeks irrelevant information concerning agreements
7 to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents are
8 being withheld on the basis of this objection.

9 Without waiving this objection, all responsive materials in Brian Mineau's and Legion
10 Investments, LLC's possession, custody, or control have been produced.

11 **REQUEST NO. 2:**

12 Produce the Articles of Organization for Legion Investments, LLC, including any
13 amendments.

14 **RESPONSE TO REQUEST NO. 2:**

15 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to
16 the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing
17 documents have no bearing on this litigation. No documents are being withheld on the basis of this
18 objection.

19 Without waiving this objection, all responsive materials in Brian Mineau's and Legion
20 Investments, LLC's possession, custody, or control have been produced.

21 **REQUEST NO. 3:**

22 Produce the Operating Agreement for Legion Investments, LLC, including any amendments.

23 **RESPONSE TO REQUEST NO. 3:**

24 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to
25 the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing
26 documents have no bearing on this litigation. No documents are being withheld on the basis of this
27 objection.

28 ///

Without waiving this objection, all responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

REQUEST NO. 4:

Produce the Articles of Organization for Atlas Investors Southside, LLC, including any amendments.

RESPONSE TO REQUEST NO. 4:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Atlas Investors Southside, LLC is not a party to this action and its internal governing documents have no bearing on this litigation. Documents are being withheld on the basis of this objection.

REQUEST NO. 5:

Produce the Operating Agreement for Atlas Investors Southside, LLC, including any amendments.

RESPONSE TO REQUEST NO. 5:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Atlas Investors Southside, LLC is not a party to this action and its internal governing documents have no bearing on this litigation. Documents are being withheld on the basis of this objection.

REQUEST NO. 6:

Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

RESPONSE TO REQUEST NO. 6:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on the basis of this objection.

REQUEST NO. 7:

Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

///

1 **RESPONSE TO REQUEST NO. 7:**

2 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
3 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
4 Investments, LLC's financial and tax records are confidential and have no bearing on this litigation.
5 Documents are being withheld on the basis of this objection.

6 **REQUEST NO. 8:**

7 Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its
8 creation on July 2, 2014.

9 **RESPONSE TO REQUEST NO. 8:**

10 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
11 information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian
12 Mineau's and Legion Investments, LLC's financial and tax records are confidential and have no
13 bearing on this litigation. Documents are being withheld on the basis of this objection.

14 **REQUEST NO. 9:**

15 Produce all meeting minutes for Legion Investments, LLC.

16 **RESPONSE TO REQUEST NO. 9:**

17 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
18 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
19 Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation.
20 Documents are being withheld on the basis of this objection.

21 **REQUEST NO.10:**

22 Produce all resolutions of the members and/or managers of Legion Investments, LLC.

23 **RESPONSE TO REQUEST NO. 10:**

24 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
25 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
26 Investments, LLC's internal governing documents are confidential and have no bearing on this
27 litigation. Documents are being withheld on the basis of this objection.

28 ///

1 **REQUEST NO. 11:**

2 Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

3 **RESPONSE TO REQUEST NO. 11:**

4 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
5 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
6 Investments, LLC's financial records are confidential and have no bearing on this litigation.
7 Documents are being withheld on the basis of this objection.

8 **REQUEST NO. 12:**

9 Produce all income and expense statements, and/or profit and loss statements for Legion
10 Investments, LLC, since its creation on July 2, 2014.

11 **RESPONSE TO REQUEST NO. 12:**

12 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
13 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
14 Investments, LLC's financial records are confidential and have no bearing on this litigation.
15 Documents are being withheld on the basis of this objection.

16 **REQUEST NO. 13:**

17 Produce all bank statements of Legion Investments, LLC accounts, since its creation on July
18 2, 2014.

19 **RESPONSE TO REQUEST NO. 13:**

20 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
21 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
22 Investments, LLC's bank records are confidential and have no bearing on this litigation. Documents
23 are being withheld on the basis of this objection.

24 **REQUEST NO. 14:**

25 Produce all escrow and title records for the real property located at 7747 S. May Street,
26 Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing
27 statements.

28 ///

1 **RESPONSE TO REQUEST NO. 14:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
3 custody, or control have been produced.

4 **REQUEST NO. 15:**

5 Produce all contracts for work performed or to be performed at the Property.

6 **RESPONSE TO REQUEST NO. 15:**

7 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
8 custody, or control have been produced.

9 **REQUEST NO. 16:**

10 Produce all invoices for materials purchased for the Property, or work performed or to be
11 performed at the Property.

12 **RESPONSE TO REQUEST NO. 16:**

13 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
14 custody, or control have been produced.

15 **REQUEST NO. 17:**

16 Produce copies of checks written to pay, or other evidence of payment for, invoices for
17 materials purchased for the Property, or work performed or to be performed at the Property.

18 **RESPONSE TO REQUEST NO. 17:**

19 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
20 custody, or control have been produced.

21 **REQUEST NO. 18:**

22 Produce any all [sic] documents, including copies of checks and bank statements, showing
23 payments from any investor for the purchase or improvement of the Property, including but not
24 limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

25 **RESPONSE TO REQUEST NO. 18:**

26 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
27 custody, or control have been produced.

28 ///

1 **REQUEST NO. 19:**

2 Produce any and all reports provided by, or to, Brian Mineau or Legion Investments, LLC,
3 regarding the status of the Property, materials to be used on the Property, or work performed or to be
4 performed on the Property.

5 **RESPONSE TO REQUEST NO. 19:**

6 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
7 custody, or control have been produced.

8 **REQUEST NO. 20:**

9 Produce copies of all business or professional licenses ever held by Brian Mineau.

10 **RESPONSE TO REQUEST NO. 20:**

11 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to the
12 discovery of admissible evidence in this matter, as copies of Brian Mineau's business or professional
13 licenses have no bearing on this litigation. Documents are being withheld on the basis of this
14 objection.

15 **REQUEST NO. 21:**

16 Produce copies of all utility bills for the Property.

17 **RESPONSE TO REQUEST NO. 21:**

18 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
19 custody, or control have been produced.

20 **REQUEST NO. 22:**

21 Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the
22 Property, or any investment in or improvement to the Property.

23 **RESPONSE TO REQUEST NO. 22:**

24 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
25 custody, or control have been produced.

26 **REQUEST NO. 23:**

27 Produce all photographs of the property.

28 ///

1 **RESPONSE TO REQUEST NO. 23:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
3 custody, or control have been produced.

4 **REQUEST NO. 24:**

5 Produce any drafts of the "Terms of Agreement" document that has been produced as "KVAM
6 403," and any correspondence referring to that document.

7 **RESPONSE TO REQUEST NO. 24:**

8 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
9 custody, or control have been produced.

10 **REQUEST NO. 25:**

11 Produce any document supporting your contention that Jay Kvam cut power to the Property.

12 **RESPONSE TO REQUEST NO. 25:**

13 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
14 custody, or control have been produced.

15 **REQUEST NO. 26:**

16 Produce any document supporting your contention in paragraph 14 of the Counterclaim that
17 Kvam demanded to be "bought out" of the agreement.

18 **RESPONSE TO REQUEST NO. 26:**

19 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
20 custody, or control have been produced.

21 **REQUEST NO. 27:**

22 Produce any document supporting your contention in paragraph 15 of the Counterclaim that
23 Kvam undertook efforts to interfere with Mineau's business investments or harm Mineau's business
24 relationships.

25 **RESPONSE TO REQUEST NO. 27:**

26 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
27 custody, or control have been produced.

28 ///

1 **REQUEST NO. 28:**

2 Produce all documents supporting your contentions in paragraph 16 of the Counterclaim that
3 Kvam wrongfully and fraudulently accessed Atlas' bank accounts and engaged in unauthorized and
4 fraudulent online banking transactions.

5 **RESPONSE TO REQUEST NO. 28:**

6 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
7 custody, or control have been produced.

8 **REQUEST NO. 29:**

9 Produce any documents supporting your contention in paragraph 18 of the Counterclaim that
10 Mr. Kvam caused process servers to harass, threaten, or intimidate Mr. Mineau's family.

11 **RESPONSE TO REQUEST NO. 29:**

12 Brian Mineau and Legion Investments, LLC have no responsive documents in their possession,
13 custody, or control.

14 **REQUEST NO. 30:**

15 Produce any and all documents supporting your contention in paragraph 39 of the
16 Counterclaim that Mineau and Legion enjoyed prospective economic relationships with various third
17 parties involving the marketing and sale of the House.

18 **RESPONSE TO REQUEST NO. 30:**

19 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
20 custody, or control have been produced.

21 **REQUEST NO. 31:**

22 Produce all documents supporting your contentions in paragraph 41 of the Counterclaim that
23 Kvam intended to harm Mineau and Legion by preventing and/or interfering with those relationships.

24 **RESPONSE TO REQUEST NO. 31:**

25 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
26 custody, or control have been produced.

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1 REQUEST NO. 32:

2 Produce all documents supporting your contentions in paragraph 43 of the Counterclaim that
3 Mineau's and Legion's prospective business relationships have been damaged.

4 RESPONSE TO REQUEST NO. 32:

5 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
6 custody, or control have been produced.

7 REQUEST NO. 33:

8 Produce any and all documents requesting a capital call or payment from any of the Investors
9 for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spinola.

10 RESPONSE TO REQUEST NO. 33:

11 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
12 custody, or control have been produced.

13 DATED this 1 day of October, 2018.

14 GUNDERSON LAW FIRM

15
16
17 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*

1 **CERTIFICATE OF SERVICE**

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

7
8 Michael Matuska, Esq.
9 Matuska Law Offices, Ltd.
10 2310 South Carson Street, Suite 6
11 Carson City, Nevada 89701
12 *Attorneys for Jay Kvam*

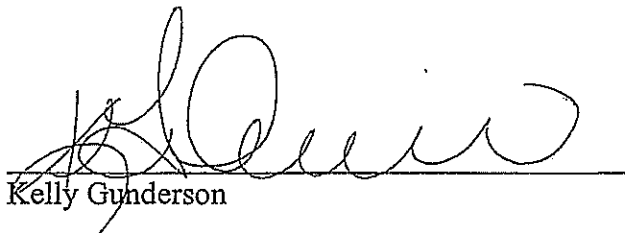
13 
14 Kelly Gunderson

EXHIBIT 4
MEET AND CONFER LETTER OF JANUARY 15, 2019
(Plaintiff's First Motion to Compel)

EXHIBIT 4
MEET AND CONFER LETTER OF JANUARY 15, 2019
(Plaintiff's First Motion to Compel)



**MATUSKA
LAW OFFICES**

Michael L. Matuska, Attorney at Law

January 15, 2019

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 accept this letter regarding the incomplete responses of Brian Mineau and Legion Investments, LLC to the Plaintiff Jay Kvam's First Request for Production of Documents and Second Request for Production of Documents. I will call you to set a time to meet and confer if you have any questions about this letter or your clients' obligations under NRCP 34.

**PLAINTIFF JAY KVAM'S FIRST SET OF REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

REQUEST NO. 1:

Produce any and all agreements between any of the following persons: Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

Response:

Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of admissible evidence in this matter. This Request seeks irrelevant information concerning agreements to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents are being withheld on the basis of this objection.

Without waiving this objection, all responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody and control have been produced.

Discussion:

Mineau and Legion Investments only produced the February, 2017 Terms of Agreement. All other documents to which these parties are a party are within their care, custody and control and must be produced. These documents are relevant to establish the background of the parties, their relationship to each other, course of dealing, and the interpretation of the Terms of Agreement and expectations thereunder. In addition, the Terms of Agreement purports to make Kvam a member and he is entitled to the documents under NRS 86.241. Also, although Legion Investments purports to be managed by Brian Mineau, Michael Spinola has also signed documents as the member/manager of Legion Investments. It is unclear whether he draws his



authority from the February, 2017 Terms of Agreement or some other agreement that has not been produced.

REQUEST NO. 6:

Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

Legion Investments' tax returns are not confidential, and they need to be made available to the Plaintiff both for the Plaintiff's case-in-chief and for the claim of punitive damages. I had this exact issue in *Cain v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018). In that case, the Nevada Supreme Court relied on *Hetter v. District Court*, 110 Nev. 513, 874 P.2d 762, 766 (1994) and ruled that it was an abuse of discretion for the District Court to deny a motion to compel the discovery of tax returns, when the Plaintiffs had presented sufficient evidence of fraud, civil conspiracy and conversion, even if the evidence did not amount to clear and convincing evidence. Defendants also have a fiduciary duty to account to Kvam and provide him access to the books and records pursuant to NRS 87.4335. In addition, the finances, governance and operation of Legion Investments is a primary issue in this case, especially as it relates to an accounting for the project at 7747 May Street, Chicago, Illinois, and Defendants' failure and refusal to provide an accounting to date. It is necessary to review the returns for these reasons, and to see how and whether Legion Investments reported this investment, including any expenses, loans and proceeds. Discovery of the tax returns is also allowed for purposes of the claim to pierce the company's limited liability shield.

REQUEST NO. 7:

Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Legion Investments should have been providing Kvam with a Schedule K-1 or other tax reporting information, and Kvam needs this information for his own tax reporting requirements.



REQUEST NO. 8:

Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's and Legion Investments, LLC's financial and tax records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Mineau's Schedule E would show whether he declared the income and loss for the project at 7747 May Street, Chicago, Illinois on his own tax returns.

REQUEST NO. 9:

Produce all meeting minutes for Legion Investments, LLC.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

Legion Investment's meeting minutes are not confidential. Kvam needs the meeting minutes to see whether and if Legion Investments approved the February, 2017 Terms of Agreement, the project at 7747 May Street, Chicago, Illinois, and any other resolutions relevant to the project. The meeting minutes might also contain information which would relate to interpretation and construction of the Terms of Agreement, which is disputed, as well as the respective roles of the different parties in regard to the investment and the project at 7747 May Street, Chicago, Illinois.

REQUEST NO. 10:

Produce all resolutions of the members and/or managers of Legion Investments, LLC.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing documents are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 9, *supra*.



REQUEST NO. 11:

Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Legion Investment's balance sheets are not confidential and will show whether and how Legion Investments documented and reported its acquisition of the house at 7747 May Street, Chicago, Illinois, as well as the loan from Kvam.

REQUEST NO. 12:

Produce all income and expense statements, and/or profit and loss statements for Legion Investments, LLC, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

See Request No. 6, *supra*. In addition, Legion Investment's income and expense statements are not confidential and will show whether and how Legion Investments documented and reported the loan from Kvam and expenses related to the project at 7747 May Street, Chicago, Illinois. Income and expense statements relate to the accounting, which is a primary issue in this case.

REQUEST NO. 13:

Produce all bank statements of Legion Investments, LLC accounts, since its creation on July 2, 2014.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion Investments, LLC's financial records are confidential and have no bearing on this litigation. Documents are being withheld on this basis.



Discussion:

See Request No. 6, *supra*. In addition, the bank statements are necessary to verify the disposition of Kvam's loan proceeds, and other sources of income from the project at 7747 May Street, Chicago, Illinois, and expenses related to that project. The bank statements are also relevant to the issue of whether Kvam's loan proceeds and project funds were co-mingled with Legion Investments' other funds. The bank statements are also necessary to verify whether the wire transfer from Criterion Investments was received. LEG 121.

REQUEST NO. 14:

Produce all escrow and title records for the real property located at 7747 S. May Street, Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing statements.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

Discussion:

All of the requested documents are within Brian Mineau's control and should have been produced. Unfortunately, the only escrow documents produced to date were the Purchase and Sale Contract and Alta Settlement Statement for the November 16, 2018 escrow (LEG 131-138). Defendants did not produce any documents regarding the February, 2017 escrow.

REQUEST NO. 15:

Produce all contracts for work performed or to be performed at the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All contracts are within Defendant's possession, custody or control, but only one contract was produced at LEG 2-15.

REQUEST NO. 16:

Produce all invoices for materials purchased for the Property, or work performed or to be performed at the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



Discussion:

All invoices are within Defendant's possession, custody or control, but none were provided. To date, Defendants have not provided an accounting, and all invoices are therefore relevant to the income and expense accounting, particularly the invoices from the contractor(s) who worked on the project.

REQUEST NO. 17:

Produce copies of checks written to pay, or other evidence of payment for, invoices for materials purchased for the Property, or work performed or to be performed at the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All checks are within Defendant's possession, custody or control, but none were provided.

REQUEST NO. 18:

Produce any all documents, including copies of checks and bank statements, showing payments from any investor for the purchase or improvement of the Property, including but not limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All responsive documents are within Defendant's possession, custody or control, but none were provided.

REQUEST NO. 19:

Produce any and all reports provided by, or to, Brian Mineau or Legion Investments, LLC, regarding the status of the Property, materials to be used on the Property, or work performed or to be performed on the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

The reports would have been generated by Brian Mineau and are within Defendant's possession, custody or control, but none were provided.



REQUEST NO. 20:

Produce copies of all business or professional licenses ever held by Brian Mineau.

Response:

Objection, relevance and confidentiality. This Request seeks irrelevant, confidential information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian Mineau's business or professional licenses are confidential and have no bearing on this litigation. Documents are being withheld on this basis.

Discussion:

Brian Mineau's business or professional licenses are not confidential and are relevant for background information and to determine his qualifications to manage a real estate project as well as to serve as a loan broker and duties owed to his lender and joint venture partners.

REQUEST NO. 21:

Produce copies of all utility bills for the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody, or control have been produced.

Discussion:

All utility bills are in the care, custody or control of Brian Mineau and Legion Investments, but only a few, scattered bills have been provided. Although the January 9, 2019 Order dismissed the Defendants' counterclaims, including the counterclaims based on the false allegation that Kvam turned off the power and caused the pipes to burst, Defendants still have not provided an accounting, and all bills are therefore relevant to the income and expense accounting.

REQUEST NO. 22:

Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the Property, or any investment in or improvement to the Property.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

Michael Spinola is a party to the February, 2017 Terms of Agreement. The documents responsive to this request are within Defendant's possession, custody or control, but none were provided. Other than the Terms of Agreement, the only document produced to date relevant to Michael Spinola is a redacted wire transfer signed by Michael Spinola on behalf of Criterion Investments LEG 121. There is no other correspondence with Michael Spinola. Defendants also failed to provide a bank statement or other document showing that funds were actually wired and



received. (See Request No. 18.)

REQUEST NO. 24:

Produce any drafts of the "Terms of Agreement" document that has been produced as "KVAM 403," and any correspondence referring to that document.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

Drafts of the Terms of Agreement are within Defendants' possession, custody and control, but have not been provided.

REQUEST NO. 33:

Produce any and all documents requesting a capital call or payment from any of the Investors for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spinola.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.

Discussion:

All documents relevant to this request are within Defendants' possession, custody and control, but have not been provided.

**PLAINTIFF JAY KVAM'S SECOND SET OF REQUESTS
FOR THE PRODUCTION OF DOCUMENTS**

Jay Kvam's Second Request for Production of Documents contained a single request as follows:

REQUEST NO. 34:

Produce any and all documents regarding the escrow and sale of the Property, including but not limited to listing information, purchase and sale agreements, title reports, escrow instructions, escrow closing statements, and checks or other documents showing the distribution of the proceeds of sale.

Response:

All responsive materials in Brian Mineau's and Legion Investments, LLC's possession, custody or control have been produced.



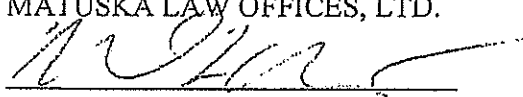
Austin K. Sweet, Esq.
January 15, 2019
Page 9 of 9

Discussion:

Unfortunately, this Response does not seem to be accurate. LEG 0121-0130 relate to Atlas Southside Investors and do not relate to the Property at 7747 S. May Street, Chicago, Illinois at all. The other documents include the Purchase and Sale Contract and the Settlement Statement. The Settlement Statement reports "\$24,473.77 Due to Seller." Please identify by date and Bates No. when and where the other requested documents have been produced, including: listing information, title reports, escrow instructions, checks or other documents showing the disposition of the proceeds of sale. The proceeds of sale obviously include "24,473.77 Due to Seller." Defendants need to provide the account statement showing the deposit of the funds. Defendants also need to provide the photos that went along with the listing agreement. To date, the only photos provided by the Defendants were six (6) grainy photos of the interior produced as LEG 0037-0042.

The requested documents should be received in this office no later than January 31, 2019. I will have to move forward with a motion to compel if they are not required by that date. You may be aware that Mr. Kvam will be entitled to recover his attorney's fees incurred in connection with the letter and the motion to compel.

Sincerely,

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

cc: Client

EXHIBIT 5
MINEAU'S SUPPLEMENTAL RESPONSES TO
REQUEST FOR PRODUCTION OF DOCUMENTS
(Plaintiff's First Motion to Compel)

EXHIBIT 5
MINEAU'S SUPPLEMENTAL RESPONSES TO
REQUEST FOR PRODUCTION OF DOCUMENTS
(Plaintiff's First Motion to Compel)

1 **DISC**

2 GUNDERSON LAW FIRM

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

11
12 **IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA**
13 **IN AND FOR THE COUNTY OF WASHOE**

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 3

16 vs.

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

20 Defendants / Counterclaimants.

21 **BRIAN MINEAU AND LEGION INVESTMENTS' SUPPLEMENTAL RESPONSES TO**
22 **PLAINTIFF JAY KVAM'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

23 **PROPOUNDING PARTY:** Jay Kvam

24 **RESPONDING PARTY:** Brian Mineau and Legion Investments, LLC

25 Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
26 INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq.
27 and Mark H. Gunderson, Esq., and pursuant to Rules 26 and 34 of the Nevada Rules of Civil
28 Procedure, supplement their responses to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s
Request for Production to Mineau and Legion ("Requests") as follows:

///

///

///

1 **REQUEST NO. 1:**

2 Produce any and all agreements between any of the following persons: Jay Kvam, Brian
3 Mineau, Michael Spinola, or Legion Investments, LLC.

4 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 1:**

5 Objection, overly broad, unduly burdensome, and not likely to lead to the discovery of
6 admissible evidence in this matter. This Request seeks irrelevant information concerning agreements
7 to which Jay Kvam is not a party and therefore have no bearing on this litigation. Documents which
8 are responsive to Request No. 1, but to which Jay Kvam is not a party, are being withheld on the basis
9 of this objection.

10 Without waiving this objection, all responsive materials in Brian Mineau's and Legion
11 Investments, LLC's possession, custody, or control have been produced.

12 **REQUEST NO. 2:**

13 Produce the Articles of Organization for Legion Investments, LLC, including any
14 amendments.

15 **RESPONSE TO REQUEST NO. 2:**

16 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to
17 the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing
18 documents have no bearing on this litigation. No documents are being withheld on the basis of this
19 objection.

20 Without waiving this objection, all responsive materials in Brian Mineau's and Legion
21 Investments, LLC's possession, custody, or control have been produced.

22 **REQUEST NO. 3:**

23 Produce the Operating Agreement for Legion Investments, LLC, including any amendments.

24 **RESPONSE TO REQUEST NO. 3:**

25 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to
26 the discovery of admissible evidence in this matter, as Legion Investments, LLC's internal governing
27 documents have no bearing on this litigation. No documents are being withheld on the basis of this
28 objection.

1 Without waiving this objection, all responsive materials in Brian Mineau's and Legion
2 Investments, LLC's possession, custody, or control have been produced.

3 **REQUEST NO. 4:**

4 Produce the Articles of Organization for Atlas Investors Southside, LLC, including any
5 amendments.

6 **RESPONSE TO REQUEST NO. 4:**

7 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
8 information that is not likely to lead to the discovery of admissible evidence in this matter, as Atlas
9 Investors Southside, LLC is not a party to this action and its internal governing documents have no
10 bearing on this litigation. Documents are being withheld on the basis of this objection.

11 **REQUEST NO. 5:**

12 Produce the Operating Agreement for Atlas Investors Southside, LLC, including any
13 amendments.

14 **RESPONSE TO REQUEST NO. 5:**

15 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
16 information that is not likely to lead to the discovery of admissible evidence in this matter, as Atlas
17 Investors Southside, LLC is not a party to this action and its internal governing documents have no
18 bearing on this litigation. Documents are being withheld on the basis of this objection.

19 **REQUEST NO. 6:**

20 Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

21 **RESPONSE TO REQUEST NO. 6:**

22 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
23 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
24 Investments, LLC's financial and tax records are confidential and have no bearing on this litigation.
25 Documents are being withheld on the basis of this objection.

26 **REQUEST NO. 7:**

27 Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

28 ///

1 **RESPONSE TO REQUEST NO. 7:**

2 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
3 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
4 Investments, LLC's financial and tax records are confidential and have no bearing on this litigation.
5 Documents are being withheld on the basis of this objection.

6 **REQUEST NO. 8:**

7 Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its
8 creation on July 2, 2014.

9 **RESPONSE TO REQUEST NO. 8:**

10 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
11 information that is not likely to lead to the discovery of admissible evidence in this matter, as Brian
12 Mineau's and Legion Investments, LLC's financial and tax records are confidential and have no
13 bearing on this litigation. Documents are being withheld on the basis of this objection.

14 **REQUEST NO. 9:**

15 Produce all meeting minutes for Legion Investments, LLC.

16 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 9:**

17 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
18 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
19 Investments, LLC's internal meeting minutes are confidential and have no bearing on this litigation.
20 Documents are being withheld on the basis of this objection.

21 Without waiving this objection, there are no meeting minutes for Legion Investments, LLC
22 which mention Jay Kvam or the real property located at 7747 S. May Street, Chicago, Illinois.

23 **REQUEST NO.10:**

24 Produce all resolutions of the members and/or managers of Legion Investments, LLC.

25 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 10:**

26 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential

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1 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
2 Investments, LLC's internal governing documents are confidential and have no bearing on this
3 litigation. Documents are being withheld on the basis of this objection.

4 Without waiving this objection, there are no resolutions for Legion Investments, LLC which
5 mention Jay Kvam or the real property located at 7747 S. May Street, Chicago, Illinois.

6 **REQUEST NO. 11:**

7 Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

8 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 11:**

9 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
10 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
11 Investments, LLC's financial records are confidential and have no bearing on this litigation.
12 Documents are being withheld on the basis of this objection.

13 Without waiving this objection, Legion Investments, LLC's financial statements relating to
14 the real property located at 7747 S. May Street, Chicago, Illinois, have been produced.

15 **REQUEST NO. 12:**

16 Produce all income and expense statements, and/or profit and loss statements for Legion
17 Investments, LLC, since its creation on July 2, 2014.

18 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 12:**

19 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
20 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
21 Investments, LLC's financial records are confidential and have no bearing on this litigation.
22 Documents are being withheld on the basis of this objection.

23 Without waiving this objection, Legion Investments, LLC's financial statements relating to
24 the real property located at 7747 S. May Street, Chicago, Illinois, have been produced.

25 **REQUEST NO. 13:**

26 Produce all bank statements of Legion Investments, LLC accounts, since its creation on July
27 2, 2014.

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1 **RESPONSE TO REQUEST NO. 13:**

2 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
3 information that is not likely to lead to the discovery of admissible evidence in this matter, as Legion
4 Investments, LLC's bank records are confidential and have no bearing on this litigation. Documents
5 are being withheld on the basis of this objection.

6 **REQUEST NO. 14:**

7 Produce all escrow and title records for the real property located at 7747 S. May Street,
8 Chicago, Illinois (the "Property"), including but not limited to any final and draft HUD-1 closing
9 statements.

10 **RESPONSE TO REQUEST NO. 14:**

11 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
12 custody, or control have been produced.

13 **REQUEST NO. 15:**

14 Produce all contracts for work performed or to be performed at the Property.

15 **RESPONSE TO REQUEST NO. 15:**

16 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
17 custody, or control have been produced.

18 **REQUEST NO. 16:**

19 Produce all invoices for materials purchased for the Property, or work performed or to be
20 performed at the Property.

21 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 16:**

22 There are no responsive materials in Brian Mineau's and Legion Investments, LLC's
23 possession, custody, or control.

24 **REQUEST NO. 17:**

25 Produce copies of checks written to pay, or other evidence of payment for, invoices for
26 materials purchased for the Property, or work performed or to be performed at the Property.

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1 **RESPONSE TO REQUEST NO. 17:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
3 custody, or control have been produced.

4 **REQUEST NO. 18:**

5 Produce any all [sic] documents, including copies of checks and bank statements, showing
6 payments from any investor for the purchase or improvement of the Property, including but not
7 limited to Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

8 **RESPONSE TO REQUEST NO. 18:**

9 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
10 custody, or control have been produced.

11 **REQUEST NO. 19:**

12 Produce any and all reports provided by, or to, Brian Mineau or Legion Investments, LLC,
13 regarding the status of the Property, materials to be used on the Property, or work performed or to be
14 performed on the Property.

15 **RESPONSE TO REQUEST NO. 19:**

16 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
17 custody, or control have been produced.

18 **REQUEST NO. 20:**

19 Produce copies of all business or professional licenses ever held by Brian Mineau.

20 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 20:**

21 Objection, relevance. This Request seeks irrelevant information that is not likely to lead to
22 the discovery of admissible evidence in this matter, as copies of Brian Mineau's business or
23 professional licenses have no bearing on this litigation. Documents are being withheld on the basis
24 of this objection.

25 Without waiving this objection, Brian Mineau's professional license relating to real estate has
26 been produced.

27 **REQUEST NO. 21:**

28 Produce copies of all utility bills for the Property.

1 **RESPONSE TO REQUEST NO. 21:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
3 custody, or control have been produced.

4 **REQUEST NO. 22:**

5 Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the
6 Property, or any investment in or improvement to the Property.

7 **RESPONSE TO REQUEST NO. 22:**

8 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
9 custody, or control have been produced.

10 **REQUEST NO. 23:**

11 Produce all photographs of the property.

12 **RESPONSE TO REQUEST NO. 23:**

13 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
14 custody, or control have been produced.

15 **REQUEST NO. 24:**

16 Produce any drafts of the "Terms of Agreement" document that has been produced as "KVAM
17 403," and any correspondence referring to that document.

18 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 24:**

19 There are no responsive materials in Brian Mineau's and Legion Investments, LLC's
20 possession, custody, or control.

21 **REQUEST NO. 25:**

22 Produce any document supporting your contention that Jay Kvam cut power to the Property.

23 **RESPONSE TO REQUEST NO. 25:**

24 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
25 custody, or control have been produced.

26 **REQUEST NO. 26:**

27 Produce any document supporting your contention in paragraph 14 of the Counterclaim that
28 Kvam demanded to be "bought out" of the agreement.

1 **RESPONSE TO REQUEST NO. 26:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
3 custody, or control have been produced.

4 **REQUEST NO. 27:**

5 Produce any document supporting your contention in paragraph 15 of the Counterclaim that
6 Kvam undertook efforts to interfere with Mineau's business investments or harm Mineau's business
7 relationships.

8 **RESPONSE TO REQUEST NO. 27:**

9 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
10 custody, or control have been produced.

11 **REQUEST NO. 28:**

12 Produce all documents supporting your contentions in paragraph 16 of the Counterclaim that
13 Kvam wrongfully and fraudulently accessed Atlas' bank accounts and engaged in unauthorized and
14 fraudulent online banking transactions.

15 **RESPONSE TO REQUEST NO. 28:**

16 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
17 custody, or control have been produced.

18 **REQUEST NO. 29:**

19 Produce any documents supporting your contention in paragraph 18 of the Counterclaim that
20 Mr. Kvam caused process servers to harass, threaten, or intimidate Mr. Mineau's family.

21 **RESPONSE TO REQUEST NO. 29:**

22 Brian Mineau and Legion Investments, LLC have no responsive documents in their
23 possession, custody, or control.

24 **REQUEST NO. 30:**

25 Produce any and all documents supporting your contention in paragraph 39 of the
26 Counterclaim that Mineau and Legion enjoyed prospective economic relationships with various third
27 parties involving the marketing and sale of the House.

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1 **RESPONSE TO REQUEST NO. 30:**

2 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
3 custody, or control have been produced.

4 **REQUEST NO. 31:**

5 Produce all documents supporting your contentions in paragraph 41 of the Counterclaim that
6 Kvam intended to harm Mineau and Legion by preventing and/or interfering with those relationships.

7 **RESPONSE TO REQUEST NO. 31:**

8 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
9 custody, or control have been produced.

10 **REQUEST NO. 32:**

11 Produce all documents supporting your contentions in paragraph 43 of the Counterclaim that
12 Mineau's and Legion's prospective business relationships have been damaged.

13 **RESPONSE TO REQUEST NO. 32:**

14 All responsive materials in Brian Mineau's and Legion Investments, LLC's possession,
15 custody, or control have been produced.

16 **REQUEST NO. 33:**

17 Produce any and all documents requesting a capital call or payment from any of the Investors
18 for the Property, including Brian Mineau, Legion, Jay Kvam or Michael Spinola.

19 **SUPPLEMENTAL RESPONSE TO REQUEST NO. 33:**

20 There are no responsive materials in Brian Mineau's and Legion Investments, LLC's
21 possession, custody, or control.

22 DATED this 21 day of February, 2019.

23 GUNDERSON LAW FIRM

24
25 By: 

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

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I certify that I am an employee of the law office of Gunderson Law
3 Firm, and that on the 21 day of February, 2019, I deposited for mailing in Reno, Nevada a true
4 and correct copy of the **BRIAN MINEAU AND LEGION INVESTMENTS' SUPPLEMENTAL**
5 **RESPONSES TO PLAINTIFF JAY KVAM'S FIRST REQUEST FOR PRODUCTION OF**
6 **DOCUMENTS**, to the following:

7
8 Michael Matuska, Esq.
9 Matuska Law Offices, Ltd.
10 2310 South Carson Street, Suite 6
11 Carson City, Nevada 89701
12 *Attorneys for Jay Kvam*

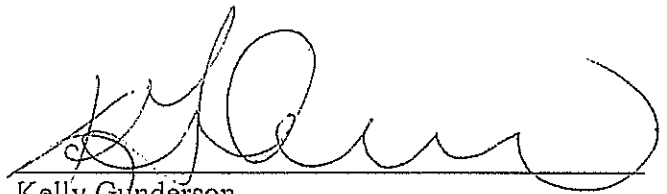
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14 Kelly Gunderson
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EXHIBIT 6
MAY 2017 BALANCE SHEET
(Plaintiff's First Motion to Compel)

EXHIBIT 6
MAY 2017 BALANCE SHEET
(Plaintiff's First Motion to Compel)

Balance Statement

Name:

Time Period: 2017

Financial Statements in U.S. Dollars

Income

Starting Balance	\$0.00
Loans	
Capital Contribution	
Rents Received	
Refinance of asset	
Net Sales	\$0.00

Expenses

Advertising	
Amortization	
Bad Debts	
Bank Charges	
Charitable Contributions	
Commissions	
Contract Labor	\$20,000.00
Depreciation	
Dues and Subscriptions	
Loan from Shareholders	
Insurance	
Interest	
Legal and Professional Fees	
Licenses and Fees	
Miscellaneous	
Office Expense	
Postage	
Mortgages	
Repairs and Maintenance	
Supplies	
Telephone	
Travel	
Utilities	
Taxes	
Wages	
Total Expenses	\$20,000.00

May 28 \$20,000 cash payment to TnT (cash given to MS to wire since I was out of town)

Net Operating Income: -\$20,000.00

Other Income

Gain (Loss) on Sale of Assets	
Other Income	
Total Other Income	\$0.00
Net Income (Loss)	-\$20,000.00

EXHIBIT 7
ATTORNEY'S FEES
(Plaintiff's First Motion to Compel)

EXHIBIT 7
ATTORNEY'S FEES
(Plaintiff's First Motion to Compel)

Date	Received From/Paid To	Explanation	Fees
Feb 22/2019	Lawyer: MLM 1.70 Hrs X 285.00	Draft motion to compel	484.50
Feb 23/2019	Lawyer: MLM 0.30 Hrs X 285.00	work on motion to compel	85.50
Feb 26/2019	Lawyer: MLM 0.40 Hrs X 285.00	Review reply; work on Chase subpoena; work on motion to compel	114.00
Feb 26/2019	Lawyer: MLM 0.30 Hrs X 285.00	continue work on motion to compel	85.50
Mar 1/2019	Lawyer: MLM 0.30 Hrs X 285.00	Work on motion to compel	85.50
Mar 6/2019	Lawyer: MLM 1.00 Hrs X 285.00	Review order; work on exhibits to motion to compel and declaration; review Legion accounting	285.00
Mar 6/2019	Lawyer: Parl 4.00 Hrs X 185.00	Contract attorney: review draft motion to compel; compile exhibits; legal research; draft declaration	740.00
Mar 11/2019	Lawyer: MLM 0.50 Hrs X 285.00	Work on motion to compel	142.50
Mar 11/2019	Lawyer: Parl 2.50 Hrs X 185.00	Contract attorney: continue work on draft motion to compel	462.50
			2485.00

1 **CODE: 1520**

2 Michael L. Matuska, Esq. SBN 5711
3 MATUSKA LAW OFFICES, LTD.
2310 South Carson Street, Suite 6
Carson City, NV 89701

4 Attorneys for Plaintiff

5
6 **THE SECOND JUDICIAL DISTRICT COURT OF NEVADA**
7 **IN AND FOR THE COUNTY OF WASHOE**
8

9
10 JAY KVAM,

Plaintiff,

Case No. CV18-00764

11 v.

Dept. No. 3

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

14 Defendants.
15

16 **DECLARATION OF MICHAEL L. MATUSKA, ESQ.**
17 **IN SUPPORT OF PLAINTIFF'S FIRST MOTION TO COMPEL**

18 I, MICHAEL L. MATUSKA, am the attorney of record for the Plaintiff, JAY KVAM, in
19 the present case, and do hereby declare as follows:

20 1. To date, Mineau has not provided a privilege log or similar identifying information
21 to support his decision to withhold documents.

22 2. Kvam's counsel sent a meet and confer letter to Mineau's counsel on January 15,
23 2019, and subsequently on February 7, 2019, spent 1 ½ hours in a meet and confer session in Mr.
24 Sweet's office.

25 3. The meet and confer session concluded with the agreement that, at least for now,
26 Kvam would limit his requests to the time frame beginning January 1, 2017 (roughly to coincide
27 with the Terms of Agreement), and Mineau would provide additional information in two (2)
28 weeks.

1 4. I am an attorney at law licensed to practice in the State of Nevada. I was a partner
2 at the law firm of Brooke Shaw Zumpft until November 1, 2011, at which time I commenced
3 practice through my current office, Matuska Law Offices, Ltd. At all times during this litigation,
4 I have been counsel of record for Jay Kvam.

5 5. I am licensed to practice in California and Nevada and in the following United
6 States District Courts: District of Nevada, Northern District of California, Central District of
7 California, and Eastern District of California. In addition, I am licensed to practice in the United
8 States Court of Appeals, Ninth Circuit, and the United States Supreme Court.

9 6. Exhibit 7 to this Declaration is a true and correct listing of the entire ledger for
10 amounts billed to Jay Kvam for work related to the present Motion to Compel.

11 7. The fees reflected in said Exhibit 7 were actually incurred in that all of the time was
12 actually billed and Mr. Kvam has either paid the fees and/or has been billed for said fees.

13 8. The fees reflected in said Exhibit 7 were necessarily incurred in that all of the time
14 listed was time that was actually billed and reflects work actually performed that, in my
15 professional opinion, was necessary to protect my clients' interests herein.

16 9. The fees reflected in said Exhibit 7 were and are reasonable in that the fees listed
17 are the actual and negotiated rates charged to my clients in this matter and are reasonable and
18 customary rates charged in northern Nevada.

19 10. The time records are derived from the fully documented and detailed time records
20 maintained in the regular course of business and practice of Matuska Law Offices.

21 11. The time records may have been redacted to remove attorney notations,
22 memorializations, privileged communications, and work product information. We are unwilling at
23 this time to produce full copies of the unredacted time records in our possession because such
24 information is privileged and could well prove useful to Defendants in the event of a trial or
25 appeal in this matter; however, such records will be provided and made available to this honorable
26 Court upon request for its *in camera* review.

27 12. In some instances, Matuska Law Offices have written down time or granted
28 courtesy write-offs when deemed appropriate by me.

1 13. My billing rate was \$285 per hour during the course of this litigation. That is an
2 average or below average rate for attorneys in this area with similar experience and qualifications.
3 Much of the work was delegated to my research attorney who spent another 4 hours and was billed
4 at a lower rate of \$185 per hour.

5 15. The total amounts claimed, \$2,485.00 is reasonable in all respects for the actual
6 work performed.

7 16. The Exhibits attached to the concurrently filed Plaintiff's First Motion to Compel
8 are true and correct copies of such documents.

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

11 Executed this 15th day of March, 2019, at Carson City, Nevada.

12
13 Respectfully submitted,

14 MATUSKA LAW OFFICES, LTD.

15 *Michael L. Matuska*

16 By:

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