

IN THE SUPREME COURT OF THE STATE OF NEVADA

In the Matter of

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

JAY KVAM,
Petitioner

vs.

THE SECOND JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF
WASHOE; AND THE HONORABLE
LYNNE K. SIMONS,
Respondents,

and

BRIAN MINEAU and LEGION
INVESTMENTS, LLC,
Real Parties in Interest

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District Court Case No. CV18-00764
Elizabeth A. Brown
Clerk of Supreme Court

**PETITION FOR WRIT OF
PROHIBITION OR
ALTERNATIVELY,
MANDAMUS**

Concerning the District Court,
Department 6 (Hon. Lynne Simons),
Second Judicial District

PETITIONER'S APPENDIX

VOLUME 4

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JAY KVAM

APPELLANT'S APPENDIX ALPHABETICAL INDEX				
	DOCUMENT	DATE	VOL.	PAGE
1.	Affidavit of Jay Kvam in Support of Reply to Opposition to Motion for Dissolution	08/01/18	1	94-99
2.	Affidavit of Jay Kvam in Support of Reply to Opposition to Motion to Dismiss and for Summary Judgment	11/19/18	2	205-213
3.	Amended Pretrial Disclosures Pursuant to NRCP 16.1(a)(3) (Plaintiff)	02/03/20	10	1584-1590
4.	Answer and Counterclaim	06/05/18	1	10-23
5.	Answer to First Amended Verified Complaint	02/19/19	3	390-394
6.	Answer to Plaintiff's Motion to Disqualify Judge	04/14/20	11	1912-1919
7.	Answer to Second Amended Verified Complaint	09/25/19	5	769-773
8.	Complaint (Verified)	04/11/18	1	1-9
9.	Declaration of Michael L. Matuska In Support of Plaintiff's First Motion to Compel	03/15/19	3	470-472
10.	Declaration of Michael L. Matuska in Support of Plaintiff's First Motion to Compel	03/27/19	4	522-527
11.	Declaration of Michael L. Matuska In Support of Plaintiff's Second Motion to Compel	11/26/19	6	974-977
12.	First Amended Counterclaim (Mineau & Legion Investments, LLC)	10/05/18	2	114-127
13.	First Amended Verified Complaint	01/31/19	3	379-389
14.	First Motion in Limine (Plaintiff)	02/14/20	10	1609-1642
15.	First Motion to Compel (Plaintiff)	03/15/19	3	395-469
16.	Legion and Mineau's NRCP 16.1 Pretrial Disclosures	01/31/20	10	1570-1577
17.	Minutes – Settlement Conference	02/24/20	10	1678
18.	Motion for Dissolution	07/11/18	1	44-51
19.	Motion for Leave to Exceed Page Limit	01/16/20	8	1248-1250

20.	Motion for Leave to File Amended Complaint	12/24/18	3	273-298
21.	Motion for Leave to File Second Amended Complaint	06/19/19	4	620-656
22.	Motion for Reconsideration of Order Affirming Discovery Commissioner's Recommendation, Entered May 16, 2019; For Discovery Sanctions; and For Other Relief (Plaintiff)	01/24/20	10	1518-1564
23.	<p>Motion for Summary Judgment</p> <p>Exhibit 1 – Declaration of Brian Mineau</p> <p>Exhibit 2 – Terms of Agreement between Legion Investments LLC (its Members) and Jay Kvam (Initial Funding Member of Same) RE: 7747 S. May Street, Chicago Illinois</p> <p>Exhibit 3 – February 13, 2017 Wire Transfer Confirmation in the amount of \$44,000.00</p> <p>Exhibit 4 – February 13, 2017 Wire Transfer Confirmation in the amount of \$784.31</p> <p>Exhibit 5 – March 6, 2017 Colleen Burke text message</p> <p>Exhibit 6 – March 19, 2017 email from Colleen Burke to Brian Mineau</p> <p>Exhibit 7 – Contractor Agreement with TNT dated March 23, 2017</p> <p>Exhibit 8 – March 23, 2017 Wire Transfer Confirmation in the amount of \$20,020.00</p> <p>Exhibit 9 – Floor Plans</p> <p>Exhibit 10 – Email chain transmitting floor plans dated April 9, 2017</p> <p>Exhibit 11 – Email chain dated April 14, 2017</p> <p>Exhibit 12 – General Wire Transfer Request</p> <p>Exhibit 13 – Minutes Special Meeting Atlas Investors Southside, LLC, Friday, May 5, 2017</p> <p>Exhibit 14 – Text chain between Brian Mineau, Jay Kvam and Michael Spinola with pictures of the property</p> <p>Exhibit 15 – Text chain dated May 15, 2017 with photos</p> <p>Exhibit 16 – “Slack” thread dated May 17, 2017</p>	01/06/20	7A	1003-1136

23.	<p>Motion for Summary Judgment – continued</p> <p>Exhibit 17 – Wire Transfer Receipt dated May 18, 2017 in the amount of \$9,000.00</p> <p>Exhibit 18 – “Slack” thread dated May 21, 2017</p> <p>Exhibit 19 – Outgoing Domestic Wire Transfer Request dated May 26, 2017</p> <p>Exhibit 20 – Text message dated May 27, 2017 to May 31, 2017</p> <p>Exhibit 21 – Text messages dated May 31, 2017</p> <p>Exhibit 22 – Text messages dated June 1, 2017 to June 20, 2017</p> <p>Exhibit 23 – City of Chicago Department of Buildings records</p> <p>Exhibit 24 – Email chain between Jay Kvam and Brian Mineau</p> <p>Exhibit 25 – Jay Kvam letter to Brian Mineau dated December 31, 2017</p> <p>Exhibit 26 – Michael Matuska letter to Brian Mineau dated February 16, 2018</p> <p>Exhibit 27 – Michael Matuska letter to Austin Sweet dated September 19, 2018</p> <p>Exhibit 28 – Exclusive Right to Sell Listing Agreement</p> <p>Exhibit 29 – Residential Real Estate Purchase and Sale Contract</p> <p>Exhibit 30 – Citywide Title Corporation ALTA Settlement Statement – Cash</p> <p>Exhibit 31 – Summary of the Annual Cash Flows relating to the Property for 2017</p> <p>Exhibit 32 – Summary of the Annual Cash Flows relating to the Property for 2018</p>	01/06/20	7B	1137-1225
24.	Motion for Temporary Restraining Order and Preliminary Injunction	11/30/18	2	214-250
25.	Motion to Dismiss Counterclaim, and for Summary Judgment	10/25/18	2	128-167
26.	Motion to Dismiss Counterclaim, or Alternatively, for a More Definite Statement	06/25/18	1	24-43
27.	Motion to Disqualify Judge	04/07/20	11	1726-1911

28.	Notice of Deposit of Property Proceeds by Brian Mineau and Legion Investments, LLC	12/13/18	3	267-272
29.	Notice of Entry of Order – (Motion to Dismiss Counterclaim, and for Summary Judgment)	01/10/19	3	313-330
30.	Notice of Entry of Order – (Stipulation to Deposit Funds; Order)	12/12/18	3	259-266
31.	Notice of Entry of Order (Motion to Dismiss Counterclaim)	09/06/18	1	103-113
32.	Notice of Entry of Order (Order Denying Motion to Disqualify the Presiding Judge)	04/27/20	11	1936-1947
33.	Notice of Entry of Order (Order Granting Motion for Leave)	09/11/19	5	746-755
34.	Notice of Entry of Order (Order Granting, in Part, and Denying, in Part Defendant’s Motion for Summary Judgment; Order Granting Summary Judgment in Claim Pursuant to Court’s NRCP 56 Notice)	06/05/20	12	1993-2042
35.	Notice of Entry of Order (Order Modifying Scheduling Order)	08/05/19	5	740-745
36.	Notice of Trial and Pretrial Conference	06/12/19	4	605-608
37.	Objection to Plaintiff’s Amended Pretrial Disclosures Pursuant to NRCP 16.1 (Defendants)	02/17/20	10	1648-1659
38.	Objection to Recommendation for Order (Defendants)	01/13/20	8	1238-1242
39.	Objections to “Legion and Mineau’s” 16.1 Pretrial Disclosures (Plaintiff)	02/14/20	10	1643-1647
40.	Objections to Report of Commissioner (Plaintiff)	04/16/19	4	552-574
41.	Opposition to Defendant’s Motion For Summary Judgment; and Cross Motion for Partial Summary Judgment Exhibit 1 – Declaration of Jay Kvam Exhibit 2 – Text dated December 29, 2016 Exhibit 3 – Project costs breakdown Exhibit 4 – Text dated March 20, 2017 Exhibit 5 – January 2, 2017 email and Unsigned Triple “R” Construction Contract Exhibit 6 – Purchase Agreement dated January 3, 2017	01/16/20	9A	1251-1370

	<p>Exhibit 7 – \$44,000 Wire dated February 13, 2017</p> <p>Exhibit 8 – \$784.31 Wire dated February 13, 2017</p> <p>Exhibit 9 – Settlement Statement dated February 13, 2017</p> <p>Exhibit 10 – Warranty Deed dated January 30 2017</p> <p>Exhibit 11 – Terms of Agreement dated February 14, 2017</p> <p>Exhibit 12 – Text dated February 17, 2017</p> <p>Exhibit 13 – Text dated March 16, 2017</p> <p>Exhibit 14 – Email dated March 20, 2017</p> <p>Exhibit 15 – DocuSign Certificate March 20, 2017</p> <p>Exhibit 16 – Text dated March 23, 2017</p> <p>Exhibit 17 – Email dated March 23, 2017</p> <p>Exhibit 18 – \$20,000 Wire dated March 23, 2017</p> <p>Exhibit 19 – Text dated April 13, 2017</p> <p>Exhibit 20 – \$20,000 Wire dated April 14, 2017</p> <p>Exhibit 21 – \$9,000 Wire dated May 18, 2017</p> <p>Exhibit 22 – Email dated May 21, 2017</p> <p>Exhibit 23 – Email dated June 5, 2017</p> <p>Exhibit 24 – Email dated July 14, 2017</p> <p>Exhibit 25 – Email dated June 26, 2017</p> <p>Exhibit 26 - Email dated August 12, 2017</p> <p>Exhibit 27 – Email dated August 16, 2017</p>			
41.	<p>Opposition to Defendant’s Motion for Summary Judgment and Cross Motion for Partial Summary Judgment - continued</p> <p>Exhibit 28 – Email dated September 25, 2017</p> <p>Exhibit 29 – Email dated October 12, 2017</p> <p>Exhibit 30 – Email dated November 5, 2017</p> <p>Exhibit 31 – Email chain November 19, 2017 – January 23, 2018</p> <p>Exhibit 32 – Inspection #12270203 report of August 7, 2019</p> <p>Exhibit 33 – Inspection #12274840 report of August 7, 2019</p> <p>Exhibit 34 – Inspection #12288430 report of August 7, 2019</p> <p>Exhibit 35 – Settlement Statement dated November 16, 2018</p>	01/16/20	9B	1371-1495

	Exhibit 36 – Warranty Deed dated November 5, 2018 Exhibit 37 – Deposition of Michelle Salazar, Excerpt Exhibit 38 – Deposition of Colleen Burke, Excerpt Exhibit 39 – Declaration of Michael L. Matuska Exhibit 40 – Declaration of Benjamin Steele Exhibit 41 – Plaintiff’s Expert Witness Disclosure (report of Benjamin Steele dated September 24, 2019) w/o exhibits Exhibits 42 – Amended Report of Expert Witness Benjamin Steele dated January 15, 2020 Exhibit 43 – Brian Mineau and Legion Investments’ Responses to Plaintiff Jay Kvam’s First Set of Interrogatories Exhibit 44 – Michael L. Matuska’s letter to Austin Sweet dated September 19, 2018 Exhibit 45 – Austin Sweet letter to Michael Matuska dated March 26, 2018 Exhibit 46 – Real Estate Contract – Scotch and Soda Goldmine Company, Inc. acceptance date of May 22, 2018 Exhibit 47 – Real Estate Contract – Mutual Happiness LLC dated July 3, 2018 Exhibit 48 – Appendix A: Legal Authority: Restatement of the Law, Second – Contracts 2d Excerpts from Volumes 1 and 2			
42.	Opposition to Motion for Dissolution	07/26/18	1	73-87
43.	Opposition to Motion for Leave to File Amended Complaint	01/14/19	3	331-339
44.	Opposition to Motion for Leave to File Second Amended Complaint	07/01/19	4	657-665
45.	Opposition to Motion for Reconsideration of Order Affirming Discovery Commissioner’s Recommendation, Entered May 16, 2019; For Discovery Sanctions; and For Other Relief	02/07/20	10	1591-1600
46.	Opposition to Motion to Dismiss Counterclaim, and for Summary Judgment	11/13/18	2	168-190
47.	Opposition to Motion to Dismiss Counterclaim, or Alternatively, For A More Definite Statement	07/12/18	1	52-62

48.	Opposition to Plaintiff's First Motion in Limine	02/28/20	11	1712-1715
49.	Opposition to Plaintiff's First Motion to Compel	03/25/19	4	473-512
50.	Opposition to Plaintiff's Second Motion to Compel	12/06/19	6	978-987
51.	Order (Motion for Dissolution)	09/04/18	1	100-102
52.	Order (Motion For Leave to File Amended Complaint)	01/29/19	3	376-378
53.	Order (Motion to Dismiss Counterclaim, and for Summary Judgment)	01/09/19	3	299-312
54.	Order Accepting Case Reassignment	06/06/19	4	602-604
55.	Order Affirming Master's Recommendation	05/16/19	4	593-601
56.	Order After Pretrial Conference	01/15/20	8	1245-1247
57.	Order Denying Motion to Disqualify the Presiding Judge	04/23/20	11	1929-1935
58.	Order Granting Temporary Restraining Order	12/03/18	3	251-255
59.	Order Granting, in Part, and Denying, in Part Defendants' Motion for Summary Judgment; Order Granting Summary Judgment on Claim Pursuant to Court's NRCP 56 Notice	06/05/20	12	1948-1992
60.	Order Modifying Scheduling Order	08/05/19	5	738-739
61.	Order Referring Discovery Motion to Commissioner for Recommendation [Defendants' Second Motion to Compel]	12/18/19	6	1000-1002
62.	Order Scheduling Settlement Conference	01/30/20	10	1565-1569
63.	Pre-Trial Conference Minutes	01/14/20	8	1243-1244
64.	Pretrial Disclosures Pursuant to NRCP 16.1(a)(3) (Plaintiff)	01/31/20	10	1578-1583
65.	Recommendation for Order	04/09/19	4	528-551
66.	Recommendation for Order	01/10/20	8	1226-1237

67.	Reply in Support of Motion for Reconsideration of Order Affirming Discovery Commissioner's Recommendation, entered May 16, 2019; For Discovery Sanctions and For Other Relief (Plaintiff)	02/09/20	10	1601-1608
68.	Reply In Support of Motion for Summary Judgment	01/23/20	10	1501-1517
69.	Reply to Answer to Motion to Disqualify Judge	04/22/20	11	1920-1928
70.	Reply to Defendants' Response to Objection to Report of Commissioner (Plaintiff)	04/30/19	4	588-592
71.	Reply to Opposition to First Motion in Limine (Plaintiff)	03/04/20	11	1716-1725
72.	Reply to Opposition to First Motion to Compel (Plaintiff)	03/27/19	4	513-521
73.	Reply to Opposition to Motion for Dissolution	08/01/18	1	88-93
74.	Reply to Opposition to Motion for Leave to File Amended Complaint	01/21/19	3	340-357
75.	Reply to Opposition to Motion for Leave to File Amended Complaint	01/22/19	3	358-375
76.	Reply to Opposition to Motion for Leave to File Second Amended Complaint	07/08/19	5	666-730
77.	Reply to Opposition to Motion to Dismiss Counterclaim, and for Summary Judgment	11/19/18	2	191-204
78.	Reply to Opposition to Motion to Dismiss Counterclaim, or Alternatively, for a More Definite Statement	07/17/18	1	63-72
79.	Reply to Opposition to Plaintiff's Second Motion to Compel (Plaintiff)	12/11/19	6	988-999
80.	Request for Submission – Order Granting Motion for Leave to File Second Amended Complaint	07/08/19	5	731-734
81.	Response to Objection to Recommendation for Order	01/21/20	10	1496-1500
82.	Response to Plaintiff's Objection to Report of Commissioner	04/25/19	4	575-587
83.	Second Amended Verified Complaint	09/11/19	5	756-768
84.	Second Motion to Compel (Plaintiff)	11/26/19	6	774-973
85.	Stipulation to Deposit Funds; Order	12/12/18	3	256-258

86.	Stipulation to Modify Scheduling Order	08/01/19	5	735-737
87.	Stipulation to Vacate Trial	02/27/20	11	1705-1707
88.	Supplement to Plaintiff's Motion for Reconsideration of Order Affirming Discovery Commissioner's Recommendation, Entered May 16, 2019; for Discovery Sanctions; and for Other Relief	02/27/20	11	1708-1711
89.	Supplemental Uniform Pretrial Order	06/12/19	4	609-619
90.	Transcript – Hearing December 17, 2018	12/17/18	13	2043-2100
91.	Transcript – Oral Arguments (Motion for Summary Judgment) February 11, 2020	02/11/20	13	2145-2195
92.	Transcript - Pretrial Conference & Pretrial Motions February 27, 2020	02/27/20	13	2196-2240
93.	Transcript - Pretrial Conference January 14, 2020 (w/correction page) [Note: page 6 line 21 was corrected to reflect that the speaker was Mr. Matuska]	01/14/20	13	2101-2144
94.	Trial Statement (Defendants)	02/24/20	10	1660-1677
95.	Trial Statement (Plaintiff)	02/26/20	10	1679-1704

1 **CODE 2645**

2 **GUNDERSON LAW FIRM**

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

23 Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
24 INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq.
25 and Mark H. Gunderson, Esq., submit this Opposition to the *First Motion to Compel* ("Motion") filed
26 by Plaintiff / Counterdefendant JAY KVAM ("Kvam"). This Opposition is made and based upon
27 NRCP 26, NRCP 34, NRCP 37, and the following points and authorities and attachments.
28

29 **MEMORANDUM OF POINTS AND AUTHORITIES**

30 **I. INTRODUCTION**

31 This dispute concerns the parties' efforts to acquire the property located at 7747 S. May Street,
32 Chicago, Illinois ("Property"), renovate it, and sell it for a profit. In furtherance of these efforts, the
33 parties entered into a very short and very poorly worded document signed by Kvam, Mineau, and
34 Michael Spinola ("Terms of Agreement"). Kvam invested approximately \$93,784.31 in the project

1 and Legion invested \$20,000.00 in the project. Approximately \$45,000.00 of Kvam's funds were
2 paid directly from Kvam into escrow to purchase the Property, and the remainder was paid directly
3 from Kvam to the contractor in Illinois, TNT Complete Facility Care Inc. ("TNT"). It is undisputed
4 that Kvam never delivered any funds to Legion or Mineau and that none of Kvam's funds ever passed
5 through Legion's or Mineau's bank accounts. Unfortunately, the project stalled and Kvam demanded
6 that Legion sell the Property and sued Legion and Mineau to reimburse him for the losses he suffered
7 in the investment.

8 Kvam has issued lengthy and detailed requests for production of documents which have
9 nothing to do with Kvam, the Property, the project, or this dispute. Kvam seeks substantial financial
10 records, tax records, and internal documents from Legion and Mineau, despite the fact that it is
11 undisputed that *neither Legion nor Mineau was ever in possession of Kvam's funds in any manner*
12 *whatsoever: each of Kvam's payments went either directly to escrow (to purchase the Property) or*
13 *directly to TNT to renovate the Property.* Despite Kvam's allegations that he is entitled to audit all
14 of Legion and Mineau's personal and financial records, there is simply no money "missing" in this
15 project and there is no allegation that Legion or Mineau mishandled or misappropriated Kvam's funds
16 in any way. There is simply no reason for Kvam to request or obtain any documents from Legion or
17 Mineau other than those documents relating or pertaining to Kvam, the Property, the project, or this
18 litigation.

19 Furthermore, the Motion should be denied due to Kvam's failure to properly meet and confer.
20 As Kvam stated in the Motion, counsel for the parties engaged in a lengthy meet and confer process,
21 after which Legion and Mineau supplemented their responses and delivered a lengthy letter
22 explaining their supplemental responses. See Sweet's February 21, 2019 letter to Matuska, attached
23 as Exhibit "2." Kvam made no further effort to meet and confer concerning these issues before filing
24 the Motion.

25 For these reasons, the Motion should be denied.

26 II. ARGUMENT

27 Kvam seeks an order compelling Legion and Mineau to provide further responses to his
28 Requests for Production of Documents Nos. 1, 6, 7, 8, 9, 10, 11, 12, 13, and 20. Each request will be

1 addressed in turn.

2 *A. Legion and Mineau Have Adequately Responded to Request No. 1.*

3 Kvam's Request No. 1 seeks "any and all agreements between any of the following persons:
4 Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC." Mineau and Legion object
5 to this request in that it seeks irrelevant information concerning agreements to which Kvam is not a
6 party and therefore have no bearing on this litigation. Legion and Mineau produced all agreements
7 to which Kvam is a party. Kvam deems this response inadequate.

8 First, Kvam argues that Legion and Mineau's response is inconsistent and ambiguous because
9 Legion and Mineau state that documents to which Kvam is not a party are being withheld, but that
10 all responsive materials have been produced. Motion p. 7. This is not inconsistent: Legion and
11 Mineau objected to the scope of the request, stated that responsive materials are being withheld on
12 the basis of that objection, and duly responded to the rest of the request. This is precisely the
13 procedure required by NRCP 34(b)(2)(C). Kvam goes on to criticize Legion and Mineau for not
14 providing a privilege log, but a privilege log is not required for documents which are being withheld
15 on the basis of an objection under NRCP 34(b)(2)(C). Critically, Kvam did not raise this issue during
16 the meet and confer process. See Motion at Ex. 4 pp. 1-2. Had Kvam raised this issue prior to the
17 Motion, Legion and Mineau could have addressed this alleged ambiguity in their supplemental
18 response and perhaps avoided judicial intervention.

19 Second, Kvam argues that Legion and Mineau have provided inconsistent information
20 regarding the source of Legion's \$20,000.00 wire transfer to TNT, requiring Legion and Mineau to
21 produce their agreements with Michael Spinola and Criterion NV LLC. Motion pp. 7-8. However,
22 Kvam's Request No. 1 does not seek agreements involving Criterion NV LLC or the \$20,000.00
23 transfer. Regardless, as Mineau has already testified, the transaction involving Mr. Spinola, Criterion
24 NV LLC, and the \$20,000.00 wire transfer was not documented, so no responsive documents exist.
25 See Reply in Support of Motion for Protective Order at Ex. 1. Again, Kvam did not raise this issue
26 during the meet and confer process. See Motion at Ex. 4 pp. 1-2. Had Kvam raised this issue prior
27 to the Motion, Legion and Mineau could have clarified this fact in their supplemental response and
28 perhaps avoided judicial intervention.

1 Kvam further argues that the requested documents are relevant to establish the background of
2 the parties, their relationship to each other, their course of dealing, and the interpretation of the Terms
3 of Agreement. Motion p. 8. However, this could only be true with respect to agreements to which
4 Kvam was a party, and Legion and Mineau did not object to the production of such documents.
5 Agreements to which Kvam was not a party could not establish any manner of background, course
6 of dealing, or interpretation of contracts related to this litigation and is therefore irrelevant. NRC
7 26(b).

8 Finally, Kvam argues that “the Terms of Agreement purports to make Kvam a member and
9 he is entitled to the company’s documents under NRS 86.241.” Motion p. 8. Legion and Mineau
10 adamantly dispute that the Terms of Agreement somehow made Kvam a member of Legion under
11 NRS Chapter 86, and there is no mechanism under Nevada law for parties to become members of a
12 preexisting entity solely with respect to a single asset of that entity. Indeed, Kvam has acknowledged
13 this fact under oath [see Affidavit of Jay Kvam in Support of Motion for Dissolution, attached as
14 Exhibit “3,” at ¶ 8] and makes no claim in his *First Amended Verified Complaint* that he is a member
15 of Legion with rights under NRS Chapter 86. Regardless, Request No. 1 does not comply with the
16 express procedural requirements of NRS 86.241, so NRS 86.241 would not justify granting Kvam’s
17 Motion even if he was somehow deemed to be a member of Legion.

18 For these reasons, Legion and Mineau properly and adequately responded to Kvam’s Request
19 No. 1. Additionally, Kvam failed to sufficiently meet and confer regarding his concerns with Legion
20 and Mineau’s Supplemental Response to Request No. 1. As explained above, the Motion relies upon
21 arguments which were not raised during the meet and confer process. Moreover, counsel for the
22 parties met at length to discuss the issues that were raised regarding these requests and Legion and
23 Mineau ultimately agreed to supplement their Response to Request No. 1 to clarify that the documents
24 being withheld were documents to which Kvam was not a party. Motion at Ex. 5 p. 2. Legion and
25 Mineau also attached a letter explaining their supplemental responses. See Ex. 2. Based upon this
26 supplemental response and explanation, Legion and Mineau believed this issue was resolved. See
27 Ex. 1 ¶ 6. Kvam made no effort to further discuss or resolve this issue before filing the Motion. Id.

28 The Motion should be denied with respect to Request No. 1.

1 **B. *Legion and Mineau Have Adequately Responded to Request No. 6.***

2 Kvam's Request No. 6, as amended, seeks all tax returns for Legion since January 1, 2017.
3 Mineau and Legion object to this request in that it seeks irrelevant and confidential information
4 because Legion's tax records are confidential and have no bearing on this litigation. In the letter
5 accompanying their supplemental responses, Legion and Mineau explained Legion's tax returns
6 would only be relevant to the extent related to the Property, but that Legion's 2017 tax returns contain
7 no entries relating to the Property and Legion's 2018 tax returns are not yet completed. See Ex. 2 pp.
8 1-2. Legion and Mineau agreed to further supplement their responses as appropriate after Legion's
9 2018 tax returns are completed. Id. Kvam deems this response inadequate.

10 Kvam first argues that Legion's tax returns are relevant because Legion sold the Property and
11 must therefore declare either a profit or a loss. Motion p. 9. However, Legion sold the Property in
12 2018 and, as Legion explained to Kvam, Legion has not yet filed its tax returns for 2018. Ex. 2 pp.
13 1-2. Thus, even if Legion's 2018 tax returns do contain relevant information, they do not presently
14 exist and Legion has no responsive documents available to produce in this regard.

15 Kvam next relies upon Cain v. Price, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018) for the
16 proposition that a plaintiff seeking punitive damages is entitled to the defendant's tax returns "when
17 the Plaintiffs had presented sufficient evidence of fraud, civil conspiracy and conversion." Motion
18 p. 9. However, that case also states that "a defendant's personal financial information can not be had
19 for the mere asking." Id. Here, unlike in Cain, Kvam has presented no evidence of fraud, civil
20 conspiracy, conversion, or misuse of funds. Indeed, it is undisputed that neither Legion nor Mineau
21 ever had custody, possession, or control over Kvam's funds in any way whatsoever. Cain therefore
22 does not support Kvam's request for Legion's tax returns.

23 Kvam also argues that Legion and Mineau have a duty to account to Kvam and provide him
24 access to Legion's books and records pursuant to NRS 87.4335. Motion p. 9. Legion and Mineau
25 dispute that a partnership was formed under NRS Chapter 87, but even if a partnership was formed,
26 NRS 87.4335 does not require each partner to provide access to their personal books and records to
27 the other partners. Rather, NRS 87.4335 requires each partner to furnish to its other partners any
28 information *concerning the partnership's business and affairs*. As Legion has explained to Kvam,

1 its 2017 tax returns contain no information relating to the Property and its 2018 tax returns have not
2 yet been filed. Ex. 2 pp. 1-2. Thus, Legion has no responsive documents available to produce in this
3 regard.

4 Kvam goes on to argue that he is entitled to review Legion's tax returns due to Legion and
5 Mineau's "failure and refusal to provide an accounting to date," so that Kvam may see "how and
6 whether Legion Investments reported this investment, including any expenses, loans and proceeds."
7 Motion pp. 9-10. Kvam has never explained: why he believes Legion and Mineau owe him some
8 duty to provide an accounting; what Kvam wishes the accounting to reflect; or how any such issues
9 might be resolved by reviewing Legion's tax returns, especially considering that Legion and Mineau
10 have never had custody, possession, or control over Kvam's funds in any way whatsoever.
11 Regardless, again, as Legion has explained to Kvam, its 2017 tax returns contain no information
12 relating to the Property and its 2018 tax returns have not yet been filed. Ex. 2 pp. 1-2. Thus, Legion
13 has no responsive documents available to produce in this regard.

14 Finally, Kvam argues that discovery of Legion's tax returns "is allowed for purposes of the
15 claim to pierce the company's limited liability shield." Motion p. 10. However, Kvam has not pled
16 a claim to pierce Legion's limited liability shield. See generally Kvam's *First Amended Verified*
17 *Complaint*. This argument is therefore irrelevant.

18 For these reasons, Legion and Mineau properly and adequately responded to Kvam's Request
19 No. 6. Additionally, Kvam also failed to sufficiently meet and confer regarding his concerns with
20 Legion and Mineau's Response to Request No. 6. As explained above, after counsel for the parties
21 met at length to discuss the issues that were raised regarding these requests, Legion and Mineau
22 informed Kvam that, regardless of their objections, Legion's 2017 tax returns contained no
23 information relating to the Property and Legion's 2018 tax returns have not yet been filed. Ex. 2 p.
24 2. Based upon this explanation, Legion and Mineau believed this issue was resolved. See Ex. 1 ¶ 6.
25 Kvam made no effort to further discuss or resolve this issue before filing the Motion. Id.

26 The Motion should be denied with respect to Request No. 6.

27 **C. Legion and Mineau Have Adequately Responded to Request No. 7.**

28 Kvam's Request No. 7, as amended, seeks all schedule K-1s for Legion since January 1, 2017.

1 Mineau and Legion object to this request because Legion's tax records are confidential and have no
2 bearing on this litigation. Again, Legion and Mineau explained that Legion's tax returns would only
3 be relevant to the extent related to the Property, but that Legion's 2017 tax returns contain no K-1s
4 relating to the Property and Legion's 2018 tax returns are not yet completed. See Ex. 2 pp. 1-2.
5 Legion and Mineau agreed to further supplement their responses as appropriate after Legion's 2018
6 tax returns are completed. Id. Kvam deems this response inadequate.

7 In his Motion concerning Request No. 7, Kvam simply refers to his arguments with respect
8 to Request No. 6. Legion and Mineau's responses to those arguments are stated above.

9 Additionally, Kvam asserts that Legion "should have been providing Kvam with a Schedule
10 K-1 or other tax reporting information." Motion p. 10. Legion and Mineau disagree, but this dispute
11 certainly cannot be resolved by way of the Motion.

12 For these reasons, the Motion should be denied with respect to Request No. 7.

13 *D. Legion and Mineau Have Adequately Responded to Request No. 8.*

14 Kvam's Request No. 8, as amended, seeks all of Mineau's Schedule Es relating to Legion
15 since January 1, 2017. Mineau and Legion object to this request in that it seeks irrelevant and
16 confidential information because Mineau's tax records are confidential and have no bearing on this
17 litigation. In the letter accompanying their supplemental responses, Legion and Mineau explained
18 that Mineau's Schedule Es would only be relevant to the extent related to the Property, but that
19 Mineau's 2017 tax returns contain no Schedule Es relating to the Property and Mineau's 2018 tax
20 returns are not yet completed. See Ex. 2 p. 2. Legion and Mineau agreed to further supplement their
21 responses as appropriate after Mineau's 2018 tax returns are completed. Id. Kvam deems this
22 response inadequate.

23 Kvam first argues that Mineau's Schedule Es are relevant for the reasons set forth in the
24 discussion regarding Request No. 6. Motion p. 11. Legion and Mineau's responses to those
25 arguments are stated above.

26 Kvam next argues that Mineau's Schedule Es would show whether he declared the income
27 and loss for the project at the Property on his own tax returns, which relates to the interpretation of
28 the Terms of Agreement. Motion p. 11. Legion and Mineau have already explained to Kvam that

1 Mineau's tax returns contain no Schedule Es relating to the Property. Ex. 2 p. 2. Thus, Mineau has
2 no relevant documents available to produce in this regard. NRCp 26(b).

3 Kvam goes on to argue that "Mineau's Schedule E would also reflect any income from
4 Criterion, if he is in fact a 'principal' of that company as he claims to be." Motion p. 11. However,
5 Request No. 8 does not request information relating to Criterion NV LLC and Kvam is not entitled
6 to undertake a proverbial fishing expedition by auditing Mineau's tax returns to see if they happen to
7 reflect any income from Criterion NV LLC. See Cain, supra. Further, Kvam did not raise this issue
8 during the meet and confer process. See Motion at Ex. 4 p. 3. Had Kvam raised this issue prior to
9 the Motion, perhaps the parties could have resolved this concern without judicial intervention.

10 Finally, Kvam argues that "Mineau's tax returns and Schedule E would be relevant to the
11 question of whether he commingled project funds and would therefore relate to the alter ego
12 allegation." Motion p. 11. However, again, it is undisputed that neither Mineau nor Legion ever had
13 possession, custody, or control of any of Kvam's funds relating to the project, and thus Mineau could
14 not possibly have "commingled" such funds. Regardless, Kvam has not pled a claim for alter ego,
15 so this argument is irrelevant. See generally Kvam's *First Amended Verified Complaint*.

16 For these reasons, Legion and Mineau properly and adequately responded to Kvam's Request
17 No. 8. Additionally, Kvam failed to sufficiently meet and confer regarding his concerns with Legion
18 and Mineau's Response to Request No. 8. As explained above, after counsel for the parties met at
19 length to discuss the issues that were raised regarding these requests, Legion and Mineau informed
20 Kvam that, regardless of their objections, Mineau's 2017 tax returns contained no Schedule Es
21 relating to the Property and Mineau's 2018 tax returns have not yet been filed. Ex. 2 p. 3. Based
22 upon this explanation, Legion and Mineau believed this issue was resolved. See Ex. 1 ¶ 6. Kvam
23 made no effort to further discuss or resolve this issue before filing the Motion. Id.

24 The Motion should be denied with respect to Request No. 8.

25 ***E. Legion and Mineau Have Adequately Responded to Request No. 9.***

26 Kvam's Request No. 9 seeks "all meeting minutes for Legion Investments, LLC." Mineau
27 and Legion object to this request in that it seeks irrelevant, confidential information concerning
28 Legion's internal business affairs which have no bearing on this litigation. After counsel met and

1 conferred regarding this response, Legion and Mineau supplemented their response to clarify that
2 there are no meeting minutes which mention Kvam or the Property. Motion at Ex. 5 p. 4. Kvam
3 deems this response inadequate.

4 First, Kvam again argues that he is entitled to Legion's meeting minutes because he is a
5 member of Legion based upon the fact of the Terms of Agreement. Motion p. 12. As discussed
6 above, Legion and Mineau adamantly dispute that the Terms of Agreement somehow made Kvam a
7 member of Legion under NRS Chapter 86, and there is no mechanism under Nevada law for parties
8 to become members of a preexisting entity solely with respect to a single asset of that entity. Indeed,
9 Kvam has acknowledged this fact under oath [see Ex. 3 ¶ 8] and makes no claim in his *First Amended*
10 *Verified Complaint* that he is a member of Legion with rights under NRS Chapter 86. As such, Kvam
11 is not entitled to Legion's meeting minutes as a member of Legion.

12 Next, Kvam argues that he needs the meeting minutes to see whether Legion approved the
13 Terms of Agreement, the project, and any other resolutions relevant to the Property. Motion p. 12.
14 As Legion and Mineau have explained to Kvam, there are no meeting minutes which mention Kvam
15 or the Property. Ex. 2 p. 9; Motion at Ex. 5 p. 4. Thus, Legion has no relevant documents available
16 to produce in this regard. NRCP 26(b).

17 Kvam goes on to argue that "This is a fraud case, and Kvam does not have to take the word
18 of Mineau or his attorney on what is or is not contained in the meeting minutes." Motion p. 13.
19 Although Kvam has pled a claim for fraud, he has not produced any evidence whatsoever to support
20 that claim. Simply pleading fraud does not entitle a plaintiff to an unconditional audit of a defendant's
21 records to determine whether a discovery response is truthful. NRCP 26(b).

22 Kvam also argues that the "meeting minutes might also reflect any agreements with Criterion,
23 which Mineau has raised as an issue." Motion p. 12. However, Request No. 9 does not request
24 information relating to Criterion NV LLC and Kvam is not entitled to undertake a proverbial fishing
25 expedition by auditing Legion's internal records to see if they happen to reflect any agreements with
26 Criterion NV LLC. See NRCP 26(b). Regardless, Kvam did not raise this issue during the meet and
27 confer process. See Motion at Ex. 4 p. 3. Had Kvam raised this issue prior to the Motion, perhaps
28 the parties could have resolved this concern without judicial intervention.

1 Finally, Kvam again argues that this information is relevant to the issue of alter ego. Motion
2 p. 13. However, again, Kvam has not pled a claim for alter ego, so this argument is irrelevant. See
3 generally Kvam's *First Amended Verified Complaint*.

4 For these reasons, Legion and Mineau properly and adequately responded to Kvam's Request
5 No. 9. Additionally, Kvam failed to sufficiently meet and confer regarding his concerns with Legion
6 and Mineau's Supplemental Response to Request No. 9. As explained above, after counsel for the
7 parties met at length to discuss the issues that were raised regarding these issues, Legion and Mineau
8 supplemented their Response to Request No. 9 to reflect that, regardless of their objections, Legion
9 had no meeting minutes which mention Kvam or the Property. Motion at Ex. 5 p. 4. Based upon this
10 supplemental response, Legion and Mineau believed this issue was resolved. See Ex. 1 ¶ 6. Kvam
11 made no effort to further discuss or resolve this issue before filing the Motion. Id.

12 The Motion should be denied with respect to Request No. 9.

13 ***F. Legion and Mineau Have Adequately Responded to Request No. 10.***

14 Kvam's Request No. 10 seeks "all resolutions of the members and/or managers of Legion
15 Investments, LLC." Mineau and Legion object to this request in that it seeks irrelevant, confidential
16 information concerning Legion's internal business affairs which have no bearing on this litigation.
17 After counsel met and conferred regarding this response, Legion and Mineau supplemented their
18 response to clarify that there are no resolutions for Legion which mention Kvam or the Property. See
19 Motion at Ex. 5 pp. 4-5. Kvam deems this response inadequate.

20 In his Motion concerning Request No. 10, Kvam simply refers to his arguments with respect
21 to Request No. 9. Legion and Mineau's responses to those arguments are stated above.

22 For these reasons, the Motion should be denied with respect to Request No. 10.

23 ***G. Legion and Mineau Have Adequately Responded to Request No. 11.***

24 Kvam's Request No. 11, as amended, seeks all balance sheets for Legion Investments, LLC,
25 since January 1, 2017. Mineau and Legion object to this request in that it seeks irrelevant and
26 confidential information because Legion's financial and tax records are confidential and have no
27 bearing on this litigation. Nonetheless, Legion and Mineau supplemented their responses to provide
28 financial records concerning the Property. Motion at Ex. 5 p. 5. Kvam deems this response

1 inadequate.

2 Kvam, without any justification or explanation, accuses Legion and Mineau's supplemental
3 response of being "intentionally misleading and fraudulent." Motion p. 14. Legion has produced the
4 financial statements which it has. Legion is not obligated to create "balance sheets (which show
5 assets, liability and owner's equity)" in a form deemed acceptable to Kvam. Legion cannot produce
6 that which does not exist.

7 Kvam again refers to the discussion regarding Request No. 6 to justify his desire to review a
8 formal "balance sheet" for Legion. Legion and Mineau's responses to Kvam's arguments regarding
9 Request No. 6 are stated above.

10 For these reasons, Legion and Mineau properly and adequately responded to Kvam's Request
11 No. 11. Additionally, Kvam failed to sufficiently meet and confer regarding his concerns with Legion
12 and Mineau's Supplemental Response to Request No. 11. While counsel for the parties met and
13 conferred regarding Request No. 11, counsel for Legion and Mineau asked Kvam's counsel what he
14 wanted to see out of an "accounting," specifically in light of the fact that Kvam had never transferred
15 any funds to Legion or Mineau, Legion and Mineau never had possession, custody, or control of any
16 of Kvam's funds, and Kvam was just as informed as Legion and Mineau as to the disposition of
17 Kvam's funds. Ex. 1 ¶ 7. Kvam's counsel asked that Legion and Mineau create a spreadsheet
18 indicating all funds they paid into the Property and all funds they received out of the Property. Id. In
19 an effort to progress this dispute toward resolution, Legion and Mineau acquiesced, creating and
20 producing the "financial statements" requested by Kvam's counsel. Id. ¶ 8. As such, Legion and
21 Mineau believed this issue was resolved. Kvam made no effort to further discuss or resolve this issue
22 before filing the Motion. Id.

23 The Motion should be denied with respect to Request No. 11.

24 ***H. Legion and Mineau Have Adequately Responded to Request No. 12.***

25 Kvam's Request No. 12 seeks "all income and expense statements, and/or profit and loss
26 statements for Legion Investments, LLC, since its creation on July 2, 2014." Mineau and Legion
27 object to this request in that it seeks irrelevant and confidential information because Legion's
28 financial records are confidential and have no bearing on this litigation. Nonetheless, Legion and

1 Mineau supplemented their responses to provide financial records concerning the Property. Motion
2 at Ex. 5 p. 5. Kvam deems this response inadequate.

3 Kvam argues that Legion and Mineau's supplemental response is "intentionally misleading
4 and false" because "Request No. 12 was not limited to financial statements only concerning this
5 property, and the financial statements provided were not reported in the normal course of business,
6 but were developed solely for this response." Motion p. 15. It is wholly unclear how these statements
7 make Legion and Mineau's supplemental response "intentionally misleading and false." Legion and
8 Mineau expressly stated that they were only producing financial statements concerning the Property,
9 for the reasons explained at length above. Legion and Mineau also expressly stated at the "meet and
10 confer" that they would develop such documents solely for this response in an effort to move this
11 dispute toward resolution. Ex. 1 ¶¶ 7 - 8. There is nothing misleading at all about this response.

12 Kvam goes on to complain that Legion and Mineau failed to provide "source documents
13 (invoices, receipts, bank statements and checks)" and does not "show who or which entity received
14 the proceeds of sale, which account it went to, and how it was reported." Motion p. 15. However,
15 none of this information was requested in Request No. 12. Kvam's assertion that Legion and
16 Mineau's supplemental response is "intentionally misleading and false" by not including documents
17 which were not requested is improper.

18 For these reasons, Legion and Mineau properly and adequately responded to Kvam's Request
19 No. 12. Additionally, Kvam failed to sufficiently meet and confer regarding his concerns with Legion
20 and Mineau's Supplemental Response to Request No. 12. As explained above, while counsel for the
21 parties met and conferred regarding these requests, counsel for Legion and Mineau asked Kvam's
22 counsel what he wanted to see out of an "accounting," specifically in light of the fact that Kvam had
23 never transferred any funds to Legion or Mineau, Legion and Mineau never had possession, custody,
24 or control of any of Kvam's funds, and Kvam was just as informed as Legion and Mineau as to the
25 disposition of Kvam's funds. Ex. 1 ¶ 7. Kvam's counsel asked that Legion and Mineau create a
26 spreadsheet indicating all funds they paid into the Property and all funds they received out of the
27 Property. Id. In an effort to progress this dispute toward resolution, Legion and Mineau acquiesced,
28 creating and producing the "financial statements" requested by Kvam's counsel. Id. ¶ 8. As such,

1 Legion and Mineau believed this issue was resolved. Id. Kvam made no effort to further discuss or
2 resolve this issue before filing the Motion. Id.

3 The Motion should be denied with respect to Request No. 12.

4 ***I. Legion and Mineau Have Adequately Responded to Request No. 13.***

5 Kvam's Request No. 13, as amended, seeks "all bank statements of Legion Investments, LLC
6 accounts" since January 1, 2017. Mineau and Legion object to this request in that it seeks irrelevant
7 and confidential information because Legion's financial and tax records are confidential and have no
8 bearing on this litigation. In the letter accompanying their supplemental responses, Legion and
9 Mineau explained that no funds pertaining to this project were ever held in Legion's bank accounts,
10 so Legion's bank statements are irrelevant. See Ex. 2 p. 3. Kvam deems this response inadequate.

11 In his Motion concerning Request No. 13, Kvam refers to his arguments with respect to
12 Request No. 6. Legion and Mineau's responses to those arguments are stated above.

13 Additionally, Kvam asserts that Legion's bank statements are necessary to verify the
14 payments listed on Legion's recently produced financial statements, the source of the funds used for
15 the \$20,000.00 wire transfer, and where the proceeds of sale were deposited." Motion p. 16. Again,
16 none of these issues were raised during the "meet and confer" process." Motion at Ex. 4 pp. 4-5.
17 Had Kvam raised this issue prior to the Motion, Legion and Mineau could have addressed these
18 alleged concerns in their supplemental response and perhaps avoided judicial intervention.

19 The Motion should be denied with respect to Request No. 13.

20 ***J. Legion and Mineau Have Adequately Responded to Request No. 20.***

21 Kvam's Request No. 20 seeks "copies of all business or professional licenses ever held by
22 Brian Mineau." Mineau and Legion objected to this request in that it seeks irrelevant and confidential
23 information because Mineau's business and professional licenses unrelated to the Property or this
24 project have no bearing on this litigation. Nonetheless, Legion and Mineau produced the real estate
25 license information he has as the document identified as LEG0182, a copy of which as attached as
26 Exhibit "4."

27 For these reasons, Legion and Mineau properly and adequately responded to Kvam's Request
28 No. 20. Additionally, Kvam also failed to sufficiently meet and confer regarding his concerns with

1 Legion and Mineau's Response to Request No. 20. Again, after counsel for the parties met at length
2 to discuss the issues that were raised regarding these requests, Legion and Mineau supplemented their
3 Response to Request No. 20. Motion at Ex. 5 p. 7; see also Ex. 4. Legion and Mineau believed this
4 issue was resolved. Kvam made no effort to further discuss or resolve this issue before filing the
5 Motion. See Ex. 1 ¶ 6

6 The Motion should be denied with respect to Request No. 20.

7 **III. SANCTIONS**

8 If a motion to compel under Rule 37 is denied, the court must, after giving an opportunity to
9 be heard, require the movant, the attorney filing the motion, or both to pay the party who opposed the
10 motion its reasonable expenses incurred in opposing the motion, including attorney fees. NRCP
11 37(a)(5)(B).

12 For the reasons explained above, the Motion should be denied. Furthermore, Kvam filed the
13 Motion without adequately attempting to meet and confer and raised several issues in the Motion
14 which were never addressed during the meet and confer process. Legion and Mineau should therefore
15 be awarded their attorneys' fees and costs in opposing the Motion.

16 Accordingly, Legion and Mineau should be awarded their attorneys' fees and costs in an
17 amount to be determined after Kvam has had the opportunity to be heard. NRCP 37(a)(5)(B).

18 **IV. CONCLUSION**

19 Kvam seeks irrelevant and confidential documents from Legion and Mineau, including tax
20 records, financial records, and internal records, none of which have any bearing on this litigation.
21 These documents which have nothing to do with Kvam, the Property, the project, or this dispute.

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1 Furthermore, Kvam failed to properly meet and confer concerning Legion and Mineau's
2 supplemental responses before filing the Motion.

3 For these reasons, the Motion should be denied.

4 **AFFIRMATION**

5 The undersigned does hereby affirm that the preceding document, **OPPOSITION TO**
6 **PLAINTIFF'S FIRST MOTION TO COMPEL**, filed in the Second Judicial District Court of the
7 State of Nevada, County of Washoe, does not contain the social security number of any person.

8 DATED this ____ day of March, 2019.

9 GUNDERSON LAW FIRM

10
11
12 By: John Funk, Esq. (SBN: 12312) for

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 25 day of March, 2019, I deposited for mailing in Reno, Nevada AND
4 electronically filed a true and correct copy of the **OPPOSITION TO PLAINTIFF'S FIRST**
5 **MOTION TO COMPEL**, with the Clerk of the Court by using the electronic filing system which
6 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*

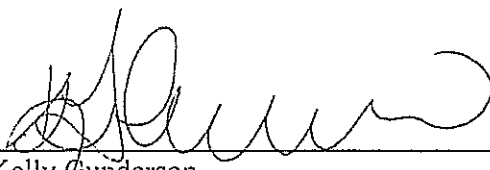
13 
14 Kelly Gunderson

EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Declaration of Austin K. Sweet, Esq.	2
Exhibit "2"	Sweet's February 21, 2019 letter to Matuska	17
Exhibit "3"	Affidavit of Jay Kvam in Support of Motion for Dissolution	16
Exhibit "4"	Real estate license, LEG0182	1

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Clerk of the Court
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Exhibit “1”

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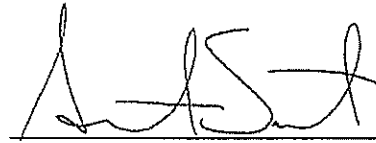
1 9. All exhibits attached to the Opposition are true and correct copies of the documents
2 they purport to be.

3 10. The foregoing is true and correct and based upon my own personal knowledge.

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

6 Executed at Reno, Nevada, this 25 day of March, 2019.

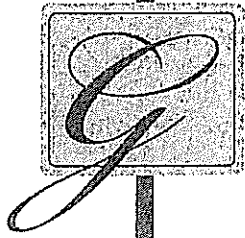
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AUSTIN K. SWEET, ESQ.

Exhibit “2”

Exhibit “2”



Gunderson
Law Firm

From the Desk of:
Austin K. Sweet, Esq.
asweet@gundersonlaw.com

February 21, 2019

*Via Email – mlm@matuskalawoffices.com
and U.S. Mail:*

Michael L. Matuska, Esq.
2310 South Carson Street, # 6
Carson City, NV 89701

*Re: Kvam v. Legion Investments, Case No. CV18-00764
Supplemental Responses Per Meet and Confer Request*

Dear Mr. Matuska:

As discussed at our meeting on February 7, 2019, enclosed are *Brian Mineau and Legion Investments' Supplemental Responses to Plaintiff Jay Kvam's First Request for Production of Documents*. The basis for our supplemental responses is as follows:

REQUEST NO. 1: Produce any and all agreements between any of the following persons: Jay Kvam, Brian Mineau, Michael Spinola, or Legion Investments, LLC.

Supplemental Response: Per our discussion, we have supplemented our response to clarify that the documents which are being withheld on the basis of our objection are agreements to which Jay Kvam is not a party.

REQUEST NO. 6: Produce all tax returns for Legion Investments, LLC, since its creation on July 2, 2014.

Supplemental Response: At our meeting, you agreed to reduce the scope of this request to the years 2017 and 2018. I explained that we maintain that there is no basis for discovery pertaining to punitive damages at this point and that Legion Investments' tax returns would only be relevant to the extent related to the May Street property.

Legion Investments' 2017 tax returns contain no entries relating to the May Street property and Legion Investments' 2018 tax returns are not yet completed. Therefore, we have not supplemented our response to Request No. 6. We will further supplement our responses as appropriate after Legion Investments' 2018 tax returns are completed.

REQUEST NO. 7: Produce all schedule K-1s for Legion Investments, LLC, since its creation on July 2, 2014.

Supplemental Response: As with Request No. 6, you agreed to reduce the scope of this request to the years 2017 and 2018. I explained that we maintain that there is no basis for discovery pertaining to punitive damages at this point and that Legion Investments' K-1s would only be relevant to the extent related to the May Street property. Legion Investments' 2017 tax returns contain no K-1s relating to the May Street property and Legion Investments' 2018 tax returns are not yet completed. Therefore, we have not supplemented our response to Request No. 7. We will further supplement our responses as appropriate after Legion Investments' 2018 tax returns are completed.

REQUEST NO. 8: Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its creation on July 2, 2014.

Supplemental Response: As with Request No. 6, you agreed to reduce the scope of this request to the years 2017 and 2018. I explained that we maintain that there is no basis for discovery pertaining to punitive damages at this point and that Brian Mineau's Schedule Es would only be relevant to the extent related to the May Street property. Brian Mineau's 2017 tax returns contain no Schedule Es relating to the May Street property and his 2018 tax returns are not yet completed. Therefore, we have not supplemented our response to Request No. 8. We will further supplement our responses as appropriate after Brian Mineau's 2018 tax returns are completed.

REQUEST NO. 9: Produce all meeting minutes for Legion Investments, LLC.

Supplemental Response: Per our discussion, we have supplemented our response to clarify that there are no responsive documents that mention Jay Kvam or the May Street property.

REQUEST NO. 10: Produce all resolutions of the members and/or managers of Legion Investments, LLC.

Supplemental Response: Per our discussion, we have supplemented our response to clarify that there are no responsive documents that mention Jay Kvam or the May Street property.

REQUEST NO. 11: Produce all balance sheets for Legion Investments, LLC, since its creation on July 2, 2014.

Michael L. Matuska, Esq.
February 21, 2019
Page 3 of 6

Supplemental Response: As with Request No. 6, you agreed to reduce the scope of this request to the years 2017 and 2018. I explained that we maintain that there is no basis for discovery pertaining to punitive damages at this point and that Legion Investments' financial records would only be relevant to the extent related to the May Street property. Legion Investments' financial statements relating to this project for 2017 and 2018 are contained in the enclosed supplemental disclosures. We have supplemented our responses accordingly.

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.

Supplemental Response: As with Request No. 6, you agreed to reduce the scope of this request to the years 2017 and 2018. I explained that we maintain that there is no basis for discovery pertaining to punitive damages at this point and that Legion Investments' financial records would only be relevant to the extent related to the May Street property. Legion Investments' financial statements relating to this project for 2017 and 2018 are contained in the enclosed supplemental disclosures. We have supplemented our responses accordingly.

REQUEST NO. 13: Produce all bank statements of Legion Investments, LLC accounts, since its creation on July 2, 2014.

Supplemental Response: Per our discussion, no funds pertaining to this project were ever held in Legion Investment's bank accounts so Legion Investments' bank statements are irrelevant. Accordingly, this response has not been supplemented.

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.

Supplemental Response: Legion Investments and Mr. Mineau have produced all responsive records in their possession.

REQUEST NO. 15: Produce all contracts for work performed or to be performed at the Property.

Supplemental Response: Per our discussion, there are no other contracts in Brian Mineau's or Legion Investments' possession, custody, or control, other than those that have been produced.

REQUEST NO. 16: Produce all invoices for materials purchased for the Property, or work performed or to be performed at the Property.

Michael L. Matuska, Esq.
February 21, 2019
Page 4 of 6

Supplemental Response: Per our discussion, neither Brian Mineau nor Legion Investments has any responsive material in its possession, custody or control. We have supplemented our response to clarify this fact.

REQUEST NO. 17: Produce all 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.

Supplemental Response: Per our discussion, there are no other responsive documents in Brian Mineau's or Legion Investments' possession, custody, or control, other than those that have been produced.

REQUEST NO. 18: Produce any and 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.

Supplemental Response: Per our discussion, there are no other responsive documents in Brian Mineau's or Legion Investments' possession, custody, or control, other than those that have been produced.

To further elaborate on your request concerning the wire transfer from Criterion NV LLC to TNT Complete Facility Care Inc. ("TNT"), in late May 2017 Derek Cole called Brian Mineau and requested the next \$20,000.00 payment for the May Street property. Mr. Mineau was travelling at the time and was unable to promptly make direct payment; however, Mr. Mineau had sufficient cash on hand in his personal safe at home to make this payment. At Mr. Mineau's request, Michael Spinola agreed to arrange to pick up the cash and have it wired to TNT. Mr. Spinola met Mr. Mineau's wife at Mr. Mineau's residence, where Mr. Mineau's wife handed Mr. Spinola the cash, and Mr. Spinola took it to his bank to have it wired to TNT. The deposit and wire were made through Criterion NV LLC's account. This transaction was not documented because neither Mr. Mineau nor Mr. Spinola anticipated that this transaction would later be a subject of litigation. As such, there are no responsive documents evidencing these facts other than those which have been produced.

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.

Supplemental Response: Per our discussion, there are no other responsive documents in Brian Mineau's or Legion Investments' possession, custody, or control, other than those that have been produced. No "reports" were provided by or to Brian Mineau or Legion Investments responsive to this request.

Michael L. Matuska, Esq.
February 21, 2019
Page 5 of 6

REQUEST NO. 20: Produce copies of all business or professional licenses ever held by Brian Mineau.

Supplemental Response: Per our discussion, Mr. Mineau's professional license relating to real estate and lending has been produced. Our response to Request No. 20 was been supplemented accordingly.

REQUEST NO. 21: Produce copies of all utility bills for the Property.

Supplemental Response: Per our discussion, all utility bills for the Property have been produced in our supplemental disclosures.

REQUEST NO. 22: Produce copies of correspondence between Brian Mineau and Michael Spinola regarding the Property, or any investment or improvement to the Property.

Supplemental Response: Per our discussion, all responsive documents have been produced.

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.

Supplemental Response: Per our discussion, we have supplemented our response to Request No. 24 to indicate that no known drafts of the "Terms of Agreement" exist.

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.

Supplemental Response: Per our discussion, we have supplemented our response to Request No. 33 to indicate that no responsive documents exist.

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 agreement, title reports, escrow instructions, escrow closing statements, and checks or other documents showing the distribution of the proceeds of sale.

Supplemental Response: Per our discussion, all responsive documents have been produced, including those in the enclosed supplemental production.

Michael L. Matuska, Esq.
February 21, 2019
Page 6 of 6

We trust that these supplemental responses satisfy all issues regarding the outstanding discovery requests. We appreciate your cooperation in meeting and conferring to resolve these concerns. Do not hesitate to contact our office with any questions in this regard.

Very truly yours,

GUNDERSON LAW FIRM



Austin K. Sweet, Esq.

AKS/kg
Enclosures

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' SUPPLEMENTAL 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 Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
27 INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq.
28 and Mark H. Gunderson, Esq., and pursuant to Rules 26 and 34 of the Nevada Rules of Civil
Procedure, supplement their responses to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s
Request for Production to Mineau and Legion ("Requests") as follows:

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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.

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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 By: 

25 Austin K. Sweet, Esq., NSB No. 11725
26 Mark H. Gunderson, Esq., NSB No. 2134
27 3895 Warren Way, Reno, Nevada 89509
28 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*

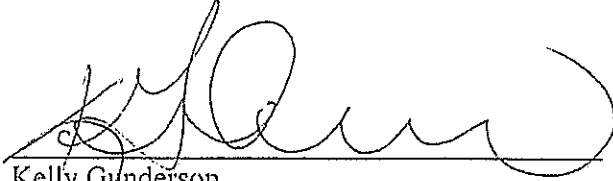
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14 Kelly Gunderson
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Exhibit “4”

Exhibit “4”

Individual Information



Brian Todd Mineau (1590431)

The Work Email Address will be used by your employer to contact you and can be updated by submitting a form filing. The Personal Email Address will be used to send system notifications and password resets and can be updated in the User Profile Page.

Name: Brian Todd Mineau

Social Security Number: xxx-xx-7258

Individual ID: 1590431

Business Phone Number: 775-525-3992

Extension:

Work Email Address (for employer contact): brian.mineau@spmc.com

Personal Email Address (for system notifications and password resets): brian.t.mineau@hotmail.com Update User Profile

Viewable Regulatory Actions: No

1 **CODE: 3790**

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 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
Joint Venture; and DOES I-X, inclusive,

14 Defendants.

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

16 COMES NOW Plaintiff, JAY KVAM ("Kvam"), by and through his counsel of record,
17 Matuska Law Offices, Ltd., Michael L. Matuska, and hereby files this *Reply to Opposition to*
18 *Plaintiff's First Motion to Compel* ("Motion" and "Opposition," respectively), filed by Defendants
19 BRIAN MINEAU and LEGION INVESTMENTS, LLC (collectively "Mineau").

20 **I. REPLY TO MINEAU'S INTRODUCTION**

21 Mineau makes various assertions in his Introduction, none of which are supported
22 in the record, and collectively which seem to invite Kvam and this Court to argue over the legal
23 relevance and admissibility of documents that have not been produced. That is not the legal
24 standard for discovery. NRCp 26(b) provides in pertinent part, as follows:

25 **(b) Discovery Scope and Limits.**

26
27 (1) **Scope.** Unless otherwise limited by order of the court in accordance
28 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

1 the issues at stake in the action, the amount in controversy, the parties' relative
2 access to relevant information, the parties' resources, the importance of the
3 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.

4 Despite being erroneous as a matter of law, Mineau's argument reveals his simplistic and
5 wrongheaded version of the case. He seems to believe that he can refuse to provide an accounting
6 and avoid charges of any breach of fiduciary duty, bad faith, fraud and concealment on the mere
7 allegation that Kvam's funds were paid directly to escrow and the contractor rather than to
8 Mineau. As with most of Mineau's case so far, he failed to cite any legal authority that would
9 exonerate him on that simplistic fact pattern, and he failed to address the incriminating facts such
10 as: Mineau signed the purchase contract; placed title in the name of Legion Investments, LLC;
11 signed the listing agreement (if one was signed); signed the sales agreement; and signed the
12 escrow papers and deed. Mineau concealed the sale from Kvam and refused to disclose where the
13 proceeds of sale were deposited. To this day, he has not disclosed whether the proceeds were
14 deposited into Legion's account, his personal account, or some other account.

15 Mineau agrees that Kvam invested a total of \$93,784.31 in the subject Property at 7747
16 May Street, Chicago, Illinois, including \$44,000 for the purchase price, another \$784.31 for
17 closing costs, and \$49,000 toward the renovation. Mineau sold the property for \$41,000, net
18 \$24,473.77 (See Closing Statement, Motion, Ex. "1"). By all accounts, Kvam's money was not
19 spent on the renovations, and the Property was in worse shape when it sold in November, 2018
20 than when it was purchased in February, 2017. Kvam predictably demanded a complete
21 accounting, which Mineau continues to refuse. Mineau's current strategy to wash his hands of this
22 fiasco and claim that Kvam was anything more than an investor is part of Kvam's case, and
23 supports the various causes of action for accounting, tortious breach of the covenant of good faith
24 and fair dealing (based on Mineau's status as a fiduciary), bad faith, fraud and concealment.

25 Recently, Mineau concocted a theory that Kvam was not entitled to the \$24,473.77
26 proceeds of sale because Criterion NV, LLC had invested \$20,000 in the project. Criterion is a
27 limited liability company of which Michael Spinola is the only member/manager of record.
28

1 Mineau has alternately claimed that he is a principal of Criterion, associated with Criterion, and
2 that his wife withdrew \$20,000 cash from a safe to hand to Spinola to wire to the contractor in
3 Chicago. These facts (if true) were also concealed from Kvam.

4 Through it all, Mineau overlooks the fact that on the face of the February, 2017 Terms of
5 Agreement, he, Jay Kvam and Michael Spinola are all members of Legion Investments, LLC.
6 Even if that is not literally true, this case continues as a case for a partnership accounting and to
7 dissolve a joint venture. All of the documents requested from Spinola relate to the pending causes
8 of action and to the claim to pierce the company veil of Legion Investments, LLC (See First
9 Amended Complaint, Par. 7).

10 Mineau's statement that "Despite Kvam's allegations that he is entitled to audit all of
11 Legion and Mineau's personal and financial records . . ." (Opposition at 2:13-14) is a gross over
12 statement of the scope of Kvam's discovery requests. Kvam is seeking information to determine
13 where the proceeds of the sale were deposited, what account(s) were used to pay expenses,
14 whether and how Mineau and Legion described this investment on their own tax returns, and the
15 extent to which Mineau and Legion comingled their funds. Kvam has not requested all of
16 Mineau's tax returns, but only Legion's tax returns, the Schedule K-1 which would carry over to
17 Mineau's 1040 tax return, and Mineau's Schedule E which would report income and loss from
18 real estate investments and partnerships (including limited liability companies). Kvam will
19 eventually need Mineau's entire tax returns and other financial information for the case on
20 punitive damages, but those records are not part of the outstanding requests.

21 II. REPLY TO MINEAU'S ARGUMENT

22 Kvam's counsel met and conferred with Mineau's counsel for 1 ½ hours. All issues were
23 raised and Kvam's counsel agreed to limit the time period of the requests to the period
24 commencing January, 2017. Mineau's meager supplement was not sufficient.

25 Mineau Failed to Comply with REQUEST NO. 1:

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

28 Mineau has placed these agreements at issue in virtually every paper he has filed in this

case, including his recently filed *Motion for Protective Order* (# 7090699) (“In furtherance of these efforts, Legion caused its business associate, Criterion NV, LLC, to transfer \$20,000 to the Property’s contractor, TNT Complete Care Facility Inc. (“TNT”) on Legion’s behalf in 2017”) (*Motion for Protective Order* at 2:1-3). No responsive documents have been produced.

Mineau Failed to Comply with REQUEST NO. 6:

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

Mineau’s response is the product of confused legal arguments. Pursuant to NRCP 26, the scope of discovery includes all issues relevant to the various claims in Kvam’s FAC, including the First Cause of Action (Declaration of Joint Venture), Fifth Cause of Action (Accounting) and claim to pierce Legion Investment’s company shield (§ 7). The fact that Mineau disputes Kvam’s characterization of the investment as joint venture is irrelevant. That cause of action remains part of the pleadings, and Mineau has refused to provide any responsive documents.

Instead, Mineau’s counsel asserts that the investment at 7747 May Street, Chicago, Illinois, is not reflected in the 2017 returns and the 2018 returns are not completed. Unfortunately, documents will be used as evidence at trial, not statements from Mineau’s counsel. Further, Mineau will have a duty to supplement once the 2018 return is completed. See NRCP 26(e). Also, the absence of any reporting in the tax records of Mineau and Legion is relevant to the interpretation of the terms of agreement, and confirms Kvam’s initial argument that this project should be considered a joint venture and profits and losses reported on a separate Form 1065 partnership tax return.

Mineau Failed to Comply with REQUEST NO. 7:

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

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. Also, Mineau failed to provide any points and authorities to support his contention that K-1s are confidential. They are not. They are given to the member

1 to assist with tax preparation.

2 **Mineau Failed to Comply with REQUEST NO. 8:**

3 "Produce all of Brian Mineau's Schedule Es relating to Legion Investments, LLC, since its
4 creation on July 2, 2014." [Amended by agreement to a request for documents since January 1,
5 2017]

6 Although Kvam would be entitled to request Mineau's entire tax return, he did not do so.
7 Rather, he only requested Schedule E, which is "Supplemental Income and Loss (from real estate,
8 royalties, partnerships, S corporations, estates, trusts, REMICs, etc.)" Schedule E is therefore
9 relevant to determine whether Mineau reported the investment at 7747 May Street, Chicago,
10 Illinois, and whether he described it as a partnership, other real estate income/loss, etc. If he did
11 not report, that is a problem as discussed above. Mineau cannot refuse to produce documents on
12 the basis that he disputes Kvam's claims.

13 **Mineau Failed to Comply with REQUEST NO. 9:**

14 "Produce all meeting minutes for Legion Investments, LLC."

15 Mineau failed to provide any legal authority to support his claim that the meeting minutes
16 are privileged or confidential. They are not. Kvam is a member of Legion Investments based on
17 the face of the Terms of Agreement. Kvam needs the meeting minutes to see whether and if
18 Legion Investments approved the February, 2017 Terms of Agreement, the project at 7747 May
19 Street, Chicago, Illinois, and any other resolutions relevant to the project, or to Kvam's claims in
20 this case.

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

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

27 This is a fraud case, and Kvam does not have to take the word of Mineau or his attorney on
28 what is or is not contained in the meeting minutes. In fact, Mineau's evasive answer suggests that

1 there is information in the meeting minutes that would relate to Criterion or to some other aspect
2 of this case.

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

4 **Mineau Failed to Comply with REQUEST NO. 10:**

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

6 See Request No. 9, *supra*.

7 **Mineau Failed to Comply with REQUEST NO. 11:**

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

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

16 In addition, Legion Investment's balance sheets are not confidential and will show whether
17 and how Legion Investments documented and reported its acquisition of the house at 7747 May
18 Street, Chicago, Illinois, as well as the loan from Kvam. These are the central issues in this case.

19 **Mineau Failed to Comply with REQUEST NO. 12:**

20 "Produce all income and expense statements, and/or profit and loss statements for Legion
21 Investments, LLC, since its creation on July 2, 2014." [Amended by agreement to a request for
22 documents since January 1, 2017]

23 Mineau's response is intentionally misleading and false. Request No. 12 was not limited
24 to financial statements only concerning this property, and the financial statements provided were
25 not prepared in the normal course of business, but were developed solely for this response.
26 Moreover, the so-called financial statements were provided without source documents (invoices,
27 receipts, bank statements and checks) and do not even show the sale of the Property in November,
28 2018. As such, Mineau still has not produced any documents to show who or which entity

1 received the proceeds of sale, which account it went to, and how it was reported.

2 **Mineau Failed to Comply with REQUEST NO. 13:**

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

5 See discussion regarding Request No. 6, *supra*. In addition, the bank statements are
6 necessary to verify the payments listed on Legion's recently produced balance statements, the
7 source of the funds used for the \$20,000 wire transfer to the contractor through the Criterion
8 account, and where the proceeds of sale were deposited. It is alarming that Mineau refuses to
9 show Kvam and this Court what he did with the proceeds of sale.

10 **Mineau Failed to Comply with REQUEST NO. 20:**

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

12 Mineau no longer objects to this request. Instead he claims that he responded and cites
13 LEG 0182, which he claims is attached as Exhibit "4" to his Opposition. Mineau's Exhibit "4"
14 appears to be some sort of printout. It is not a license, and does not even identify the putative
15 licensing authority.

16 **III. CONCLUSION**

17 Based on the foregoing, Brian Mineau and Legion Investments, LLC should be compelled
18 to provide full and complete responses to Kvam's Requests for Production, Request Nos. 1, 6, 7,
19 8, 9, 10, 11, 12, 13, and 20. Kvam's attorney has been required to spend an additional 4 ½ hours
20 preparing this Reply and the Proposed Order, at the same hourly rate of \$285 per hour, for a total
21 of \$3,767.50 in relation to this First Motion to Compel and Reply.

22 **AFFIRMATION**

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

25 //

26 //

27 //

28 //

1 Dated this 27th day of March 2019.

2 MATUSKA LAW OFFICES, LTD.

3 *Michael L. Matuska*

4 By:

5 MICHAEL L. MATUSKA, SBN 5711
6 Attorneys for Plaintiff, JAY KVAM,
7 individually and derivatively on behalf the
8 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 27th day of March, 2019, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S REPLY TO OPPOSITION TO 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

1 **CODE: 1520**

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

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. That on February 7, 2019, spent 1 ½ hours in a meet and confer session in Mr.
21 Sweet's office. We discussed all matters at issue in the First Motion to Compel.

22 2. Exhibit 8 to this Declaration is a true and correct listing of the entire updated ledger
23 for amounts billed to Jay Kvam for work related to the present Motion to Compel and Reply.

24 3. The fees reflected in said Exhibit 8 were actually incurred in that all of the time was
25 actually billed and Mr. Kvam has either paid the fees and/or has been billed for said fees.

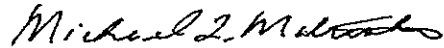
26 4. The total amount claimed, \$3,767.50 is reasonable in all respects for the actual
27 work performed and includes 9 hours of my time billed at my normal hourly rate of \$285 per hour
28 and 6.5 hours of my contract attorney's time billed at the rate of \$185 per hour.

1
2 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
3 true and correct.

4 Executed this 27th day of March, 2019, at Carson City, Nevada.

5 Respectfully submitted,

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 the
12 unincorporated joint venture identified as 7747
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27 I:\Client Files\Litigation\Kvam\l. Mineau\PIldgs\Motion to Compel\Dec.MLM (reply).doc
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 27th 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

EXHIBIT	DOCUMENT	NO. OF PAGES
8	Michael L. Matuska's Billing Ledger	1

EXHIBIT 8
MICHAEL L. MATUSKA'S BILLING LEDGER
(Declaration of Michael L. Matuska, Esq. In Support of Plaintiff's
First Motion to Compel)

EXHIBIT 8
MICHAEL L. MATUSKA'S BILLING LEDGER
(Declaration of Michael L. Matuska, Esq. In Support of 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: Par1 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: Par1 2.50 Hrs X 185.00	Contract attorney: continue work on draft motion to compel	462.50
Mar 26/2019	Lawyer: MLM 3.50 Hrs X 285.00	Review opposition; draft reply and order	997.50
Mar 27 2019	Lawyer: MLM 1.00 Hrs X 285.00	Final draft of reply, order and declaration	285.00
			3767.50

1 CODE NO. 1945

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5
6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

7 IN AND FOR THE COUNTY OF WASHOE

8 * * *

9 JAY KVAM,

10 Plaintiff,

11 vs.

Case No. CV18-00764

12 BRIAN MINEAU et al.,

Dept. No. 3

13 Defendants.
14 _____/

15 BRIAN MINEAU et al.,

16 Counterclaimants,

17 vs.

18 JAY KVAM,

19 Counterdefendant.
20 _____/

21 **RECOMMENDATION FOR ORDER**

22 Plaintiff Jay Kvam filed the original complaint in this action on April 11, 2018; an amended
23 complaint was filed on January 31, 2019. Essentially, this action involves a dispute between
24 Nevada residents over a project to purchase, improve, and re-sell residential real property located in
25 Chicago, Illinois ("Property"). Plaintiff alleges that he entered into a joint venture agreement
26 ("Agreement") with Defendant Brian Mineau, Defendant Legion Investments ("Legion"), and nonparty
Michael Spinola. The joint venture is identified as Defendant 7747 S. May St. Plaintiff further

1 alleges that the Agreement has been violated through the failure of Defendants¹ to repay any part of
2 the \$93,781.31 he provided to purchase and improve the Property. Plaintiff seeks compensatory
3 and punitive damages for breach of contract, tortious breach of the implied covenant of good faith
4 and fair dealing, and fraud. He also requests declaratory relief, injunctive relief, rescission or
5 reformation of the Agreement, an accounting, court-supervised dissolution and winding up of their
6 joint venture, the appointment of a receiver, and relief pursuant to a derivative claim.

7 Defendants Mineau and Legion deny any liability to Plaintiff. They also assert a counterclaim
8 based upon trespass to chattels and conversion, in connection with personal property located at the
9 Property. They seek compensatory and punitive damages, as well as declaratory relief.²

10 This case was exempted from the Court Annexed Arbitration Program on July 3, 2018.
11 Counsel for both sides participated in an early case conference on June 21, 2018, and the parties
12 filed a joint case conference report on August 6, 2018. The parties have not yet scheduled the trial
13 in this action.

14 On August 29, 2018, Plaintiff served Defendants with an NRCP 34 request for production.
15 Defendants served their response on October 1, 2018. Plaintiff perceived aspects of that response
16 to be insufficient, and his counsel explained those concerns in a letter emailed to Defendants'
17 counsel on January 15, 2019. Plaintiff's counsel also informed Defendants' counsel that a motion to
18 compel would be filed unless certain documents were produced by January 31, 2019. Counsel for
19 both sides further conferred about this discovery dispute in person on February 7, 2019. On
20 February 21, 2019, Defendants served Plaintiff with their supplemental response to the NRCP 34
21 request, together with a letter explaining the basis for those supplemental responses.

22 On March 15, 2019, Plaintiff filed *Plaintiff's First Motion to Compel*. Plaintiff seeks an order
23 directing Defendants to produce documents responsive to Category Nos. 1, 6, 7, 8, 9, 10, 11, 12, 13,
24 and 20 of his NRCP 34 request. Defendants' *Opposition to Plaintiff's First Motion to Compel* was

25 ¹ All references to "Defendants" in this decision are to Defendants Mineau and Legion.

26 ² The first amended counterclaim identified several other claims for relief; however, those claims were resolved through the Court's order of January 9, 2019.

1 filed on March 25, 2019. *Plaintiff's Reply to Opposition to First Motion to Compel* was filed on March
2 27, 2019, and the motion was submitted for decision on that same date.

3 A. Request for Production

4 1. Category No. 1

5 In Category No. 1 of his request for production, Plaintiff asks Defendants to "[p]roduce any
6 and all agreements between any of the following persons: Jay Kvam, Brian Mineau, Michael
7 Spinola, or Legion Investments, LLC." Defendants' original response is as follows:

8 Objection, overly broad, unduly burdensome, and not likely to lead to the
9 discovery of admissible evidence in this matter. This Request seeks irrelevant
10 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.

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

12 Their supplemental response is substantially the same, except that Defendants have modified the
13 last sentence of the first paragraph to clarify that "[d]ocuments which are responsive to Request No.
14 1, but to which Jay Kvam is not a party, are being withheld on the basis of this objection."

15 In their opposition, Defendants maintain that the requested agreements are relevant only to
16 the extent that Plaintiff is a party to a particular agreement. That argument is not persuasive.
17 Defendants are both parties to this case and to the Agreement that forms the basis for Plaintiff's
18 claims, and Mr. Spinola was a party to the Agreement as well. Moreover, Mr. Spinola has been
19 identified by Defendants as a percipient witness in this case. Any agreement between Mr. Spinola
20 and either Defendant—or Plaintiff—would be relevant to Mr. Spinola's credibility because it
21 reasonably could suggest that he might have a financial interest in one side or the other prevailing in
22 this action, or might otherwise reflect a bias in favor of Defendants or Plaintiff.³

23 Further, Plaintiff alleges that Defendant Legion took title to the Property; that Defendant
24 Mineau signed the construction contract; that Defendant Mineau acted as the project manager; and
25 that Defendant Mineau signed the November 2018 agreement to sell the Property, together with the

26 ³ An agreement between Mr. Spinola and any litigant in this action would remain relevant and discoverable even
if the agreement also involves other parties, such as the entity Criterion NV, LLC, which is mentioned in the parties' briefs.

1 escrow papers and deed. In this context, any agreement between Defendant Mineau and
2 Defendant Legion is within the scope of discovery because any such secret agreement would bear
3 on whether Defendant Mineau acted in bad faith in connection with the alleged Agreement. For all
4 of the foregoing reasons, Defendants are not entitled to withhold any responsive documents on the
5 basis of their stated objections. They must therefore produce all documents responsive to Category
6 No. 1 that are within their possession, custody, or control. Defendants must also serve Plaintiff with
7 an amended response to Category No. 1 in which they specifically identify any responsive
8 documents that they assert were already produced. To the extent Defendants must otherwise
9 respond to this category with information rather than documents (e.g., a response stating that
10 Defendants have no responsive documents; that responsive documents were lost, destroyed, or
11 otherwise cannot be located; that responsive documents never existed; that responsive documents
12 are in the possession of a third-party; etc.), then that information must also be set forth in the
13 amended response.⁴

14 2. Category No. 6

15 In this category, Plaintiff asks Defendants to “[p]roduce all tax returns for Legion Investments,
16 LLC, since its creation on July 2, 2014.” Defendants’ original response is as follows:

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
19 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.

20 Plaintiff subsequently agreed to limit the temporal scope of this request to January 1, 2017, to the
21 present. Defendants’ supplemental response is identical to their original response.

22 The potential scope of discovery in civil matters is set forth at NRCP 26(b)(1): “Parties may
23 obtain discovery regarding any nonprivileged matter that is relevant to any party’s claims or

24 ⁴ Any statements in their amended response must be made under oath. See Rogers v. Guirbino, 288 F.R.D.
25 469, 485 (S.D. Cal. 2012) (“[i]f Defendant Kuzil–Ruan maintains that there is no relevant material in her control, she must
26 state so under oath”); Vazquez-Fernandez v. Cambridge Coll., Inc., 269 F.R.D. 150, 154-55 (D.P.R. 2010) (statements
provided in response to request for production must be provided under oath); Rayman v. Am. Charter Fed. Sav. & Loan
Ass’n, 148 F.R.D. 647, 651 (D. Neb. 1993) (response that requested documents have been produced must be made under
oath).

1 defenses and proportional to the needs of the case." This scope may be limited by other
2 considerations. For example, NRCP 26(b)(2) identifies various considerations that may limit the
3 scope of discovery, and NRCP 26(c) allows the Court to limit discovery through the use of a
4 protective order. In addition, limitations may be imposed through appellate court decisions.

5 Notwithstanding the broader language of NRCP 26(b)(1), tax returns are subject to a limited
6 degree of protection in Nevada: "While this state does not recognize a privilege for tax returns . . . ,
7 public policy suggests that tax returns or financial status not be had for the mere asking." See
8 Hetter v. Dist. Court, 110 Nev. 513, 520, 874 P.2d 762, 766 (1994); accord Cain v. Price, 134 Nev.,
9 Adv. Op. 26, at 7, 415 P.3d 25, 30 (2018). Indeed, federal appellate courts have recognized a
10 constitutional right of privacy encompassing personal financial information. See Mangum v. Action
11 Collection Serv., Inc., 575 F.3d 935, 942 (9th Cir. 2009); Denius v. Dunlap, 209 F.3d 944, 957-58
12 (7th Cir. 2000); In re McVane, 44 F.3d 1127, 1138-39 (2d Cir. 1995); cf. Cain, 134 Nev., Adv. Op.
13 26, at 7, 415 P.3d at 30 (noting the privacy concerns and potential for abuse and harassment that
14 are implicated with a request for an opposing party's financial information). Accordingly, our high
15 court has held that the discovery of tax returns generally will not be permitted unless the information
16 sought is otherwise unobtainable; even then, production would be limited to the relevant portions of
17 a given tax return. See McNair v. Dist. Court, 110 Nev. 1285, 1290, 885 P.2d 576, 579 (1994) ("tax
18 returns must be relevant to be discoverable, and may not be discoverable in the absence of a
19 showing that the information is otherwise unobtainable") (emphasis added); Clark v. Dist. Court, 101
20 Nev. 58, 64, 692 P.2d 512, 516 (1985) (discovery of tax returns "may not be approved in the
21 absence of a showing that the information is otherwise unobtainable" and lower court erred in
22 ordering the production of entire tax returns without specifying the items requested and the
23 relevancy thereof) (quoting Schlatter v. Dist. Court, 93 Nev. 189, 192, 561 P.2d 1342, 1343 (1977)
24 (emphasis added).

25 The protection afforded tax returns by our supreme court is appropriate for documents in
26 which most income-earners are required to reveal substantial amounts of information about their

1 income and assets, and which then must be filed with the Internal Revenue Service. See Hetter,
2 110 Nev. at 519, 874 P.2d at 765-66 ("because of the policy considerations of protecting taxpayer
3 privacy and encouraging the filing of full and accurate tax returns, both state and federal courts have
4 subjected discovery requests for income tax returns to a heightened scrutiny"). Thus, while any
5 compelled disclosure of tax returns must be limited to relevant portions of those returns, a showing
6 that information contained in tax returns is relevant—or even crucial—is not sufficient to support
7 discovery under the supreme court's standard. The party seeking those returns also must show that
8 the information contained therein is otherwise unobtainable.

9 Plaintiff argues that Defendant Legion's tax returns are relevant to his case-in-chief. But
10 Plaintiff has not shown that Defendant Legion's business activities have been limited exclusively to
11 the Property. To the extent that its tax returns would reflect information unrelated to the Property,
12 Plaintiff presumptively would not be entitled to it with regard to his case-in-chief. Plaintiff might very
13 well be entitled to see portions of Defendant Legion's tax returns that mention or otherwise pertain to
14 the Property (e.g., expenses, profits, losses, etc.), but Category No. 6 is not limited in that way.
15 Although the Court could impose that limitation now, Defendants represent that Defendant Legion's
16 tax return for 2017 contains no references or information pertaining to the Property, and that its 2018
17 tax return has not yet been filed. Thus, Defendants effectively represent that they presently have no
18 responsive documents to produce.

19 Plaintiff also argues that the tax returns are relevant to his claim for punitive damages. A
20 party's financial condition—which could include information contained in tax returns—is a proper
21 subject of pretrial discovery on the issue of punitive damages because it ultimately impacts any
22 analysis of whether an award of punitive damages is excessive. See Evans v. Dean Witter
23 Reynolds, Inc., 116 Nev. 598, 614, 5 P.3d 1043, 1053 (2000); Hetter, 110 Nev. at 519, 874 P.2d at
24 765. However, in recognition of the confidential nature of financial information, the Nevada Supreme
25 Court has imposed an additional requirement before a plaintiff can obtain an opponent's financial
26 information on that basis:

1 While this state does not recognize a privilege for tax returns or necessarily require
2 that liability for punitive damages be established before discovery of financial
3 condition, public policy suggests that tax returns or financial status not be had for the
4 mere asking. Claims for punitive damages can be asserted with ease and can result
5 in abuse and harassment if their assertion alone entitles plaintiff to financial
6 discovery. We hold that before tax returns or financial records are discoverable on
7 the issue of punitive damages, the plaintiff must demonstrate some factual basis for
8 its punitive damage claim. . . .

9 Hetter, 110 Nev. at 520, 874 P.2d at 766 (citation omitted); accord Cain, 134 Nev., Adv. Op. 26, at 7,
10 415 P.3d at 30-31. For example, in Cain v. Price, supra, "[t]he Cains presented evidence showing
11 that their loan proceeds were distributed to C4 officers rather than being used to purchase CMOs, as
12 per the JVA [i.e., joint venture agreement]." See id. at 7, 415 P.3d at 31 (emphasis added).

13 In connection with this motion, Plaintiff has not provided evidence sufficient to support an
14 order compelling Defendant Legion to produce its tax returns for 2017 and 2018. His briefs contain
15 many assertions of fact, but assertions made in briefs are not evidence. See, e.g., Ladner v.
16 Litespeed Mfg. Co., 537 F. Supp. 2d 1206, 1217 (N.D. Ala. 2008) (statements by counsel in briefs
17 do not constitute evidence); see also Jain v. McFarland, 109 Nev. 465, 475-76, 851 P.2d 450, 457
18 (1993) ("[a]rguments of counsel are not evidence and do not establish the facts of the case"); Phillips
19 v. State, 105 Nev. 631, 634, 782 P.2d 381, 383 (1989) ("[f]acts or allegations contained in a brief are
20 not evidence and are not part of the record"). More important, even if Plaintiff can make the
21 threshold factual showing needed to allow discovery of tax returns in connection with a claim for
22 punitive damages, he still must demonstrate that the information he seeks is otherwise unobtainable.
23 Thus, the pending claim for punitive damages is not a sufficient basis for compelling the disclosure
24 of Defendant Legion's tax returns.

25 Plaintiff also argues that he is entitled to Defendant Legion's tax returns pursuant to NRS
26 87.4335, which provides, in pertinent part, as follows:

A partnership shall provide partners and their agents and attorneys access to its
books and records. It shall provide former partners and their agents and attorneys
access to books and records pertaining to the period during which they were
partners. The right of access provides the opportunity to inspect and copy books and
records during ordinary business hours. A partnership may impose a reasonable
charge, covering the costs of labor and material, for copies of documents furnished.

1 NRS 87.4335(2) (2017). However, the parties disagree over whether a partnership was formed for
2 purposes of NRS Chapter 87. In that regard, a discovery motion is not the proper vehicle for
3 obtaining determinations about substantive issues that are disputed among the litigants. See Am.
4 Air Filter Co. v. Universal Air Prods., LLC, No. 3:14-CV-665-TBR-LLK, 2015 WL 3862529, at *1
5 (W.D. Ky. June 22, 2015) (“[t]he Court believes that trial or a dispositive motion, not a discovery
6 motion, provides the proper mechanism for determining the implications of the Settlement
7 Agreement”); Yarus v. Walgreen Co., Civil Action No. 14-1656, 2015 WL 1021282, at *4 n.1 (E.D.
8 Pa. Mar. 6, 2015) (“[t]he Court finds it inappropriate to debate the merits of Plaintiff’s pled theory of
9 liability in an order on a discovery motion”); Nat’l Union Fire Ins. Co. of Pittsburgh, Pa. v. Coinstar,
10 Inc., No. C13-1014-JCC, 2014 WL 3396124, at *2 (W.D. Wash. July 10, 2014) (“the Court finds that
11 it would be inappropriate to rule on the merits of the underlying counterclaim when considering
12 discovery motions”); Brown v. Bridges, No. 3:12-cv-4947-P, 2013 WL 11842015, at *1 (N.D. Tex.
13 Aug. 26, 2013) (“[t]his discovery motion is not the proper context for . . . merits-directed arguments”);
14 Clark Motor Co. v. Mfrs. & Traders Tr., Co., No. 4:07-CV-856, 2008 WL 2498252, at *1 (M.D. Pa.
15 June 18, 2008) (objection to discovery requests “may not be used as a vehicle for deciding the
16 merits of a case”). Moreover, NRS 87.4335 is not a discovery rule, nor is it a statute purporting to
17 address the rights or duties of parties involved in litigation. Under these circumstances, a discovery
18 order premised on NRS 87.4335 would be inappropriate.

19 Plaintiff maintains that Defendant Legion’s tax returns are otherwise relevant in this case:

20 In addition, the finances, governance and operation of Legion Investments is a
21 primary issue in this case, especially as it relates to an accounting for the project at
22 7747 May Street, Chicago, Illinois, and Defendants’ failure and refusal to provide an
23 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.

24 The Court cannot compel the production of Defendant Legion’s tax returns based on broad,
25 unspecified aspects of its “finances, governance and operation.” Moreover, Plaintiff has not
26 provided sufficient argument or evidence to persuade the Court that every conceivable aspect of

1 Defendant Legion's "finances, governance and operation" are at issue in this case, or why the entire
2 tax returns are needed with regard to any particular aspect of its "finances, governance and
3 operation." To the extent Plaintiff is interested in aspects of its "finances, governance and operation"
4 that concern the Property, Defendants have stated that the 2017 tax return has no pertinent
5 information, and the 2018 tax return has not been completed.

6 Finally, Plaintiff maintains that "[d]iscovery of the tax returns is also allowed for purposes of
7 the claim to pierce the company's limited liability shield." As noted above, the Nevada Supreme
8 Court has recognized that tax returns or financial status cannot be had for the mere asking; a litigant
9 is entitled to some degree of privacy on matters not directly relevant to the lawsuit. See Schlatter,
10 93 Nev. at 192, 561 P.2d at 1343-44. In addition, a corporation ordinarily has a legal existence
11 separate and apart from that of its owners (i.e., shareholders), officers, directors, and managers.
12 See LFC Mktg. Grp., Inc. v. Loomis, 116 Nev. 896, 902, 8 P.3d 841, 845 (2000) ("corporations are
13 generally to be treated as separate legal entities").

14 Nevertheless, when an individual or entity is deemed the alter ego of a corporation, courts
15 may pierce the corporate veil and hold that individual or entity liable for the corporation's obligation.
16 The Nevada Supreme Court has identified the elements necessary to support a finding of alter-ego
17 liability: "(1) the corporation must be influenced and governed by the person asserted to be the alter
18 ego; (2) there must be such unity of interest and ownership that one is inseparable from the other;
19 and (3) the facts must be such that adherence to the corporate fiction of a separate entity would,
20 under the circumstances, sanction [a] fraud or promote injustice." See, e.g., id. at 904, 8 P.3d at
21 846-47. In addition, certain factors, though not conclusive, may indicate the existence of an alter-
22 ego relationship between the individual and the corporate entity: "(1) commingling of funds; (2)
23 undercapitalization; (3) unauthorized diversion of funds; (4) treatment of corporate assets as the
24 individual's own; and (5) failure to observe corporate formalities." See, e.g., id. at 904, 8 P.3d at 847.

25 Any nonprivileged material that is relevant to alter-ego claims would be presumptively
26 discoverable under NRCP 26(b)(1). See Cain, 134 Nev., Adv. Op. 26, at 10, 415 P.3d at 30

1 ("[d]iscovery is proper for any matter that is not privileged and is relevant to the subject matter of the
2 action before the court"). This would include nonprivileged evidence bearing upon commingling of
3 funds, undercapitalization, unauthorized diversion of funds, treatment of one entity's assets as those
4 of the other, and failure to observe corporate formalities. See Bollore S.A. v. Imp. Warehouse, Inc.,
5 448 F.3d 317, 325 (5th Cir. 2008) (degree to which corporate and individual property have been kept
6 separately is a factor in whether alter ego doctrine applies); Huard v. Shreveport Pirates, Inc., 147
7 F.3d 406, 409-10 (5th Cir. 1998) (failure to provide separate bank accounts is relevant to claimant's
8 alter ego theory). But requests for financial information and documents are closely scrutinized to
9 ensure that they encompass only relevant information. See, e.g. Copper Sands Home Owners
10 Ass'n, Inc. v. Copper Sands Realty, LLC, No. 2:10-cv-00510-GMN-LRL, 2011 WL 112146, at *3 (D.
11 Nev. Jan. 13, 2011) (despite pending alter ego claim, plaintiffs could not serve subpoena in effort to
12 obtain "[a]ny and all banking records" of defendants "regardless of its probable connection to this
13 lawsuit or to transactions that tend to show a connection among the defendants").

14 In his motion, Plaintiff has not offered any explanation or evidence to support his contention
15 that Defendant Legion's tax returns are needed in connection with any alter ego claim he may be
16 asserting in this case. In that regard, the fact that his amended complaint includes a broad
17 allegation that all entities referenced in that complaint are the alter egos of the individual defendants
18 is insufficient.⁵ Plaintiff also has not shown that all portions of Defendant Legion's tax returns are
19 relevant, or that the specific information from tax returns that might be relevant to his alter-ego claim
20 is otherwise unobtainable.

21 ⁵ As noted previously, the court in Hetter v. Dist. Court, supra, observed that claims for punitive damages can be
22 asserted with ease, and can result in abuse and harassment if their assertion alone entitles plaintiff to financial discovery.
23 Accordingly, a plaintiff must demonstrate some factual basis for its punitive damage claim before discovery of tax returns
24 and financial information would be permitted on that issue. A claim of alter ego liability likewise can be asserted with ease
25 in many cases, and unfettered review of an opponent's financial information can result in abuse and harassment. While
26 certain financial information can be relevant to an alter ego claim, the Court is not persuaded that the mere assertion of
such a claim entitles a party to invasive discovery of an opponent's personal financial information. This conclusion is
justified under the Hetter requirement of heightened scrutiny toward requests for financial information, as well as cases
recognizing a constitutional right to privacy in financial information. Without sufficient evidentiary support, an order
permitting discovery effectively would allow a party to allege alter-ego liability and then conduct discovery to determine
whether any evidence exists to support the claim. As a general rule, pretrial discovery is not permitted so that a party can
determine whether it has a valid claim. See, e.g., Cenveo, Inc. v. Rag, 659 F. Supp. 2d 312, 317 n.4 (D. Conn. 2009);
Avnet, Inc. v. American Motorists Ins. Co., 115 F.R.D. 588, 592 (S.D.N.Y. 1987). Significantly, Plaintiff's alter-ego claim is
premised primarily upon allegations that were made "[u]pon information and belief.

1 For all of these reasons, the Court finds that Plaintiff has not yet demonstrated that he is
2 entitled to Defendant Legion's tax returns in this case. In addition, Defendants represent that
3 Defendant Legion's tax return for 2017 contains no references or information pertaining to the
4 Property, and that its 2018 tax return has not yet been filed. Therefore, Defendants have no
5 documents to produce in response to Category No. 6. However, the Court will require Defendants to
6 serve Plaintiff with an amended response to Category No. 6, under oath, in which Defendant Legion
7 (a) clarifies that no information set forth on its 2017 tax return reflects, directly or indirectly, any
8 business activities involving the Property, and (b) confirms that its 2018 tax return has not yet been
9 completed and filed.⁶

10 3. Category No. 7

11 In Category No. 7, Defendants are asked to "[p]roduce all schedule K-1s for Legion
12 Investments, LLC, since its creation on July 2, 2014." Their original response is as follows:

13 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
14 information that is not likely to lead to the discovery of admissible evidence in this
15 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.

16 Plaintiff subsequently agreed to limit the temporal scope of this request to January 1, 2017, to the
17 present. Defendants' supplemental response is identical to their original response.

18 Both sides indicate in their briefs that the arguments over discoverability of these documents
19 are the same as those concerning Defendant Legion's tax returns. Based on the analysis set forth
20 in the preceding section of this decision, the Court is constrained to find that Plaintiff has not yet
21 made the showing needed to support an order compelling production of Defendant Legion's
22 Schedule K-1 filings.⁷ Defendants are therefore not presently required to produce documents in
23

24 ⁶ If that statement is no longer true and accurate, then Defendants must either produce documents containing the
relevant information (with redactions for other, irrelevant financial information) or provide another response, as appropriate.
This directive also applies to Category Nos. 7 and 8.

25 ⁷ In his motion and reply brief, Plaintiff specifically argues that Defendant Legion already should have been
26 providing him with Schedule K-1 forms, presumably based upon his status as a partner in Defendant Legion. As noted in
the discussion regarding Category No. 6, Plaintiff's status as a partner of that entity is a disputed substantive issue in this
case, and must be resolved outside of this discovery motion.

1 response to Category No. 7. However, the Court will require Defendants to serve Plaintiff with an
2 amended response to Category No. 7, under oath, in which Defendant Legion (a) clarifies that no
3 information set forth on its 2017 Schedule K-1 filing reflects, directly or indirectly, any business
4 activities involving the Property, and (b) confirms that its 2018 Schedule K-1 form has not yet been
5 completed and filed.

6 4. Category No. 8

7 In this category, Defendants are asked to “[p]roduce all of Brian Mineau’s Schedule Es
8 relating to Legion Investments, LLC, since its creation on July 2, 2014.” Their original response is as
9 follows:

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
12 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 the basis of this objection.

13 Plaintiff subsequently agreed to limit the temporal scope of this request to January 1, 2017, to the
14 present. Defendants’ supplemental response is identical to their original response.

15 Plaintiff emphasizes that he is not seeking the entirety of Defendant Mineau’s tax returns at
16 this time, but argues that the requested Schedule E forms are relevant for the same reasons offered
17 in support of Category No. 6. To that extent, the analysis provided previously would apply to
18 Category No. 8 as well. Plaintiff specifically notes that Defendant “Mineau’s Schedule E would show
19 whether he declared the income and loss for the project at 7747 May Street, Chicago, Illinois on his
20 own tax returns,” which would bear on how the parties’ Agreement should be interpreted. But
21 Defendants assert in their opposition that “Mineau’s 2017 tax returns contain no Schedule Es
22 relating to the Property and Mineau’s 2018 tax returns are not yet completed.” They further agree to
23 supplement this response when the 2018 return is filed. Thus, at this time, Defendants have no
24 documents responsive to Category No. 8.

25 Plaintiff offers three additional arguments to support his request for these documents. First,
26 he contends that “these documents also may clear up some of the intentionally vague or ambiguous

1 responses by Defendants thus far." However, no information is provided regarding those other
2 responses, and this argument is too indefinite to support the order he seeks.

3 Second, he asserts that Defendant Mineau's Schedule E forms "would also reflect any
4 income from Criterion, if he is in fact a 'principal' of that company as he claims to be." But
5 Defendant Mineau's receipt of income from Criterion NV, LLC ("Criterion"), is not at issue in this
6 case. The only apparent connection of Criterion to the events giving rise to this lawsuit is that
7 Defendants previously represented that Criterion contributed \$20,000 for the purchase or
8 improvement of the Property. They subsequently represented that Defendant Mineau and Mr.
9 Spinola are the "principals" of Criterion, and that those two individuals caused Criterion to contribute
10 the \$20,000 on behalf of Defendant Legion. Plaintiff also asserts that Defendant Mineau later said
11 that he (i.e., Defendant Mineau) gave the \$20,000 to Mr. Spinola to wire directly to the project's
12 contractor. But whether or not any of these representations are true, they do not require Plaintiff to
13 obtain information about income paid by Criterion to Defendant Mineau. Moreover, a Schedule E
14 form will not identify whether Defendant is or was a "principal" of Criterion. Finally, to the extent that
15 a relationship or transactions between Criterion and Defendant Mineau are relevant, Plaintiff has not
16 shown that the information from the Schedule E forms is otherwise unobtainable. Presumably,
17 Criterion would possess relevant documents in that regard.

18 Third, Plaintiff contends that information in the Schedule E forms would be relevant to his
19 alter-ego allegations. That issue was addressed previously in connection with Category No. 6, and
20 Plaintiff has not presented sufficient facts to support an order compelling the production of
21 Defendant Mineau's Schedule E forms in connection with any alter-ego claims. For all of the
22 foregoing reasons, Defendants are not required to produce any documents in response to Category
23 No. 8 at this time. However, the Court will require Defendants to serve Plaintiff with an amended
24 response to Category No. 8, under oath, in which Defendant Mineau (a) clarifies that no information
25 set forth on his 2017 Schedule E filing reflects, directly or indirectly, any business activities involving
26 the Property, and (b) confirms that his 2018 Schedule E form has not yet been completed and filed.

1 5. Category No. 9

2 In Category No. 9, Plaintiff asks Defendants to "[p]roduce all meeting minutes for Legion
3 Investments, LLC." Defendants' original response is as follows:

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
6 matter, as Legion Investments, LLC's internal meeting minutes are confidential and
have no bearing on this litigation. Documents are being withheld on the basis of this
objection.

7 In their supplemental response, Defendants add the following statement: "Without waiving this
8 objection, there are no meeting minutes for Legion Investments, LLC which mention Jay Kvam or
9 the real property located at 7747 S. May Street, Chicago, Illinois."

10 In his motion, Plaintiff states that the requested meeting minutes are not confidential as to
11 him, since he is a member of Defendant Legion. As explained previously, Plaintiff's status as a
12 member of Legion is a disputed issue between the parties. Resolution of that substantive issue is
13 not appropriate in the context of a discovery motion.

14 Plaintiff also argues that he needs these meeting minutes in connection with the project
15 involving the Property, and with his claims in this action. But Defendants have clarified that Legion
16 has no meeting minutes which mention Plaintiff or the Property. Plaintiff adds that these minutes
17 "might reflect any agreements with Criterion." But Defendants' representation effectively implies that
18 the minutes do not reflect any agreements with Criterion that mention Plaintiff or the Property.
19 Plaintiff argues that the absence of any meeting minutes is also relevant to his alter-ego claims, but
20 that argument is not further explained. In any event, the assertion of an alter-ego claim does not
21 automatically grant Plaintiff the right to pore through all of Defendant Legion's meeting minutes to
22 see whether one or more documents might arguably support that claim.

23 Plaintiff maintains that "[t]his is a fraud case, and Kvam does not have to take the word of
24 Mineau or his attorney on what is or is not contained in the meeting minutes." That statement is not
25 accurate. When the discoverability of a document depends on whether it contains certain relevant
26 information, courts ordinarily rely on a determination and representation by the responding party and

1 its counsel about whether that document contains the relevant information. See Kestner v. Pratt &
2 Whitne Can., Inc., No. 94-3176, 1995 WL 598995, at *2 (E.D. Pa. Oct. 6, 1995) (“[w]hen one party
3 seeks to compel production, it is sufficient for the other party to simply respond that a particular
4 discovery item is not in existence or not in that party’s possession”); In re Air Crash Disaster at
5 Detroit Metro. Airport on Aug. 16, 1987, 130 F.R.D. 641, 646 (E.D. Mich. 1989) (“in those situations
6 in which the [discovery] sought to be produced [is] not in existence, a request to produce must be
7 denied”); cf. White v. Deere & Co., Civil Action No. 1:13-cv-02173-PAB-NYW, 2015 WL 1385210, at
8 *11 (D. Colo. Mar. 23, 2015) (“the court . . . cannot compel production of documents that defense
9 counsel represent, as officers of the court, do not exist”); Loparex, LLC v. MPI Release Techs., LLC,
10 No. 1:09-cv-01411-JMS-TAB, 2011 WL 1326274, at *3 (S.D. Ind. Mar. 25, 2011) (“[d]espite the
11 Defendants’ belief that it is ‘unlikely’ that there would be no documents to log ‘[i]n this day and age,’
12 . . . the Court accepts the sworn representations to the contrary”). Absent a showing that the
13 responding party’s discovery representations have been false or inaccurate, the requesting party
14 generally is not entitled to determine for itself whether that document contains relevant information.

15 Based on the foregoing, the Court finds that Defendants are not presently required to
16 produce any documents in response to Category No. 9. However, Plaintiff is entitled to a more
17 definitive statement from Defendants regarding the lack of relevant information in the requested
18 minutes. Therefore, Defendants must serve Plaintiff with an amended response to Category No. 9,
19 under oath, in which they clarify that Defendant Legion’s meeting minutes do not mention (a) the
20 Agreement, (b) the Property, (c) the project pertaining to the Property, (d) any resolutions that
21 pertain to that project, (e) Plaintiff, (f) Plaintiff’s claims in this action, or (g) any agreement with
22 Criterion that mentions the Property.

23 6. Category No. 10

24 In this category, Plaintiff asks Defendants to “[p]roduce all resolutions of the members and/or
25 managers of Legion Investments, LLC.” Defendants’ original response is as follows:

26 Objection, relevance and confidentiality. This Request seeks irrelevant, confidential
information that is not likely to lead to the discovery of admissible evidence in this

1 matter, as Legion Investments, LLC's internal governing documents are confidential
2 and have no bearing on this litigation. Documents are being withheld on the basis of
this objection.

3 In their supplemental response, Defendants add the following statement: "Without waiving this
4 objection, there are no resolutions for Legion Investments, LLC which mention Jay Kvam or the real
5 property located at 7747 S. May Street, Chicago, Illinois."

6 Both sides indicate in their briefs that the arguments over discoverability of these documents
7 are the same as those concerning Defendant Legion's meeting minutes. Based on the analysis set
8 forth in the preceding section, the Court is constrained to find that Defendants are not presently
9 required to produce documents in response to Category No. 10. However, the Court will require
10 Defendants to serve Plaintiff with an amended response to Category No. 10, under oath, in which
11 they clarify that Defendant Legion's resolutions do not mention (a) the Agreement, (b) the Property,
12 (c) the project pertaining to the Property, (d) any resolutions that pertain to that project, (e) Plaintiff,
13 (f) Plaintiff's claims in this action, or (g) any agreement with Criterion that mentions the Property.

14 7. Category No. 11

15 In Category No. 11, Defendants are asked to "[p]roduce all balance sheets for Legion
16 Investments, LLC, since its creation on July 2, 2014." Their original response is as follows:

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
19 matter, as Legion Investments, LLC's financial records are confidential and have no
bearing on this litigation. Documents are being withheld on the basis of this
objection.

20 Plaintiff subsequently agreed to limit the temporal scope of this request to January 1, 2017, to the
21 present. In their supplemental response, Defendants add the following statement: "Without waiving
22 this objection, Legion Investments, LLC's financial statements relating to the real property located at
23 7747 S. May Street, Chicago, Illinois, have been produced."

24 Plaintiff acknowledges that Defendants provided him with "some recently created profit and
25 loss statements," but disputes Defendants' characterization of those documents as actual "financial
26 statements." He correctly observes that the term "financial statements" encompasses both balance

1 sheets and profit and loss statements. See John Downes & Jordan Elliot Goodman, Dictionary of
2 Finance and Investment Terms 132 (2d ed. 1987) (“[t]he financial statement includes a balance
3 sheet and an income statement (or operating statement or profit and loss statement) and may also
4 include a statement of changes in working capital and net worth”). Plaintiff maintains that
5 Defendants have not produced balance sheets or any source documents for the “financial
6 statements” they provided.

7 In their opposition, Defendants state that “Legion has produced the financial statements it
8 has”; that “Legion is not obligated to create ‘balance sheets (which show assets, liability and owner’s
9 equity)’ in a form deemed acceptable to Kvam”; and that “Legion cannot produce that which does
10 not exist.” NRCP 34 only requires a party to produce documents already in existence; it does not
11 require a party to prepare new documents to satisfy the request. See, e.g., Acosta v. Wellfleet
12 Commc’ns, LLC, No. 2:16-cv-02353-GMN-GWF, 2018 WL 664779, at *7 (D. Nev. Feb. 1, 2018).
13 However, Defendants’ statement that “[d]ocuments are being withheld” has created confusion about
14 whether Defendant Legion has any balance sheets for the applicable period that were not created to
15 respond to this request. Plaintiff is entitled to greater clarity in that regard. However, assuming that
16 Defendant Legion does not have possession, custody, or control of any balance sheets, a statement
17 to that effect would be a sufficient response to Category No. 11.

18 To the extent that actual balance sheets do exist, Plaintiff’s request remains problematic.
19 Plaintiff argues that balance sheets “will show whether and how Legion Investments documented
20 and reported its acquisition of the house at 7747 May Street, Chicago, Illinois, as well as the loan
21 from Kvam.” But balance sheets typically do not identify specific assets and liabilities, and it is not
22 clear whether Defendant Legion was involved in other projects during the applicable period. Merely
23 providing Plaintiff the total value of its undifferentiated assets—or even subcategories of assets,
24 such as “land” or “real estate”—would be of little or no utility, and the same is true for its total
25 undifferentiated liabilities or subcategories of liabilities. In addition, as explained previously, financial
26 information is entitled to qualified protection.

1 Under these circumstances, the Court will require Defendants to serve Plaintiff with an
2 amended response to Category No. 11, under oath, in which they unequivocally state whether
3 Defendant Legion does or does not possess any balance sheets that were created on or after
4 January 1, 2017.⁸ If Defendant Legion does not have any documents responsive to this category,
5 then no further response is required. If one or more responsive documents do exist, however, then
6 Defendants must produce responsive documents in which (a) the Property or Plaintiff is expressly
7 mentioned (by whatever words), or (b) the impact of the Property or funds provided by Plaintiff
8 (whether characterized as loans, funding, or otherwise) as an asset or liability is reflected in the
9 amounts stated for a given asset or liability. In that event, Defendants may redact identifications and
10 amounts for other stated categories that do not pertain to the Property or amounts provided by
11 Plaintiff.⁹

12 8. Category No. 12

13 In this category, Defendants are asked to "[p]roduce all income and expense statements,
14 and/or profit and loss statements for Legion Investments, LLC, since its creation on July 2, 2014."
15 Defendants' original response is as follows:

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

19 In their supplemental response, Defendants add that "[w]ithout waiving this objection, Legion
20 Investments, LLC's financial statements relating to the real property located at 7747 S. May Street,
21 Chicago, Illinois, have been produced."

23 ⁸ This directive is not necessarily limited to documents with the title "Balance Sheet." The same kind of financial
report sometimes goes by other names, such as "statement of condition" or "statement of financial position." However
24 titled, it is a document showing the status of a company's assets, liabilities, and owner's equity on a given date. See John
Downes & Jordan Elliot Goodman, Dictionary of Finance and Investment Terms 28 (2d ed. 1987) (definition of "balance
sheet").

25 ⁹ Put differently, if a particular item includes amounts reflecting the Property or amounts provided by Plaintiff, then
26 Plaintiff is entitled to see that item and the associated amount; but Plaintiff presumptively would not be entitled to see other
financial information in that document.

1 Plaintiff observes that this request is not limited to financial statements concerning the
2 Property. But Plaintiff has not demonstrated how any information about Defendant Legion's income
3 and expenses (or profits and losses) from its other properties, or other business operations
4 unrelated to project involving the Property, would have any bearing on the claims or defenses
5 asserted. To the extent that Plaintiff would make the same arguments for relevance that were
6 asserted in connection with other categories of his request for production, the Court's previous
7 analysis would apply here as well.

8 Under these circumstances, the Court will require Defendants to serve Plaintiff with an
9 amended response to Category No. 12, under oath, in which they unequivocally state whether
10 Defendant Legion does or does not possess any income and expense statements, or profit and loss
11 statements (whatever their formal title). If Defendant Legion does not have any documents
12 responsive to this category, then no further response is required. If one or more responsive
13 documents do exist, however, then Defendants must produce responsive documents in which (a)
14 the Property or Plaintiff is expressly mentioned (by whatever words), or (b) the impact of the
15 Property or funds provided by Plaintiff is reflected in the stated entries. In that event, Defendants
16 may redact identifications and amounts for other categories that do not pertain to the Property or
17 amounts provided by Plaintiff.

18 9. Category No. 13

19 In Category No. 13, Plaintiff asks Defendants to "[p]roduce all bank statements of Legion
20 Investments, LLC accounts, since its creation on July 2, 2014." Defendants' original response is as
21 follows:

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
24 matter, as Legion Investments, LLC's bank records are confidential and have no
bearing on this litigation. Document are being withheld on the basis of this objection.

25 Plaintiff subsequently agreed to limit the temporal scope of this request to January 1, 2017, to the
26 present. Defendants' supplemental response is identical to their original response.

1 Plaintiff argues that the requested bank statements are relevant for the same reasons offered
2 in support of Category No. 6. To that extent, the analysis provided previously would apply to
3 Category No. 13 as well. Plaintiff further contends that, "[i]n addition, the bank statements are
4 necessary to verify the payments listed on Legion's recently produced balance statements." But in
5 connection with Category No. 11, Plaintiff states that Defendants failed to produce any balance
6 sheets. In any event, the bank statements will not necessarily provide information about the value of
7 specific assets and liabilities reflected on a balance sheet, and they presumably would contain
8 information about transactions having no connection to this litigation. Individual bank statements
9 containing information pertaining to the Property or Plaintiff's loan might be discoverable, but the
10 Court is not persuaded that Plaintiff needs to see all bank statements for the stated period. Plaintiff
11 also states that bank statements are relevant to "the source of the funds used for the \$20,000 wire
12 transfer to the contractor through the Criterion account, and where the proceeds of sale were
13 deposited." If this information is reflected on a given bank statement, then that statement must be
14 produced to that extent, and irrelevant financial information can be redacted.

15 In their opposition, Defendants state that Defendant Legion's bank records are not
16 discoverable at all because "no funds pertaining to this project were ever held in Legion's bank
17 accounts." That assertion is not sufficient for the Court to find that none of the requested bank
18 records is discoverable. If any information contained in a given bank statement shows funds that
19 were connected to the Property, the project, or Plaintiff's loan, then that bank statement would be
20 discoverable to that extent, and any such statement must be produced. If no bank statement bears
21 any such information, then no records must be produced at this time. However, if that is
22 Defendants' representation, then they must provide an amended answer to Category No. 13 in
23 which they state that (1) no deposit or transfer of funds into a Legion bank account concerned funds,
24 or a portion of funds, that were provided by any person or entity for any aspect of the Property or
25 project; (2) no deposit or transfer of funds into a Legion bank account concerned funds, or a portion
26 of funds, realized from the Property or project, whether through a sale of the property or otherwise;

1 and (3) no withdrawal, debit, or transfer of funds from a Legion bank account concerned any
2 expense, in whole or in part, for the Property or project.

3 10. Category No. 20

4 In this category, Plaintiff asks Defendants to "[p]roduce copies of all business or professional
5 licenses ever held by Brian Mineau." Defendants' original response is as follows:

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

9 In their supplemental response, Defendants add that "[w]ithout waiving this objection, Brian Mineau's
10 professional license relating to real estate has been produced." Notwithstanding that statement,
11 Plaintiff asserts that Defendants have not produced any of the requested licenses. He maintains
12 that the requested documents "are relevant for background information and to determine his
13 qualifications to manage a real estate project as well as to serve as a loan broker and duties owed to
14 his lender and joint venture partners."

15 The Court has no idea about the kind or quantity of licenses held by Defendant Mineau
16 during the course of his life, but it observes that licenses may be required, at different jurisdictional
17 levels, for myriad activities having no apparent connection to the claims or defenses in this action. A
18 party is entitled to obtain reasonable discovery pertaining to an opponent's background, but a
19 request for licenses bearing no connection to the opponent's relevant acts or omissions is not
20 permissible. See Schlatter, 93 Nev. at 192, 561 P.2d at 1344 ("discovery rules provide no basis for
21 such an invasion into a litigant's private affairs," and district court "exceeded its jurisdiction by
22 ordering disclosure of information neither relevant to the tendered issues nor leading to discovery of
23 admissible evidence"); see also Crouch v. City of Hyattsville, Md., Civil Action No. DKC 09-2544,
24 2011 WL 13223820, at *5 (D. Md. Aug. 15, 2011) (denying request for "copies of all professional
25 licenses"). Plaintiff is free to serve one or more discovery requests to obtain information about
26 relevant licenses, but Category No. 20 is objectionably overbroad.

1 However, in a supplemental response, Defendants produced a document identified as
2 LEG0182, which they describe as Defendant Mineau's "real estate license information." That
3 document is attached as Exhibit 4 to Defendants' opposition, and the Court has reviewed it. As
4 Plaintiff notes, it is "some sort of printout," but "[i]t is not a license, and does not even identify the
5 putative licensing authority." Because Defendants are effectively representing that Defendant
6 Mineau has a real estate license, and a real estate license is arguably relevant as background
7 information in this action, the Court will require Defendants to produce a copy of the actual real
8 estate license issued to Defendant Mineau that LEG0182 is supposed to reflect. If Defendants
9 maintain that they do not have possession, custody, or control of a formal licensing certificate
10 associated with this license, then they must serve Plaintiff with an amended response to Category
11 No. 20, under oath, and in which they identify the issuing authority for the license they maintain is
12 set forth in LEG0182.

13 B. Request for Expenses

14 Plaintiff seeks an award of the reasonable expenses he incurred in connection with this
15 motion, and Defendants likewise seek an award of expenses incurred in opposing it. When, as
16 here, a motion to compel is granted in part and denied in part, the court may, after giving an
17 opportunity to be heard, apportion the reasonable expenses for the motion. See NRCP 37(a)(5)(C).
18 Under the circumstances presented here, the Court finds that each side should bear its own
19 expenses incurred in connection with this motion.

20 ACCORDINGLY, *Plaintiff's First Motion to Compel* should be GRANTED in part, and
21 DENIED in part.

22 IT SHOULD, THEREFORE, BE ORDERED that, no later than April 23, 2019, Defendants
23 produce for inspection and copying by Plaintiff all documents within the possession, custody, or
24 control of either of them that are responsive to the categories of Plaintiff's first request for production
25 of documents, or serve Plaintiff with amended responses to those categories, to the extent required

26 ///

1 by and in accordance with this decision.

2 DATED: This 9th day of April, 2019.

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4 _____
5 WESLEY M. AYPRES
6 DISCOVERY COMMISSIONER
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CERTIFICATE OF SERVICE

CASE NO. CV18-00764

I certify that I am an employee of the SECOND JUDICIAL DISTRICT COURT of the STATE OF NEVADA, COUNTY OF WASHOE; that on the 9th day of April, 2019, I electronically filed the **RECOMMENDATION FOR ORDER** with the Clerk of the Court by using the ECF system.

I further certify that I transmitted a true and correct copy of the foregoing document by the method(s) noted below:

Electronically filed with the Clerk of the Court by using the ECF system which will send a notice of electronic filing to the following:

MICHAEL L. MATUSKA, ESQ. for JAY KVAM

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

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

Deposited in the Washoe County mailing system for postage and mailing with the United States Postal Service in Reno, Nevada: [NONE]


Danielle Spinella
Administrative Secretary

1 **CODE: 2630**
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 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
Joint Venture; and DOES I-X, inclusive,

14 Defendants.

15 **PLAINTIFF'S OBJECTIONS TO REPORT OF COMMISSIONER**

16 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
17 Offices, Ltd., Michael L. Matuska, and pursuant to EJDR 2.34(f) hereby submits this Objection to
18 the April 9, 2019 *Recommendation for Order* ("Recommendation").

19 I. INTRODUCTION

20 The Recommendation missed the essential issue regarding the scope of discovery on
21 accounting and financial matters. Mineau has not and possibly cannot provide an accounting to
22 Kvam for the property at 7747 May Street, Chicago, Illinois (the "Property"). Kvam therefore has
23 to conduct his own discovery. Mineau and Legion did not keep a separate accounting system for
24 the Property, such as a partnership account or a partnership tax return. The necessary information
25 (to the extent it exists) is therefore intermingled with Mineau's and Legion's financial
26 information. They cannot now claim privacy concerns and use their failure to keep a separate
27 accounting system as an excuse not to provide discovery.

28 The Recommendation does not seem to reflect the entire record when it notes that

1 “statements by counsel in briefs do not constitute evidence.” (Recommendation at 7:13-14)
2 (citing *Ladner v. Litespeed Mfg. Co.*, 537 F.Supp. 2d 1206, 1217 (N.D. Ala. 2008). The
3 Recommendation does not seem to have the benefit of the multiple affidavits and extensive
4 documentary evidence submitted to date or the transcript from the hearing on December 17, 2018.
5 The Affidavits include #6771116, 6807270, 7000744 and 6983487.

6 The Recommendation also references Defendants’ counterclaims for trespass to chattels
7 and conversion (Recommendation at 2:7-9), when in fact, those counterclaims were dismissed and
8 the only remaining counterclaim is the third claim for declaratory relief (Order, #7059540).

9 Kvam has already demonstrated that Mineau concealed the status of the project, concealed
10 Criterion’s investment, concealed the sale, concealed what happened to the proceeds of sale, and
11 to date, has not or cannot provide an accounting.¹ Kvam has also demonstrated Defendant’s
12 accounting practice of simultaneous deposits and withdrawals, such that they can show a payment
13 or receipt, as necessary, without a corresponding change to the account balance (See *Motion to*
14 *Dismiss Counterclaim, or Alternatively, for a More Definite Statement* #6746240 and December
15 17, 2018 Hearing Transcript²). There is no evidence that Kvam’s investment was used to improve
16 the Property, and it is becoming increasingly likely that Kvam’s money was used for other
17 projects that were underway by Mineau, Legion and Criterion.³

18
19 ¹ The November 16, 2018 escrow closing statement was attached as Exhibit “1” to Kvam’s First Motion to Compel.

20 ² At the December 17, 2018 hearing on Kvam’s Motion to Dismiss, the court commented twice on Mineau’s circular
21 accounting system.

22 THE COURT: And then the other one had to do with the money, the \$10,000 in the Atlas
23 account, going out and coming right back in.

24 MR. MATUSKA: \$20,000.

25 THE COURT: Coming out and going right back in, right?
26 (Transcript, Ex. “4” at 10:22-11:3).

27 THE COURT: He is saying money wasn’t taken out of the account.

28 MR. SWEET: No, he is not.

THE COURT: It is out one hour and a couple of hours later it was put back in. Pay the bill
and get the money back.
(Transcript, Ex. “4” at 18:23-19:4).

³ Mineau has alleged multiple times that Kvam’s project funds were paid directly to the contractor, not to Mineau.
Kvam recently received the contractor’s bank statements from JP Morgan Chase. Those statements indicate that
Mineau used this same contractor for his other projects in Chicago, and that Kvam’s money was placed in the same

1 The Recommendation does not adequately address the fact that Kvam is a member of
2 Legion based on the face of the Terms of Agreement. Even if that is not literally true for all of
3 Legion's business activities, Kvam must be considered a member, at least for purposes of the
4 Property, which entitles him to examine the books and records pursuant to NRS 86.241 without
5 having to resort to litigation, discovery and the motion to compel. The Recommendation should
6 have enforced his statutory rights, not limited them.

7 Discovery is ongoing, and Kvam should have the right to renew these discovery requests if
8 facts warrant, regardless of this Court's decision on the pending First Motion to Compel and
9 Recommendation.

10 II. DISCUSSION

11 A. Request for Production

12 1. Category No. 1

13 No objection.

14 2. Category No. 6 – Legion Investments, LLC Tax Returns

15 The Recommendation actually makes the case for production of the requested tax returns
16 when it acknowledges that there is no privilege for tax returns and tax returns will be produced
17 when the information is not otherwise available, and then cites the recent controlling case of *Cain*
18 *v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018). The Recommendation further notes that the
19 main reason for not producing tax returns are concerns of privacy and harassment.
20 (Recommendation at 5:5-24).

21 In this case, Mineau and Legion have not and presumably cannot provide Kvam with an
22 accounting. Kvam does not know what Legion and Mineau claimed for expenses and revenues
23 related to the Property. Mineau cannot even prove that Kvam's money was used for the Property
24 rather than for other projects that were underway by Mineau and his cohorts. There is no concern
25 of harassment when Kvam is simply trying to discover which defendant is claiming the proceeds
26 of the sale, and other expenses relating to the Property, and verify how his project funds were

27 account with other funds received for other projects. The records received to date from JP Morgan Chase are
28 incomplete. Kvam can supplement his First Motion to Compel on this issue when the additional records are received.

1 spent. This information is not available from any other sources, or it would presumably have been
2 produced by now.

3 Despite these seminal facts, the Recommendation is not to compel production of the tax
4 returns for the following reason:

5 Plaintiff argues that Defendant Legion's tax returns are relevant to his
6 case-in-chief. But Plaintiff has not shown that Defendant Legion's business
7 activities have been limited exclusively to the Property. To the extent that its tax
8 returns would reflect information unrelated to the Property, Plaintiff
9 presumptively would not be entitled to it with regard to his case-in-chief. Plaintiff
10 might very well be entitled to see portions of Defendant Legion's tax returns that
11 mention or otherwise pertain to the Property (e.g., expenses, profits, losses, etc.),
12 but Category No. 6 is not limited in that way. Although the Court could impose
13 that limitation now, Defendants represent that Defendant Legion's tax returns for
14 2017 contains no references or information pertaining to the Property, and that its
15 2018 tax return has not yet been filed. Thus, Defendants effectively represent that
16 they presently have no responsive documents. (Recommendation at 6:9-18)

17 Despite the extensive legal citations contained elsewhere in the Recommendation, this
18 seminal passage is lacking any legal authority, imposes its own interpretation of the what the
19 ultimate issues are for the case, and potentially impacts the scope of trial. Plaintiff does not have
20 to demonstrate that Legion's business activities have been limited exclusively to the Property.
21 Rather, Mineau and Legion boasted of their real estate experience in order to induce Kvam to
22 invest. Mineau failed to keep separate accounts for the Property, and cannot prove that Kvam's
23 funds were used to improve the Property. There is no presumption that Legion does not have to
24 produce tax returns, that are otherwise discoverable, merely because other activities might be
25 reflected on the returns. This is particularly true when those activities may themselves be relevant
26 to the disposition of Kvam's project funds.

27 Likewise, there is no rule of evidence that the Defendant in a fraud case can prevent the
28 discovery or admission of documentary evidence at trial based on a self-serving statement of what
is or is not contained in the documents. Also, the question of whether Legion's 2018 tax return
has been prepared is irrelevant to the question of whether it is discoverable in the first instance.
Mineau and Legion have an ongoing duty to supplement their responses. NRCP 26(e).

The requested tax returns are also discoverable for the claim of punitive damages, and the

1 Recommendation did not properly apply *Cain v. Price*. The Nevada Supreme Court observed in
2 *Cain v. Price* that “Tax returns are not to be had for the mere asking.” See *Cain v. Price*, 134 Nev.
3 Adv. Op. 26 (Nev. April 12, 2018). In that case, the Nevada Supreme Court ruled: “While that
4 evidence might not amount to ‘clear and convincing evidence’ that Price and Shackelford
5 committed ‘oppression, fraud, or malice,’ NRS 42.005(1), such alleged misuse of funds contrary
6 to the [joint venture agreement] constitutes ‘some factual basis’ for those claims such that
7 discovery was proper.”⁴ Similarly, in this case, Kvam has provided evidence of fraud, even if the
8 evidence submitted in support of his First Motion to Compel and other briefs does not amount to
9 clear and convincing evidence.

10 Although the Recommendation acknowledges the right of a partner to inspect the books
11 and records of a partnership, the Recommendation lapses into a confused discussion of how
12 allowing discovery on financial matters (which is the principal issue in this case) is tantamount to
13 a judgment that a partnership existed, when that issue is still disputed by Mineau. In other words,
14 the Recommendation suggests that Kvam has to prove his case before he is allowed discovery. In
15 support of this position, the Recommendation cites 5 unpublished opinions from other
16 jurisdictions. There is no such rule, and the Recommendation misinterprets the cited cases and
17 NRCP 26(b). For instance, in the first cited case of *Air Filter Co. v. Universal Air Prods., LLC*,
18 No. 3:14-DV-665-TBR-LLK, 2015 WL 3862529 (W.D. Ky., June 22, 2015), the question was
19 whether a prior settlement agreement precluded money damages and restricted the plaintiff to
20 injunctive relief, only. The court noted that “money damages remains within the scope of
21 discovery.” However, the court stayed discovery on money damages pending a ruling on the
22 defendant’s motion for clarification of whether the prior settlement agreement precluded such
23 relief. The *Air Filter* court acknowledged that “Rule 26 does not limit discovery to issues raised
24 in the pleadings, but those relevant to the pleadings.” In this case, there are no settlement
25 agreements, judgments or orders that would limit Kvam’s causes of action or the remedies
26 available to him. As such, the scope of discovery is not limited merely because Mineau contests

27 ⁴ The undersigned counsel was the attorney of record for the successful appellants in *Cain v. Price*, along with Robert
28 L. Eisenberg.

1 Kvam's assertion that 7747 May Street should be considered a joint venture.

2 The Recommendation also lapses into a lengthy discussion about alter-ego, and concludes
3 that Kvam's general allegation of alter-ego is "insufficient" to allow discovery on that issue.
4 (Recommendation at 10:18). The Recommendation failed to cite any cases that would require
5 Kvam to provide a more specific allegation of alter-ego, and the allegations of alter-ego remain
6 part the case. The requested discovery is relevant to Kvam's claim of alter-ego. As explained in
7 the First Motion to Compel, the absence of a separate accounting system and minutes, and the co-
8 mingling of project funds with personal funds supports the case for alter-ego.

9 3. Category No. 7 - Legion Investments K-1s

10 See Category No. 6, *supra*. Providing a response, under oath, is not a substitute for
11 providing documents, especially when the Terms of Agreement make Kvam a member of Legion,
12 at least for purposes concerning the Property.

13 4. Category No. 8 – Mineau's Schedule E

14 Schedule E is for "Supplemental Income and Loss (from real estate, royalties, partnerships,
15 S corporations, estates, trusts, REMICs, etc.)" The need for Mineau's Schedule E is apparent
16 from the phony financial statements produced to date by the Defendants, including **Exhibits "1"**
17 **and "2"** attached hereto. Those statements show that Legion is claiming a \$20,000 investment in
18 the Property (actually, made by Criterion) but does not show the corresponding \$24,473.77 from
19 the sale proceeds in November, 2018. Kvam is entitled to know whether Mineau reported the
20 proceeds of sale on his Schedule E.

21 5. Category No. 9 – Meeting Minutes

22 There is no protection for meeting minutes, particularly when Kvam is a member of
23 Legion.

24 6. Category No. 10 – Resolutions

25 See Category No. 9, *supra*. In addition, Legion's claim that it does not have any
26 Resolutions pertaining to the Property is patently false. Legion was required to provide a
27 Resolution to escrow. (See **Exhibit "3"**) Rather than produce the Resolutions as requested,
28 Legion responded that "there are no resolutions for Legion Investments, LLC which mention Jay

1 Kvam or the real property located at 7747 S. May Street, Chicago, Illinois.” The specific wording
2 of the Resolution is irrelevant, and Mineau’s contrived response suggests that there are
3 Resolutions that are responsive to Request No. 10, even if they do not expressly mention Jay
4 Kvam or the Property. For example, **Exhibit “3”** was provided to escrow even though it does not
5 specifically mention Kvam or the Property. Legion should not be allowed to limit the request,
6 misinterpret the request, or provide a verified response in lieu of producing documents. Kvam
7 needs to see all minutes and resolutions for Legion Investments.

8 7. Category No. 11 – Balance Sheets

9 Comments reserved pending additional responses.

10 8. Category No. 12 – Income and Expense Statements

11 Comments reserved pending additional responses. In addition, **Exhibits “1” and “2”**
12 provided herewith demonstrate why Kvam needs to continue discovery on the accounting issues,
13 and cannot simply rely on Mineau’s verified responses. As shown on **Exhibit “1”**, Legion
14 attempts to claim Criterion’s \$20,000 payment as an expense, but Legion does not report the
15 proceeds of sale on **Exhibit “2.”**

16 9. Category No. 13 – Bank Statements

17 See Category No. 6, *supra*. Further comments are reserved pending additional responses.

18 10. Category No. 20 – Professional Licenses

19 There is no limitation on discovery for professional licenses and Mineau no longer objects
20 to this request. As such, most of the discussion in the Recommendation Part 10 is unnecessary.
21 Rather, Mineau claims that he responded and cites LEG 0182, which he claims is attached as
22 Exhibit “4” to his Opposition. Mineau’s Exhibit “4” appears to be some sort of printout. It is not
23 a license, and does not even identify the putative licensing authority. The Recommendation
24 directs Mineau to provide additional information regarding LEG 0182. Further comments are
25 therefore reserved pending additional responses.

26 III. CONCLUSION

27 The Recommendation’s reliance on unpublished decisions and cases from other
28 jurisdictions is unnecessary in light of NRCP 26 and the controlling case law of *Cain v. Price*. All

1 of Plaintiff's requests either seek admissible evidence, or evidence that will likely lead to the
2 discovery of admissible evidence. Mineau apparently did not keep a separate accounting system
3 for the Property. Also, Mineau cannot produce any evidence that Kvam's money was used to
4 improve the Property. Rather, it is appearing increasingly likely that Kvam's project funds were
5 co-mingled with funds for Mineau's other projects. As such, the necessary financial information
6 is intermingled with his personal financial affairs and those of Legion, and discovery should
7 continue as necessary to find out the ultimate use and disposition of Kvam's project funds, among
8 other issues. Mineau and Legion should not be allowed to claim a privacy concern when they
9 failed to keep a separate accounting system and the project accounting is intertwined with their
10 personal accounting. To rule otherwise would be to allow Mineau to use the lack of a separate
11 accounting system to promote fraud and mask the potential diversion of project funds.

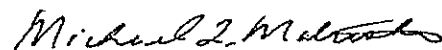
12 The court should not follow the Recommendation to the extent that it attempts to create
13 special privileges for meeting minutes, resolutions and professional licenses. There simply is no
14 legal basis upon which to restrict these discovery requests, especially when Kvam is a member of
15 Legion pursuant to the Terms of Agreement.

16 To the extent Kvam's First Motion to Compel is granted, Kvam should be awarded
17 attorney's fees. To the extent Kvam's First Motion to Compel is denied, any such denial should
18 be without prejudice to Kvam's right to renew the requests as additional information becomes
19 available and circumstances warrant.

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

22 Dated this 16th day of April 2019.

23 MATUSKA LAW OFFICES, LTD.

24 

25 By:

26 MICHAEL L. MATUSKA, SBN 5711
27 Attorneys for Plaintiff, JAY KVAM,
28 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 16th day of April, 2019, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S OBJECTION TO RECOMMENDATION FOR 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.

Wesley M. Ayers
DISCOVERY COMMISSIONER
75 Court Street, Room 125
Reno, NV 89501

☐ **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	PAGES
1	Legion Investments, LLC Balance Statement for May 2017	1
2	Legion Investments, LLC Balance Statement for November 2017	1
3	Resolution on Members/Managers Authority to Execute Any Instrument(s) on Behalf of Legion Investments, LLC	1
4	Transcript of Proceedings Hearing December 17, 2018 – Pages 1, 2, 10, 11, 18, 19	6

EXHIBIT 1
LEGION INVESTMENTS, LLC
BALANCE STATEMENT FOR MAY 2017
(Plaintiff's Objections to Report of Commissioner)

EXHIBIT 1
LEGION INVESTMENTS, LLC
BALANCE STATEMENT FOR MAY 2017
(Plaintiff's Objections to Report of Commissioner)

Balance Statement

Name:

Time Period: 2017

Financial Statements in U.S. Dollars

Income Statement

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 ip 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 2
LEGION INVESTMENTS, LLC
BALANCE STATEMENT FOR NOVEMBER 2017
(Plaintiff's Objections to Report of Commissioner)

EXHIBIT 2
LEGION INVESTMENTS, LLC
BALANCE STATEMENT FOR NOVEMBER 2017
(Plaintiff's Objections to Report of Commissioner)

Balance Statement

Name:

Time Period: 2018

Financial Statements in U.S. Dollars

Income Statement

Starting Balance	-34,408.42
Loans	
Capital Contribution	
Assets Received	
Reversal of asset	
Net Sales	-34,408.42

Expense Statement

Advertising	
Amortization	
Bad Debt	
Bank Charges	
Charitable Contributions	
Commissions	
Contract Labor	
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	\$0.00
Net Operating Income	-34,408.42

Other Income Statement

Gain (Loss) on Sale of Assets	
Other Income	\$0.00
Total Other Income	\$0.00
Net Income (Loss)	-34,408.42

EXHIBIT 3
RESOLUTION ON MEMBERS/MANAGERS AUTHORITY
TO EXECUTE ANY INSTRUMENT(S) ON BEHALF OF
LEGION INVESTMENTS, LLC
(Plaintiff's Objections to Report of Commissioner)

EXHIBIT 3
RESOLUTION ON MEMBERS/MANAGERS AUTHORITY
TO EXECUTE ANY INSTRUMENT(S) ON BEHALF OF
LEGION INVESTMENTS, LLC
(Plaintiff's Objections to Report of Commissioner)

**RESOLUTION ON
MEMBERS/MANAGERS AUTHORITY TO EXECUTE ANY
INSTRUMENT(S) ON BEHALF OF
LEGION INVESTMENTS, LLC**

Upon a duly made and seconded motion, a majority of the Managers/Members of
LEGION INVESTMENTS, LLC adopted the following resolutions:

RESOLVED, that all management decisions relating to LEGION
INVESTMENTS, LLC shall be made by its Managers, and that any and all Managers
shall have authority to execute any instruments on behalf of LEGION INVESTMENTS,
LLC which may include, but not limited to the purchase and sale of real and or personal
property for investment, and that any one Manager may act for and on behalf of the
Company, keeping in mind a fiduciary duty to act in the best interest of the Company and
to keep other Managers informed of any action taken, as set forth in the Operating
Agreement of LEGION INVESTMENTS, LLC.

The undersigned certifies that I am a/the duly appointed Managing Member of
LEGION INVESTMENTS, LLC and that the above is a true and correct copy of a
resolution duly adopted at a meeting of the Managers/Members thereof, convened and
held in accordance with the law and Operating Agreement of said Limited Liability
Company and that such resolution is now in full force and effect.

IN WITNESS THEREOF, I have affixed my name as Manager/Member of
LEGION INVESTMENTS, LLC and have attached the seal of LEGION
INVESTMENTS, LLC to this resolution.



Brian Mineau, Manager

Dated: 20140722

Manager

Dated: _____

(LLC Seal)

EXHIBIT 4
TRANSCRIPT OF PROCEEDINGS HEARING
DECEMBER 17, 2018 – PAGES 1, 2, 10, 11, 18, 19
(Plaintiff's Objections to Report of Commissioner)

EXHIBIT 4
TRANSCRIPT OF PROCEEDINGS HEARING
DECEMBER 17, 2018 – PAGES 1, 2, 10, 11, 18, 19
(Plaintiff's Objections to Report of Commissioner)

1 Code No. 4185

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6

IN THE SECOND JUDICIAL DISTRICT COURT

7

OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WASHOE

8

THE HONORABLE JEROME M. POLAHA, DISTRICT JUDGE

9

-oOo-

10

JAY KVAM,

)

11

Plaintiff,

)

12

vs.

)

Case No. CV18-00764

13

BRIAN MINEAU,

)

Dept. No. 3

14

Defendant.

)

15

)

16

17

TRANSCRIPT OF PROCEEDINGS

18

HEARING

19

MONDAY, DECEMBER 17TH, 2018; 1:30 P.M.

20

RENO, NEVADA

21

22

Joan Dotson, NV CSR #102

23

24

A P P E A R A N C E S

For the Plaintiff: MICHAEL MATUSKA
 Attorney at Law
 Carson City, Nevada

For the Defendant: AUSTIN SWEET
 Attorney at Law
 Reno, Nevada

1 part of this, they need to provide the discovery on that.
2 But the --

3 THE COURT: The reason I ask that question --
4 and I'll ask counsel this.

5 You put in your pleadings the cutoff date on
6 the electricity from the power company --

7 MR. MATUSKA: Yes.

8 THE COURT: -- being April something, which is
9 after the alleged fraudulent or -- bad conduct of your
10 client in leaving the -- or cutting off the electricity
11 causing the pipes to freeze and break and destroy some of
12 the property inside.

13 Now, is that coming from you or is that
14 coming from them or how do you get that?

15 MR. MATUSKA: Those exhibits were exhibits
16 that I received from them through our written discovery
17 request.

18 THE COURT: So you are far along enough --

19 MR. MATUSKA: Yes.

20 THE COURT: -- to get discovery.

21 MR. MATUSKA: Yes.

22 THE COURT: And then the other one had to do
23 with the money, the \$10,000 in the Atlas account, going
24 out and coming right back in.

1 MR. MATUSKA: \$20,000.

2 THE COURT: Coming out and going right back
3 in, right?

4 MR. MATUSKA: Right.

5 THE COURT: And that's from them also?

6 MR. MATUSKA: Those bank statements were, yes,
7 your Honor. And I bring it up in those terms and relate
8 it -- my opening statements back to the timing. Again,
9 this case has been pending since April.

10 I made a deliberate point of focussing on the
11 relative burdens when moving for summary judgment and
12 responding to summary judgment.

13 And I hope that we are agreed that -- when
14 the party bears the burden of proof at trial, they can't
15 just rest on the allegations of their Complaint.

16 Jay Kvam, as the party moving against those
17 counterclaims, could have just pointed out a lack of
18 evidence in our record. The burden would have been on
19 them to come forward and affirmatively -- produce
20 admissible evidence to affirmatively support their
21 counterclaims. And they didn't do it.

22 Now on those specific issues you just
23 identified regarding the investment issue or transfer out
24 of the bank account and the pipes bursting, we have

1 THE COURT: Rule 11 you are supposed to have
2 information that justify the pleadings.

3 MR. SWEET: Again, your Honor, Mr. Kvam has
4 admitted that he turned off the power. Let me take a
5 step back and give you a little bit more factual history
6 about what happened.

7 THE COURT: How about the Atlas, \$20,000?

8 MR. SWEET: Your Honor, I think this might
9 be -- an error that I made. And that's something that
10 again we need to address through discovery.

11 Mr. Kvam doesn't dispute that he paid off the
12 Atlas credit card. It was my understanding from my
13 discussions with my client -- and perhaps I was wrong and
14 we need to figure that out -- that it was this \$20,000 on
15 April 6th.

16 I'm not sure. It might have been the \$18,000
17 on February 12th, which is on the same statement.

18 And, again, this is -- there is no dispute,
19 as I understand it, that Mr. Kvam paid off the Atlas
20 credit card. He is just saying, "Well, I didn't do it
21 on that day. And so your case should be thrown out
22 because you got the date wrong."

23 THE COURT: He is saying money wasn't taken
24 out of the account.

1 MR. SWEET: No, he is not.

2 THE COURT: It is out one hour and a couple
3 hours later it was put back in. Pay the bill and get the
4 money back.

5 MR. SWEET: The transaction that I referenced
6 in my pleading occurred on March 6th.

7 He says, "I didn't do that transaction."
8 What I believe his position will be once we actually get
9 an answer is that it is the transaction on February 12th
10 that he did.

11 So what happens is -- in the original
12 pleading he said, "Well, you didn't give me a specific
13 date."

14 And then in the amended pleading we provided
15 a specific date, which perhaps was my error. And then he
16 said, "Well, I didn't do the transaction on that date."
17 He has not at all disputed that he paid off the Atlas
18 credit card. That's not disputed. What he is saying is,
19 "I didn't do it on that date."

20 THE COURT: But he was specifically accused of
21 doing such and such on a certain date.

22 MR. SWEET: And, your Honor, again this is
23 why -- we need more discovery. Because it may well have
24 been my personal misunderstanding or miscommunication

1 **CODE 3880**

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 **RESPONSE TO PLAINTIFF'S OBJECTION TO REPORT OF COMMISSIONER**

23 Defendants / Counterclaimants BRIAN MINEAU ("Mineau") and LEGION
24 INVESTMENTS, LLC ("Legion"), by and through their counsel of record, Austin K. Sweet, Esq.
25 and Mark H. Gunderson, Esq., submit this Response to the *Objections to Report of Commissioner*
26 ("Objection") filed by Plaintiff / Counterdefendant JAY KVAM ("Kvam"). This Response is made
27 and based upon NRCP 26, NRCP 34, NRCP 37, and the following points and authorities and
28 attachments.

MEMORANDUM OF POINTS AND AUTHORITIES

26 **I. INTRODUCTION**

27 This dispute concerns the parties' efforts to acquire the property located at 7747 S. May Street,
28 Chicago, Illinois ("Property"), renovate it, and sell it for a profit. In furtherance of these efforts, the

1 parties entered into a very short and very poorly worded document signed by Kvam, Mineau, and
2 Michael Spinola ("Terms of Agreement"). Kvam invested approximately \$93,784.31 in the project
3 and Legion invested \$20,000.00 in the project. Approximately \$45,000.00 of Kvam's funds were
4 paid directly from Kvam into escrow to purchase the Property, and the remainder was paid directly
5 from Kvam to the contractor in Illinois, TNT Complete Facility Care Inc. ("TNT"). It is undisputed
6 that Kvam never delivered any funds to Legion or Mineau and that none of Kvam's funds ever passed
7 through Legion's or Mineau's bank accounts. Unfortunately, the project stalled and Kvam demanded
8 that Legion sell the Property and sued Legion and Mineau to reimburse him for the losses he suffered
9 in the investment.

10 Kvam now argues that Legion and Mineau are responsible for accounting to Kvam concerning
11 how TNT used Kvam's funds and, until they are able to do so to Kvam's satisfaction, Kvam is entitled
12 to unfettered access to Legion's and Mineau's personal financial records. To that end, Kvam issued
13 lengthy and detailed requests for production of documents which have nothing to do with Kvam, the
14 Property, the project, or this dispute. Kvam sought substantial financial records, tax records, and
15 internal documents from Legion and Mineau, despite the undisputed fact that *neither Legion nor*
16 *Mineau was ever in possession of Kvam's funds in any manner whatsoever: each of Kvam's*
17 *payments went either directly to escrow (to purchase the Property) or directly to TNT to renovate*
18 *the Property*. There is no allegation that Legion or Mineau mishandled or misappropriated Kvam's
19 funds in any way, nor has Kvam explained why he contends that a full audit of Legion's or Mineau's
20 financial records will help him determine what happened to the funds Kvam transferred to TNT.
21 Legion and Mineau make no objection to providing any information concerning this dispute, but there
22 is simply no reason for Kvam to request or obtain any documents from Legion or Mineau other than
23 those documents relating or pertaining to Kvam, the Property, the project, or this litigation.

24 For these reasons, Legion and Mineau objected to many of Kvam's discovery requests. After
25 a lengthy meet and confer process, and after Legion and Mineau supplemented their responses, Kvam
26 filed *Plaintiff's First Motion to Compel* ("Motion"). Discovery Commissioner Ayres thoroughly
27 analyzed the issues and submitted his *Recommendation for Order* ("Recommendation"),
28 recommending that the bulk of Kvam's Motion be denied because the information sought was

1 irrelevant to the issues of this dispute. Commissioner Ayres further recommended that Legion and
2 Mineau supplement their responses to state under oath when certain documents do not exist.

3 Commissioner Ayres' Recommendation was well-researched, well-reasoned, and well-
4 decided. This Court should affirm the Recommendation in its entirety.

5 **II. ARGUMENT**

6 Kvam's Motion sought an order compelling Legion and Mineau to provide further responses
7 to Kvam's Requests for Production of Documents Nos. 1, 6, 7, 8, 9, 10, 11, 12, 13, and 20. Kvam's
8 Objection applies only to Commissioner Ayres' Recommendation concerning Requests for
9 Production of Documents Nos. 6, 7, 8, 9, 10, 12, 13, and 20. Each objection will be addressed in
10 turn.

11 **A. Commissioner Ayres' Recommendation Concerning Request No. 6 Should Be** 12 **Confirmed.**

13 Kvam's Request No. 6, as amended, seeks all tax returns for Legion since January 1, 2017.
14 Legion and Mineau objected to this request because Legion's tax records are confidential and have
15 no bearing on this litigation. Legion and Mineau explained that Legion's tax returns would only be
16 relevant to the extent related to the Property, but that Legion's 2017 tax returns contain no entries
17 relating to the Property and Legion's 2018 tax returns are not yet completed. Commissioner Ayres
18 agreed that the portions of Legions tax returns that are not related to the Property are not discoverable
19 and recommended that Defendants serve Kvam with an amended response to Category No. 6, under
20 oath, in which Legion (a) clarifies that no information set forth in its 2017 tax return reflects, directly
21 or indirectly, any business activities involving the Property, and (b) confirms that its 2018 tax return
22 has not yet been completed and filed. Recommendation pp. 6-11. This recommendation should be
23 confirmed.

24 In his Objection, Kvam first argues that he is entitled to Legion's tax returns in furtherance of
25 his case-in-chief because he "is simply trying to discover which defendant is claiming the proceeds
26 of the sale, and other expenses relating to the Property, and verify how his project funds were spent."
27 Objection pp. 3-4. This argument does not support a different outcome than that which the

28 ///

1 Recommendation offers. Again, *it is undisputed that Kvam never delivered any funds to Legion or*
2 *Mineau*: all funds were delivered directly from Kvam to either the title company or TNT. Kvam has
3 offered no argument as to how reviewing Legion's financial records, including its tax returns, would
4 explain or otherwise prove how TNT spent Kvam's project funds.¹ Regardless, the information Kvam
5 seeks does not appear on Legion's tax returns.

6 Legion did not object to producing portions of its tax returns which related to the Property;
7 rather, Legion responded that its 2017 tax returns contain no entries relating to the Property and its
8 2018 tax returns are not yet completed. Commissioner Ayres recommends that these assertions be
9 made under oath. Kvam's arguments do not explain why this recommendation is inadequate or why
10 any information reflected on Legion's 2017 tax return, which is not related to the Property, would
11 have any relevance to his case-in-chief.

12 Kvam next argues that the Recommendation improperly analyzed Kvam's right to review
13 Legion's tax returns in furtherance of his punitive damages claims. Commissioner Ayres correctly
14 recited that before tax returns or financial records are discoverable on the issue of punitive damages,
15 the plaintiff must demonstrate some factual basis for its punitive damage claim...." Recommendation
16 at 7 (quoting Hetter v. Dist. Court, 110 Nev. 513, 520, 874 P.2d 762, 766 (1994)). Commissioner
17 Ayres went on to conclude that Kvam "has not provided evidence sufficient to support an order
18 compelling Defendant Legion to produce its tax returns for 2017 and 2018," because the arguments
19 made in Kvam's brief are not evidence and, even if Kvam can make the threshold factual showing,
20 Kvam failed to demonstrate that the information he seeks is otherwise unobtainable.
21 Recommendation at 7. Kvam objects to the Recommendation in this regard by simply stating that he
22 "has provided evidence of fraud," without citing to that evidence or attempting to demonstrate that
23 the information he seeks is otherwise unobtainable. Kvam's Objection should therefore be overruled
24 in this regard.

25 Next, Kvam argues that he is entitled to Legion's tax returns based upon his assertion that he
26 is a member of Legion. Recommendation pp. 5-6. Kvam's argument puts the proverbial cart before
27

28 ¹ Kvam has subpoenaed TNT's financial records which should plainly show how TNT spent Kvam's
and Legion's project funds, although Kvam has yet to provide a copy of those documents to Legion
and Mineau.

1 the horse. In his Motion, Kvam argued that he is a member of Legion and, as such, he is entitled to
2 review Legion's books and records pursuant to NRS Chapter 87. Commissioner Ayres correctly
3 found that Kvam's status as a member of Legion is disputed and a motion to compel is not the proper
4 vehicle to resolve that dispute. Recommendation pp. 6-7. Critically, Kvam does not argue that he is
5 entitled to review Legion's tax returns because *they are necessary for him to prove* that he is a
6 member of Legion: conversely, Kvam argues that he is entitled to review Legion's tax returns because
7 *he is* a member of Legion and is therefore entitled to such records as a matter of law. Kvam is not
8 entitled to exercise any rights as a member of a limited liability company under NRS Chapter 87
9 unless and until Kvam establishes that he is, in fact, a member of that company. Kvam has not
10 established that he is a member of Legion. As such, Commissioner Ayres correctly concluded that
11 Kvam is not entitled to assert the rights of a member under NRS 87.4335 by way of a motion to
12 compel. The Recommendation should be confirmed in this regard.

13 Finally, Kvam objects to Commissioners Ayres' conclusion that Kvam's "broad allegation
14 that all entities referenced in that complaint are the alter egos of the individual defendants is
15 insufficient" to overcome the general policy that a party's tax returns and financial information
16 "cannot be had for the mere asking." Recommendation pp. 9-11. Commissioner Ayres correctly
17 stated that a claim of alter ego can be asserted with ease in many cases, that unfettered review of an
18 opponent's financial information can result in abuse and harassment, and that, without sufficient
19 evidentiary support, an order permitting discovery would effectively allow a party to improperly
20 allege alter-ego liability and then conduct discovery to determine whether any evidence exists to
21 support the claim. *Id.* p. 10. Commissioner Ayres concluded that Kvam has not offered any
22 explanation or evidence to support his contention that Legion's tax returns are needed in connection
23 with an alter ego claim or that any specific information contained in the tax returns which might be
24 relevant to his alter ego claim is otherwise unobtainable. *Id.* Kvam's Objection does not specifically
25 address any of Commissioner Ayres' conclusions: rather, Kvam simply argues that since he has pled
26 an alter ego claim he is entitled to obtain Legion's tax returns. Commissioner Ayres' legal citations
27 and conclusions to the contrary are sound and his Recommendation should be confirmed.

28 ///

1 For these reasons, Commissioners Ayres' Recommendation concerning Kvam's Request No.
2 6 is well-supported by applicable and persuasive law, is well-reasoned, and should be confirmed.

3 ***B. Commissioner Ayres' Recommendation Concerning Request No. 7 Should Be***
4 ***Confirmed.***

5 Kvam's Request No. 7, as amended, seeks all schedule K-1s for Legion since January 1, 2017.
6 Legion and Mineau objected to this request because Legion's tax records are confidential and have
7 no bearing on this litigation. Again, Legion and Mineau explained that Legion's tax returns would
8 only be relevant to the extent related to the Property, but that Legion's 2017 tax returns contain no
9 K-1s relating to the Property and Legion's 2018 tax returns are not yet completed. Commissioner
10 Ayres agreed that the portions of Legion's K-1s that are not related to the Property are not
11 discoverable and recommended that Defendants serve Kvam with an amended response to Category
12 No. 7, under oath, in which Legion (a) clarifies that no information set forth in its 2017 Schedule K-
13 1 filings reflects, directly or indirectly, any business activities involving the Property, and (b)
14 confirms that its 2018 Schedule K-1 form has not yet been completed and filed. Recommendation
15 pp. 11-12. This recommendation should be confirmed.

16 In his Objection concerning Request No. 7, Kvam simply refers to his arguments with respect
17 to Request No. 6. Legion and Mineau's responses to those arguments are stated above. Providing a
18 response under oath that the documents sought either do not exist or do not contain relevant
19 information is proper substitute for providing irrelevant, private documents.

20 For these reasons, Commissioners Ayres' Recommendation concerning Kvam's Request No.
21 7 is well-supported by applicable and persuasive law, is well-reasoned, and should be confirmed.

22 ***C. Commissioner Ayres' Recommendation Concerning Request No. 8 Should Be***
23 ***Confirmed.***

24 Kvam's Request No. 8, as amended, seeks all of Mineau's Schedule Es relating to Legion
25 since January 1, 2017. Legion and Mineau objected to this request because Mineau's tax records are
26 confidential and have no bearing on this litigation. Again, Legion and Mineau explained that
27 Mineau's Schedule Es would only be relevant to the extent related to the Property, but that Mineau's
28 2017 tax returns contain no Schedule Es relating to the Property and Mineau's 2018 tax returns are

1 not yet completed. Commissioner Ayres agreed that the portions of Mineau's Schedule Es that are
2 not related to the Property are not discoverable and recommended that Defendants serve Kvam with
3 an amended response to Category No. 8, under oath, in which Mineau (a) clarifies that no information
4 set forth in its 2017 Schedule E filings reflects, directly or indirectly, any business activities
5 involving the Property, and (b) confirms that his 2018 Schedule E form has not yet been completed
6 and filed. Recommendation pp. 12-13. This recommendation should be confirmed.

7 In his Objection concerning Request No. 8, Kvam argues that Mineau's Schedule E is
8 necessary because Legion and Mineau have produced "phony financial statements" which show a
9 \$20,000 investment by Legion but does not show a corresponding entry for the sale proceeds² in
10 November 2018, and that Kvam "is entitled to know whether Mineau reported the proceeds of sale
11 on his Schedule E." Objection p. 6. While Legion and Mineau adamantly dispute that the financial
12 information they have provided is "phony," or that Kvam is entitled to any aspect of Mineau's
13 Schedule E that does not make reference to the Property, the fact remains that Mineau has not yet
14 completed and filed a 2018 Schedule E. Providing a response under oath that the documents sought
15 either do not exist or do not contain relevant information is proper substitute for providing irrelevant,
16 private documents.

17 For these reasons, Commissioners Ayres' Recommendation concerning Kvam's Request No.
18 8 is well-supported by applicable and persuasive law, is well-reasoned, and should be confirmed.

19 ***D. Commissioner Ayres' Recommendation Concerning Request No. 9 Should Be***
20 ***Confirmed.***

21 Kvam's Request No. 9 seeks "all meeting minutes for Legion Investments, LLC." Legion
22 and Mineau objected to this request in that it seeks irrelevant, confidential information concerning
23 Legion's internal business affairs which have no bearing on this litigation. Again, Legion and Mineau
24 explained there are no meeting minutes which mention Kvam or the Property. Commissioner Ayres
25 agreed that any of Legion's meeting minutes that are not related to the Property are not discoverable
26 and recommended that Defendants serve Kvam with an amended response to Category No. 9, under
27 oath, in which they clarify that Legion's meeting minutes do not mention (a) the Agreement, (b) the
28 Property, (c) the project pertaining to the Property, (d) any resolutions that pertain to that project, (e)

² Notably, those proceeds have been deposited with this Court.

1 Plaintiff, (f) Plaintiff's claims in this action, or (g) any agreement with Criterion that mentions the
2 Property. Recommendation pp. 14-15. This recommendation should be confirmed.

3 In his Objection concerning Request No. 9, Kvam simply states that, "There is no protection
4 for meeting minutes, particularly when Kvam is a member of Legion." Objection p. 6. As explained
5 above, Kvam is not entitled to exercise any rights as a member of a limited liability company under
6 NRS Chapter 87 unless and until Kvam establishes that he is, in fact, a member of that company.
7 Kvam has not established that he is a member of Legion. As such, Commissioner Ayres correctly
8 concluded that Kvam is not entitled to assert the rights of a member by way of a motion to compel.
9 The Recommendation should be confirmed in this regard.

10 *E. Commissioner Ayres' Recommendation Concerning Request No. 10 Should Be*
11 *Confirmed.*

12 Kvam's Request No. 10 seeks "all resolutions of the members and/or managers of Legion
13 Investments, LLC." Legion and Mineau objected to this request because it seeks irrelevant,
14 confidential information concerning Legion's internal business affairs which have no bearing on this
15 litigation. Again, Legion and Mineau explained that there are no resolutions for Legion which
16 mention Kvam or the Property. Commissioner Ayres agreed that any of Legion's resolutions that are
17 not related to the Property are not discoverable and recommended that Defendants serve Kvam with
18 an amended response to Category No. 10, under oath, in which they clarify that Legion's resolutions
19 do not mention (a) the Agreement, (b) the Property, (c) the project pertaining to the Property, (d) any
20 resolutions that pertain to that project, (e) Plaintiff, (f) Plaintiff's claims in this action, or (g) any
21 agreement with Criterion that mentions the Property. Recommendation pp. 15-16. This
22 recommendation should be confirmed.

23 In his Objection concerning Request No. 10, Kvam refers to his arguments with respect to
24 Request No. 9. Legion and Mineau's responses to those arguments are stated above.

25 Kvam also identifies a resolution which Kvam argues was provided to escrow and argues that,
26 in light of this resolution, "Legion's claim that it does not have any Resolutions pertaining to the
27 Property is patently false." Objection at Ex. 3. However, the resolution attached to the Objection at
28 Exhibit 3 makes no reference to the Agreement, the Property, the project pertaining to the Property,

1 the project, Kvam, Kvam's claims in this action, or any agreement with Criterion that mentions the
2 Property. Id. Indeed, the resolution was signed in 2014, three years before the facts of this dispute
3 first arose. See First Amended Verified Complaint ¶ 8. This resolution neither establishes that
4 Legion's response is "patently false" nor justifies any deviation from Commissioner Ayres'
5 Recommendation.

6 For these reasons, Commissioners Ayres' Recommendation concerning Kvam's Request No.
7 10 is well-supported by applicable and persuasive law, is well-reasoned, and should be confirmed.

8 ***F. Commissioner Ayres' Recommendation Concerning Request No. 12 Should Be***
9 ***Confirmed.***

10 Kvam's Request No. 12 seeks "all income and expense statements, and/or profit and loss
11 statements for Legion Investments, LLC, since its creation on July 2, 2014." Legion and Mineau
12 objected to this request because Legion's financial records are confidential and have no bearing on
13 this litigation. Legion and Mineau explained that they were only producing financial statements
14 concerning the Property, for the reasons explained at length above, and that these documents were
15 developed solely for this response in an effort to move this dispute toward resolution. Commissioner
16 Ayres agreed that the portions of Legion's financial records which are not related to the Property are
17 not discoverable and recommended that Defendants serve Kvam with an amended response to
18 Category No. 12, under oath, in which they unequivocally state whether Legion does or does not
19 possess any income and expense statements, or profit and loss statements (whatever their formal title).
20 Recommendation pp. 18-19. This recommendation should be confirmed.

21 Whether Kvam objects to Commissioner Ayres' Recommendation concerning Kvam's
22 Request No. 12 is unclear. Kvam initially reserves comment "pending additional responses," but
23 goes on to argue that Exhibits 1 and 2 to his Objection demonstrate why Kvam needs more discovery
24 on accounting issues. Objection p. 7. Legion and Mineau do not generally object to Kvam conducting
25 discovery concerning accounting issues related to the Property. However, providing a response under
26 oath that the documents sought do not exist is a proper response to a request for production of
27 documents, regardless of whether Kvam needs to continue discovery into such issues.

28 ///

1 For these reasons, Commissioners Ayres' Recommendation concerning Kvam's Request No.
2 12 is well-supported by applicable and persuasive law, is well-reasoned, and should be confirmed.

3 ***G. Commissioner Ayres' Recommendation Concerning Request No. 13 Should Be Confirmed.***

4 Kvam's Request No. 13, as amended, seeks "all bank statements of Legion Investments, LLC
5 accounts" since January 1, 2017. Legion and Mineau objected to this request because Legion's
6 financial and tax records are confidential and have no bearing on this litigation. Legion and Mineau
7 explained that no funds pertaining to this project were ever held in Legion's bank accounts, so
8 Legion's bank statements are irrelevant. Commissioner Ayres agreed that the portions of Legion's
9 financial records which are not related to the Property are not discoverable and recommended that
10 Defendants serve Kvam with an amended response to Category No. 13 in which they state that (1) no
11 deposit or transfer of funds into a Legion bank account concerned funds, or a portion of funds, that
12 were provided by any person or entity for any aspect of the Property or project; (2) no deposit or
13 transfer of funds into a Legion bank account concerned funds, or a portion of funds, realized from the
14 Property or project, whether through a sale of the property or otherwise; and (3) no withdrawal, debit,
15 or transfer of funds from a Legion bank account concerned any expense, in whole or in part, for the
16 Property or project. Recommendation pp. 19-21. This recommendation should be confirmed.

17 In his Objection concerning Request No. 13, Kvam refers to his arguments with respect to
18 Request No. 6. Legion and Mineau's responses to those arguments are stated above. For the reasons
19 stated, Commissioner Ayres' Recommendation concerning Kvam's Request No. 13 is well-supported
20 by applicable and persuasive law, is well-reasoned, and should be confirmed.

21 ***H. Commissioner Ayres' Recommendation Concerning Request No. 20 Should Be***
22 ***Confirmed.***

23 Kvam's Request No. 20 seeks "copies of all business or professional licenses ever held by
24 Brian Mineau.". Legion and Mineau objected to this request in that it seeks irrelevant and confidential
25 information because Mineau's business and professional licenses unrelated to the Property or this
26 project have no bearing on this litigation. Nonetheless, Legion and Mineau produced the real estate
27 license information Mineau has. Commissioner Ayres agreed and determined that Category No. 20
28 is "objectionably overbroad" because, under Nevada law, a party is entitled to obtain reasonable

1 discovery pertaining to an opponent's background, but a request for information bearing no
2 connection to the relevant acts or omissions is not permissible. Recommendation p. 21. Nonetheless,
3 Commissioner Ayres recommended that Defendants produce a copy of the actual real estate license
4 issued to Mineau that LEG0182 is supposed to reflect or, if Mineau does not have the actual license,
5 to serve Kvam with an amended response to Category No. 20, under oath, in which they identify the
6 issuing authority for the license they maintain is set forth in LEG0182. Recommendation p. 22. This
7 recommendation should be confirmed.

8 Whether Kvam objects to Commissioner Ayres' Recommendation concerning Kvam's
9 Request No. 20 is unclear. Kvam restates the arguments and then reserves comments pending
10 additional responses. Objection p. 7. Accordingly, Commissioners Ayres' Recommendation
11 concerning Kvam's Request No. 20 should be confirmed

12 **IV. CONCLUSION**

13 Kvam seeks irrelevant and confidential documents from Legion and Mineau, including tax
14 records, financial records, and internal records, which have no bearing on this litigation. These
15 documents which have nothing to do with Kvam, the Property, the project, or this dispute. Discovery
16 Commissioner Ayres thoroughly analyzed the issues and recommended that the bulk of Kvam's
17 Motion be denied and that Legion and Mineau supplement their responses, under oath, as necessary
18 to establish that relevant documents do not exist. Commissioner Ayres' Recommendation was well-
19 researched, well-reasoned, and well-decided. This Court should affirm the Recommendation in its
20 entirety.

21 **AFFIRMATION**

22 The undersigned does hereby affirm that the preceding document, **RESPONSE TO**
23 **PLAINTIFF'S OBJECTION TO REPORT OF COMMISSIONER**, filed in the Second Judicial

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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 25 day of April, 2019.

4 GUNDERSON LAW FIRM

5
6
7 By:


Austin K. Sweet, Esq.

Nevada State Bar No. 11725

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*Attorneys for Brian Mineau and Legion
Investments*

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1 **CODE: 3790**
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 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
Joint Venture; and DOES I-X, inclusive,

14 Defendants.

15 **PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO OBJECTION TO**
16 **REPORT OF COMMISSIONER**

17 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
18 Offices, Ltd., Michael L. Matuska, and hereby submits this Reply to the Defendants Brian Mineau
19 and Legion Investments, LLC's *Response to Plaintiff's Objection to Report of Commissioner*
20 (hereafter, Report, Objection and Response, accordingly).¹

21 **1. Mineau's Response is Not Allowed**

22 Mineau's Response is not authorized by SJDCR 24. That rule provides in pertinent part
23 that "1. The Second Judicial District Court has approved automatic referral to the discovery
24 master of all discovery proceedings pursuant to NRCP 16, 16.1 and 16.2" and that "6. A party
25 shall have 10 days from service of written findings of fact and recommendations within which to

26
27 ¹ Kvam incorrectly cited EJDCR 2.34(f) in his Objection, rather than SJDCR 24 and NRCP 16.1(d)(2). That
28 distinction has no impact, as Kvam's Objection is authorized under SJDCR 24 and NRCP 16.1(d)(2) as well as
EJDCR 2.34(f).

1 file an objection.” Mineau’s so-called Response is not allowed under either SJD CR 24 or NRCP
2 16.1(d)(2), and Mineau’s Response is unnecessary as it presents nothing new and merely repeats
3 Mineau’s belief that the Discovery Commissioner’s Report should be affirmed.

4 Mineau cites NRCP 16.3(c)(2) as the authority for his Response. However, that sub-
5 section was added to NRCP 16.3 effective March 1, 2019, and does not govern this case which
6 was filed on April 11, 2018. In addition, Mineau’s Response was late even if authorized by NRCP
7 16.3(c)(2) which requires responding authorities to be filed within seven (7) days of the objection.
8 Kvam’s Objection was filed on April 16, 2019. Mineau’s Response was therefore due on or
9 before April 23, 2019. It was not filed until April 25th. It does not help Mineau to argue that he
10 was computing time under the former version of the rules, because the former version of the rules,
11 which are applicable to this case, do not allow his Response. If Mineau wants to take advantage of
12 the new NRCP 16.3(c)(2) which allows a response, he must also be bound by the deadlines
13 contained therein.

14 **2. Mineau’s Response Contains Fraudulent Information**

15 Mineau continues to present fraudulent information to this Court. The statement that
16 “Legion invested \$20,000 in the project” (Response at 2:2-3) has been proven false in other briefs.
17 Mineau’s continued insistence on this point warrants Kvam’s discovery efforts to determine
18 whether and where Mineau ever reported this investment, including whether he reported it on his
19 tax returns.

20 Mineau’s assertion that there are no resolutions that mention Kvam or the property
21 (Response at 8:12-13:7) is intentionally misleading and irrelevant. Kvam subpoenaed records
22 from the escrow company that included a resolution signed by Mineau, even though the resolution
23 does not specifically mention Kvam or the property. Kvam included this resolution as Exhibit “3”
24 to his Objection. Kvam also needs to see if there are any resolutions that mention the \$20,000
25 wire transfer from Criterion, which Legion is still trying to claim credit for. Neither the Discovery
26 Commissioner nor Mineau cited any legal authority for their claim of privilege for meeting
27 minutes and resolutions, and no such privilege exists. This is especially true considering that
28 Kvam is a member of Legion Investment, LLC based on the face of the Terms of Agreement, and

1 that Mineau continues to put Legion's finances at issue, particularly as they concern the alleged
2 \$20,000 investment.

3 **3. Mineau Inadvertently Explained the Need for the Additional Discovery**

4 Mineau conceded the following point in his Response:

5 Legion and Mineau make no objection to providing any information concerning
6 this dispute, but there is simply no reason for Kvam to request or obtain any
7 documents from Legion or Mineau other than those documents relating or
8 pertaining to Kvam, the Property, the project or this litigation. (Response at 2:21-
9 23).

10 With two important corrections, Mineau's statement is accurate. What he failed to address
11 is the fact he did not keep separate accounts and records for the project that Kvam invested in. As
12 such, the requested financial information about the project, including any record of whether
13 Legion invested \$20,000, is mixed with Mineau's records. Mineau cannot claim privilege for
14 personal records that include information about the project.

15 The first correction to Mineau's statement regarding the scope of discovery concerns other
16 projects. Although Mineau underscores the fact that Kvam's project funds were sent directly to
17 the contractor in Chicago, that same contractor was working on other projects for Mineau, Legion,
18 Criterion, and possibly other of their cohorts, such that Kvam's funds for the project at 7747 May
19 Street, Chicago, Illinois appear to have been comingled with funds from other projects. Mineau
20 has not denied that the contractor was working on other projects at the same time, and he has been
21 unable or unwilling to verify whether Kvam's project funds were actually spent on 7747 May
22 Street, rather than these other projects. Additional discovery will likely be needed concerning all
23 of the ongoing projects to determine where Kvam's funds were actually spent.

24 The second correction to Mineau's statement regarding the scope of discovery concerns his
25 failure to address Kvam's right to conduct discovery for the case on punitive damages. That issue
26 is adequately addressed in Kvam's First Motion to Compel and the recently filed Objection. The
27 Discovery Commissioner did not properly apply the recent, controlling case of *Cain v. Price*, 134
28 Nev. Adv. Op. 26 (Nev. April 12, 2018).

1 Based on the foregoing, all of Kvam's requests pertain to "Kvam, the Property, the project,
2 or this litigation." As such, there should be no further objections to the requested discovery and
3 Kvam's First Motion to Compel should be granted.

4 **AFFIRMATION**

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

7 Dated this 30th day of April 2019.

8 MATUSKA LAW OFFICES, LTD.

9 *Michael L. Matuska*

10 By:

11 MICHAEL L. MATUSKA, SBN 5711
12 Attorneys for Plaintiff, JAY KVAM,
13 individually and derivatively on behalf of the
14 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 30th day of April, 2019, I served a true and correct copy of the preceding document entitled **PLAINTIFF'S REPLY TO DEFENDANTS' RESPONSE TO OBJECTION TO REPORT OF COMMISSIONER** 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.

Wesley M. Ayers
DISCOVERY COMMISSIONER
75 Court Street, Room 125
Reno, NV 89501

☐ **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

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

11 **JAY KVAM,**

12 **Plaintiff,**

Case No. CV18-00764

Dept. No. 3

13 **vs.**

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

17 **Defendants.**
18 _____ /

19 **ORDER AFFIRMING MASTER'S RECOMMENDATION**

20 Currently before the Court is a RECOMMENDATION FOR ORDER ("the
21 Recommendation") filed by Discovery Commissioner Wesley Ayres ("Commissioner Ayres") on
22 April 9, 2019. PLAINTIFF JAY KVAM ("Kvam") filed PLAINTIFF'S OBJECTION TO REPORT
23 OF COMMISSIONER ("the Objection") on April 16, 2019. DEFENDANTS BRIAN MINEAU and
24 LEGION INVESTMENTS, LLC ("Defendants") filed a RESPONSE to the Objection on April 25,
25 2019. On April 30, 2019 Kvam filed a REPLY to Defendants' Response. The matter was submitted
26 for the Court's consideration the same day.
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1 The subject of the Recommendation is Kvam's FIRST MOTION TO COMPEL ("the
2 Motion"), filed March 15, 2019. In the Recommendation, Commissioner Ayres granted in part and
3 denied in part the Motion. While the Motion sought an order compelling Defendants to provide
4 responses to Kvam's Requests for Production of Documents 1, 6, 7, 8, 9, 10, 11, 12, 13, and 20,
5 Kvam only objects to Commissioner Ayres' Recommendations for document numbers 6, 7, 8, 9, 10,
6 12, 13, and 20.
7

8 *Request No. 6*

9 Request no. 6 required Defendants to "[p]roduce all tax returns for Legion Investments,
10 LLC, since its creation on July 2, 2014." Mot. 8. Commissioner Ayres determined that Kvam "has
11 not provided evidence sufficient to support an order compelling Defendant Legion to produce its tax
12 returns for 2017 and 2018," noting that Kvam would only properly be entitled to Legion's tax return
13 information dealing with the property at issue, and that, in order to obtain tax returns for the
14 purposes of determining appropriate punitive damages, Kvam must provide evidence establishing a
15 factual basis for a punitive damage claim and, additionally, "must demonstrate that the information
16 he seeks is otherwise unobtainable." Recommendation 6-7. Commissioner Ayres also concluded
17 that Kvam's NRS 87.4335 argument was unavailing, as the matter of whether or not a partnership
18 was formed for the purposes of the provision is a central factual and legal question to be determined
19 in this case.
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22 Kvam objects to Commissioner Ayres' reasoning primarily on the basis that it lacks legal
23 authority, and that it accepts at face value Defendants' "self-serving statement of what is or is not
24 contained in the documents." Objection 4. Furthermore, Kvam contends that Commissioner Ayres
25 misapplied the controlling case, *Cain v. Price*, 134 Nev. Adv. Op. 26, 415 P.3d 25 (2018), with
26 regard to his punitive damages argument. As to his partnership argument, Kvam makes an appeal to
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1 the absurd, stating that “the Recommendation suggests that Kvam has to prove his case before he is
2 allowed discovery.” Objection 5.

3 Defendants respond by noting that only transactions related to the property in question
4 would be relevant, and that Legion’s 2017 tax return reflected no such transactions, while its 2018
5 tax return was not yet completed. Defendants also express agreement with Commissioner Ayres that
6 a motion to compel is not the proper vehicle by which to decide a central disputed issue in the case,
7 i.e., the partnership status of Kvam in relation to Legion.

8
9 The Court finds Commissioner Ayres’ Recommendation for Request no. 6 reasonable.
10 Commissioner Ayres concluded that Kvam “has not shown that Defendant Legion’s business
11 activities have been limited exclusively to the Property.” Recommendation 6. Kvam argues that such
12 a showing is not necessary. But Commissioner Ayres’ suggestion is based on Kvam’s attempt to
13 obtain *all* of Legion’s tax information, only a portion—that dealing with the property—of which
14 might actually be relevant. Defendants represent that there are no transactions related to the
15 property reflected in the 2017 tax return, which renders the remaining information contained therein
16 irrelevant absent some legitimate additional need for Kvam to review it. That additional need is,
17 presumably, for the purposes of deciding punitive damages. However, Commissioner Ayres
18 concluded that Kvam had not met “the threshold factual showing needed to allow discovery of tax
19 returns in connection with a claim for punitive damages,” and that even if he had, he would still be
20 required to show that the information was not otherwise obtainable. Recommendation 7. Finally, the
21 Court agrees with Commissioner Ayres that Kvam’s status in relation to Legion remains a disputed
22 issue central to the factual and legal resolution of this case. To grant Kvam access to Legion’s tax
23 returns based on NRS 87.4335 would be to assume the conclusion. The Court does not find
24 Commissioner Ayres’ decision an abuse of discretion, and as such the recommendation is hereby
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1 affirmed.

2 *Request No. 7*

3 Request no. 7 required Defendants to “[p]roduce all schedule K-1s for Legion Investments,
4 LLC, since its creation on July 2, 2014.” Mot. 10. As Commissioner Ayres noted, the parties in
5 briefing the Motion agreed that the arguments over the discoverability of these documents mirror
6 those concerning the tax returns.
7

8 In briefing the Objection, the parties appear again to agree to the homogeneity of the
9 arguments. Kvam adds merely that “[p]roviding a response, under oath, is not a substitute for
10 providing documents.” Defendants make the opposite argument in their Response.
11

12 The analysis from Request no. 6 to no. 7 remains unchanged. The Court finds Commissioner
13 Ayres’ conclusion reasonable and it will be, therefore, affirmed.

14 *Request No. 8*

15 Request no. 8 required Defendants to “[p]roduce all of Brian Mineau’s Schedule Es relating
16 to Legion Investments, LLC, since its creation on July 2, 2014.” Mot. 10. To the extent that Plaintiff
17 argues that these documents are needed for the same reasons as the documents in request no. 6, the
18 analysis again remains the same. Commissioner Ayres addressed three additional arguments with
19 regard to this Request. First, Kvam suggests these documents might clear up some confusion related
20 to Defendants’ other responses. Commissioner Ayres rejected this argument as “too indefinite”
21 because “no information is provided regarding those other responses.” Recommendation 13. Next,
22 Kvam seeks the documents because they would presumably contain information about any income
23 Mineau received from Criterion. Commissioner Ayres found this irrelevant because such income is
24 not at issue in this case, and because Kvam did not show that the documents were otherwise
25 unobtainable (e.g., from Criterion). Finally, Kvam asserts that these documents are relevant to his
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1 alter-ego allegations against Defendants. However, Commission Ayres did not feel Kvam had
2 presented facts sufficient “to support an order compelling the production...in connection with any
3 alter-ego claims.” *Id.*

4 Kvam’s Objection asserts that the financial information Defendants have thus far provided is
5 “phony,” and that the sale proceeds of the property, sold in November of 2018, should be reflected
6 in the Schedule Es. Defendants remind the Court that Mineau has not yet completed and filed a
7 Schedule E for 2018, and therefore the information Kvam seeks does not yet exist.

9 The Court finds Commissioner Ayres’ reasoning persuasive. Kvam’s request for Schedule
10 Es for the sake of resolving ambiguities cannot properly be considered without some indication of
11 what exactly is in need of clarification. Furthermore, Commissioner Ayres is correct in concluding
12 that any income received by Mineau from Criterion is beyond the scope of this litigation. Even
13 where Kvam’s factual allegations are true, “they do not require Plaintiff to obtain information about
14 income paid by Criterion to Defendant Mineau.” *Id.* Commissioner Ayres *did* require Defendants to
15 serve an amended response to the Request clarifying that none of the relevant information would be
16 reflected in Mineau’s 2017 Schedule E, and confirming that Mineau’s 2018 Schedule E had not yet
17 been completed and filed. The Court affirms the Recommendation as reasonable.

20 *Request No. 9*

21 Request no. 9 requires Defendants to “[p]roduce all meeting minutes for Legion
22 Investments, LLC.” Mot. 11. Commissioner Ayres first notes that Kvam’s primary argument for
23 compelling this information is that he is a member of Legion. This argument has, of course, already
24 been disposed of in relation to Request no. 6 and the subsequent requests that were also in part
25 based on this premise. Commissioner Ayres further explains that Defendants have represented to
26 the Court that there are no meeting minutes which mention either Kvam or the property such that
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1 they would become relevant to the instant litigation. Kvam's contention that he does not have to
2 rely on Defendants' or their counsel's representations was also rejected by Commissioner Ayres
3 "[a]bsent a showing that the responding party's discovery representations have been false or
4 inaccurate." Recommendation 15. Commissioner Ayres did, however, require Defendants to
5 provide a more definitive statement for the lack of relevant information in the minutes. *See Id.*
6

7 Kvam makes no additional argument in his Objection, stating merely, "[t]here is no
8 protection for meeting minutes, particularly when Kvam is a member of Legion." Objection 6.
9 Again, this argument has already been disposed of. The Court finds, therefore, no basis upon which
10 to reject Commissioner Ayres' findings. The Recommendation will, therefore, be affirmed.
11

12 *Request No. 10*

13 Request no. 10 requires Defendants to "[p]roduce all resolutions of the members and/or
14 managers of Legion Investments, LLC." Mot. 13. As noted by Commissioner Ayres, the parties in
15 briefing the Motion agreed that the arguments over the discoverability of these documents mirror
16 those concerning the minutes in Request no. 9. The analysis, therefore, remains the same.
17 Commissioner Ayres did require Defendants to serve a clarifying response under oath. *See id.* at 16.
18 The Court affirms this Recommendation.
19

20 *Request No. 12*

21 Request no. 12 required Defendants to [p]roduce all income and expense statements, and/or
22 profit and loss statements for Legion Investments, LLC, since its creation on July 2, 2014." Mot. 15.
23 With regard to this request, Commissioner Ayres observed, "Plaintiff has not demonstrated how any
24 information about Defendant Legion's income and expenses (or profits and losses) from its other
25 properties, or other business operations unrelated to project involving the Property, would have any
26 bearing on the claims or defenses asserted." Recommendation 19. Commissioner Ayres also
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1 required an amended and clarifying response to this request from Defendants.

2 Kvam's objection to this Recommendation is unclear. He notes, as he has elsewhere in the
3 Objection, "[c]omments reserved pending additional responses." Objection 7. In any event, the
4 Court finds Commissioner Ayres' Recommendation reasonable and it is therefore affirmed.

5
6 *Request No. 13*

7 Kvam appears to object to the Recommendation regarding Request no. 13 by merely
8 referencing his arguments with regard to Request no. 6. Because the Court has already adopted
9 Commissioner Ayres' Recommendation for Request no. 6, it will do so here, as well, on the same
10 bases.

11
12 *Request No. 20*

13 Request no. 20 requires Defendants to "[p]roduce copies of all business or professional
14 licenses ever held by Brian Mineau." Mot. 16. Commissioner Ayres rightly referred to this request
15 as "objectionably overbroad." Recommendation 21. However, Kvam concedes that the analysis
16 here is mostly unnecessary because Defendants are no longer objecting to this request and have
17 been ordered to amend the response to "identify the issuing authority for the license they maintain."
18 Recommendation 22. As such, the Court affirms this Recommendation.

19
20 *Attorney's Fees*


21 Finally, Kvam argues that to the extent that his Motion was granted, he should be awarded
22 attorney's fees. Commissioner Ayres Recommended that each side bear their own expenses, and the
23 Court finds this reasonable and consistent with the outcome envisioned by NRCP 37(a)(5)(c), which
24 provides, "If the Motion Is Granted in Part and Denied in Part. If the motion is granted in part and
25 denied in part, the court...may, after giving an opportunity to be heard, apportion the reasonable
26 expenses for the motion." The Court finds no compelling reason, and Kvam has offered none, to
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1 apportion the expenses in any manner other than each party bearing its own costs. Therefore, the
2 Recommendation is affirmed.

3 Accordingly, and good cause appearing,

4 IT IS HEREBY ORDERED that the Recommendation for Order filed April 9, 2019, is
5 AFFIRMED in its entirety.

6 Dated this 15th day of May, 2019.

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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 16 day of ~~December~~ ^{May}, 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:



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

8 JAY KVAM,

Case No. CV18-00764

9 Plaintiff,

Dept. No. 6

10 vs.

11 BRIAN MINEAU; LEGION
12 INVESTMENTS, LLC; et al.,

13 Defendants.
14

15 **ORDER ACCEPTING CASE REASSIGNMENT**

16 Pursuant to Administrative Order 2019-06 entered June 3, 2019, The Honorable
17 Jerome Polaha, Presiding Judge in Department 3 of this Court, was assigned to preside
18 over the Second Judicial District Court's Specialty Courts Program. *Administrative Order*
19 *2019-06 ("AO")* ¶ 2. The AO provides Court Administration shall randomly reassign to
20 Departments 1, 4, 6, 7, 8, 9, 10 and 15 all existing criminal and civil matters currently
21 assigned to Department 3. AO ¶ 3.¹
22

23 The AO further provides, effective June 3, 2019, no criminal or civil case types shall
24 be assigned to Department 3, with the exception of cases assigned to the Specialty Courts
25 Program. AO, p. 2.
26
27

28 ¹ Administrative Order 2019-06, including the full list of case reassignments, may be viewed on the Second
Judicial District Court's website: <https://www.washoecourts.com/Main/AdminOrder>.

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The above-captioned case has been reassigned to Department 6.

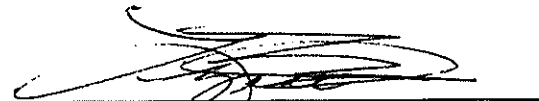
Good cause appearing therefor,

IT IS HEREBY ORDERED:

1. Department 6 of the Second Judicial District Court accepts the reassignment and transfer of this case.

2. Counsel are directed to contact Judicial Assistant Heidi Boe at (775) 328-3176 to confirm the dates of all hearing and trial dates set.

Dated this 6th day of June, 2019.


DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 6th day of June, 2019, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

MICHAEL MATUSKA, ESQ.

MARK GUNDERSON, ESQ.

AUSTIN SWEET, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows

Hidi Box

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. 6

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 TRIAL AND PRETRIAL CONFERENCE**

23 TO: All parties of interest and their counsel of record.

24 PLEASE TAKE NOTICE that the above-referenced action has been set for trial scheduled on
25 **March 2, 2020, at 9:00 a.m.** in Department Number 6 of the Second Judicial District Court for the
26 State of Nevada. The trial is set for five (5) days. A true and correct copy of the *Application for*
27 *Setting* is attached and incorporated by reference as Exhibit "1."


28 PLEASE TAKE NOTICE that the above-referenced action has been set for a Pretrial
Conference to commence on **January 14, 2020, at 9:30 a.m.**, in Department Number 6 of the
Second Judicial District Court for the State of Nevada. Attendance by counsel and all parties is
required. The Application for Setting is attached hereto as Exhibit "1."

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DATED this 12 day of June, 2019.

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 12 day of June, 2019, I electronically filed a true and correct copy of the
4 **NOTICE OF TRIAL AND PRETRIAL CONFERENCE**, with the Clerk of the Court by using the
5 electronic filing system which will send a notice of electronic filing to the following:

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

12 
13 Kelly Gunderson
14
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EXHIBIT LIST

Exhibit #	Description	Pages
Exhibit "1"	Application for Setting	1

FILED
Electronically
CV18-00764
2019-06-12 02:31:54 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7317646 : yvilorla

Exhibit “1”

Exhibit “1”

1 CODE 1250
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
7 IN AND FOR THE COUNTY OF WASHOE

8 JAY KVAM,
9 Plaintiff,

10 vs.

Case No. CV18-00764

11 BRIAN MINEAU, et al.,
12 Defendant.

Dept. No. 6

13
14 APPLICATION FOR SETTING

15 TYPE OF ACTION: Contract and Fraud

MATTER TO BE HEARD: Trial Setting

16 Date of Application: June 5, 2019

Made by: Michael L. Matuska, Esq.

Plaintiff or Defendant

17 COUNSEL FOR PLAINTIFF: Michael L. Matuska, Esq.

18 COUNSEL FOR DEFENDANT: Austin K. Sweet, Esq

19 Instructions: Check the appropriate box. Indicate who is requesting the jury. Estimated No. Of Jurors:

20 ☒ Jury Demanded by (Name): Austin K. Sweet

21 ☐ No Jury Demanded by (Name): _____

22 Estimated Duration of Trial: 5 days

23 Set by phone

Set by phone

24
25 Attorney(s) for Plaintiff

26 PTC
27 Motion No. 2

28 Trial - No.

9:30 am
Setting at

9:00 am
Setting at

14th
on the
2nd
on the

Attorney(s) for Defendant

Jannay
day of

day of

2020
2020
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1 CODE NO. 3696

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

6 JAY KVAM,

7 Plaintiff,

8 vs.

Case No. CV18-00764

Dept. No. 6

9 BRIAN MINEAU; LEGION INVESTMENTS,
10 LLC.; et al.,

11 Defendants.
12 _____ /

13 **SUPPLEMENTAL UNIFORM PRETRIAL ORDER**

14 The procedures described in this Pretrial Order are designed to secure a just,
15 speedy, and inexpensive determination of this case. If any party believes any procedure
16 required in this order will not achieve these ends, that party should seek an immediate
17 conference among all parties and the Court so an alternative order may be discussed.
18 **Otherwise, failure of any party to comply with the provisions of this order may result**
19 **in the imposition of sanctions, which may include, but are not limited to, dismissal of**
20 **the action or entry of default.** All references to "counsel" include self-represented
21 litigants.

22 **I. TRIAL SETTING**

23 Unless the parties have already done so, counsel for the parties shall set trial no later
24 than twenty (20) days after entry of this order. Please contact Heidi Boe, the Department
25 Six Judicial Assistant at 775-328-3176 to schedule a setting appointment. Plaintiff's counsel
26

1 shall prepare the Application for Setting form. The sections regarding juries only apply if a
2 jury trial is requested.

3 II. PRETRIAL CONFERENCES

4 A. **Early Pretrial and Scheduling Conference.** No later than 20 days after entry
5 of this order and simultaneously with the trial setting appointment if the trial has not already
6 been set, counsel for the parties shall set a pretrial scheduling conference, to be held within
7 60 days.

8 1. Purpose. The pretrial scheduling conference provides the parties with
9 an opportunity to meet directly with the Court in an effort to facilitate the purposes identified
10 at NRCP 16(a), present suggestions regarding the matters identified at NRCP 16(c), and
11 address disputes or problems arising out of the early case conference.

12 2. Required Attendance. Lead trial counsel for all parties, as well as all
13 unrepresented parties, must attend the pretrial scheduling conference.

14 3. Stipulation to Vacate Conference. **The parties may stipulate to**
15 **vacate the pretrial scheduling conference and the Court will order the same** if the
16 Court is provided with a written stipulation stating the agreement of all parties that an early
17 pretrial scheduling conference is not warranted, and including a stipulated scheduling order
18 for entry in this case. The stipulated scheduling order must specify deadlines, using
19 calendar dates, that comply with the provisions of NRCP 16.1(a) and (c) for:
20

- 21 a. filing motions to amend the pleadings or to add
- 22 parties;
- 23 b. making initial expert disclosures;
- 24 c. making rebuttal expert disclosures;
- 25
- 26

- d. completing discovery proceedings; and
- e. filing dispositive motions.

The stipulated scheduling order also must specify a calendar date by which all pretrial motions, including dispositive motions and motions limiting or excluding an expert's testimony, must be submitted for decision, said submission date must be no later than 30 calendar days before trial.

B. Interim Pretrial Conference. This Court is available to meet with the parties whenever the parties agree a meeting would be beneficial. This Court may also order one or more pretrial conferences sua sponte or upon motion by any party.

C. Final Pretrial Conference. At the same time trial is scheduled, the parties must also schedule the date for a final pretrial conference, to be held no later than 30 days¹ prior to trial.

1. Purpose. The conference is intended to develop a plan for trial, including, a protocol for facilitating the admission of evidence and to address any trial-related disputes, needs, or requests.

2. Required Attendance. This conference must be attended by:

- (a) the attorneys who will try the case (the parties, which includes an authorized representative of any party that is an entity, may be required to attend); and
- (b) any unrepresented parties.

3. Use of Equipment at Trial. At the final pretrial conference, counsel must advise the Court fully with respect to the following matters:

¹ See WDCR 6

- (a) the equipment to be used during trial, including any request to use the Court's equipment;
- (b) the presentation software to be used during trial, and whether each party is able to receive and use digital files of presentation materials prepared by another;
- (c) any expected use of videoconferencing; and
- (d) the reliability and positioning for any equipment to be brought to the courtroom.

D. **Personal Appearance Required at all conferences.** Counsel's personal appearance is required at all conferences, except upon prior approval of the Court.

III. DISCOVERY

A. **Consultation Before Discovery Motion Practice.** Prior to filing any discovery motion, the attorney for the moving party must consult with opposing counsel about the disputed issues. Counsel for each side must present to the other the merits of their respective positions with the same candor, specificity, and supporting material as would be used in connection with a discovery motion. The parties are reminded that the Discovery Commissioner is available to address some disputes telephonically.

B. **Discovery Hearings.** Discovery motions typically are resolved without the need for oral argument. However, if both sides desire a dispute resolution conference pursuant to NRCP 16.1(d), counsel must contact the Discovery Commissioner's office, at (775) 328-3293, to obtain a convenient date and time for the conference. If the parties cannot agree upon the need for a conference, the party seeking the conference must file and submit a motion in that regard.

1 **C. Effect of Trial Continuance.** A continuance of trial does not extend the
2 deadline for completing discovery. A request for an extension of the discovery deadline, if
3 needed, must be made separately or included as part of any motion for continuance of trial.
4 The parties may include an agreement to extend discovery in a stipulation to continue trial
5 presented for court order.

6 **D. Computer Animations.** If any party intends to offer a computer-generated
7 animation either as an evidentiary exhibit or an illustrative aid, that party must disclose that
8 intention when expert disclosures are made pursuant to NRCP 16.1(a)(2). A copy of the
9 animation must be furnished to all other parties and the Court no later than thirty days prior
10 to trial. Disclosure of the animation includes copies of the underlying digital files as well as
11 the completed animation.
12

13 **IV. SETTLEMENT AND ALTERNATIVE DISPUTE RESOLUTION**

14 **A. Notice of Settlement.** In the event that this case is settled prior to trial, the
15 parties must promptly notify Judicial Assistant Heidi Boe.

16 **B. Settlement Conference or Alternative Dispute Resolution.** This Court may
17 order, upon a party's request or sua sponte, that the parties and their attorneys (1) meet in
18 person with another judge and attempt to settle the case, or (2) participate in mediation or
19 some other appropriate form of alternative dispute resolution in an effort to resolve this case
20 prior to trial.
21

22 **V. TRIAL-RELATED PROCEDURES**

23 **A. Motions in Limine.** All motions in limine, except motions in limine to exclude
24 an expert's testimony, must be submitted for decision no later than fifteen 15 calendar days
25 before trial.
26

1 B. **All Other Motions.** All motions, except motions in limine as defined above,
2 must be submitted for decision no later than thirty (30) calendar days before trial.

3 C. **Exhibits.** Trial counsel for the parties shall contact the Courtroom Clerk,
4 Jenny Martin, no later than ten (10) judicial days before trial, to arrange a date and time to
5 mark trial exhibits. In no event shall the marking of exhibits take place later than the
6 Monday before trial, without leave of the Court.

7 1. Marking and Objections. All exhibits shall be marked in one numbered
8 series (Exhibit 1, 2, 3, etc.) and placed in one or more binders provided by counsel, unless
9 the Court permits a different procedure. When marking the exhibits with the clerk, counsel
10 shall advise the clerk of all exhibits which may be admitted without objection, and those that
11 may be admissible subject to objections. Any exhibits not timely submitted to opposing
12 counsel and he clerk may not be offered or referenced during the trial, without leave of the
13 Court.
14

15 2. Copies. Counsel must cooperate to insure that the official exhibits and
16 two identical sets of exhibits are provided to the Court.

17 3. Custody of Exhibits. After marking trial exhibits by the clerk, the
18 exhibits will remain in the custody of the clerk, until an order is issued directing the
19 disposition or return to counsel.
20

21 4. Demonstrative Exhibits. Any exhibits not timely submitted to opposing
22 counsel and the clerk in full compliance with these procedures will not be marked by the
23 clerk, and may not be offered or referenced during the trial.

24 D. **Trial Statements.** Trial Statements must conform to WDCR 5. Trial
25 Statements must be filed and served no later than 5:00 p.m. five (5) calendar days before
26

1 trial, unless otherwise ordered by the Court. They may be served upon other parties by e-
2 filing, personal delivery, fax, or email.

3 E. **Jury Instructions and Verdict Forms.** All proposed jury instructions and
4 verdict forms must be submitted to the Court no later than five (5) calendar days prior to
5 trial, unless otherwise ordered by the Court.²

6 1. Format. All original jury instructions must be accompanied by a
7 separate copy of each instruction containing a citation to the form instruction or to the
8 authority supporting that instruction. All modifications made to instructions taken from
9 statutory authority must be separately underscored on the citation page.

10 2. Exchange. The parties must exchange all proposed jury instructions
11 and verdict forms no later than seven judicial days before trial, unless otherwise ordered by
12 the Court.

13 3. Agreement and Submission. The parties must confer regarding the
14 proposed jury instructions and verdict forms before they are submitted to the Court and shall
15 use their best efforts to stipulate to uncontested instructions. All undisputed instructions and
16 verdict forms must be submitted jointly to the Court; the parties must separately submit any
17 disputed instructions and verdict forms.

18 4. Disputes and Additional Instructions. After commencement of the trial,
19 the Court will meet with counsel to determine the jury instructions and verdict forms that will
20 be used. At that time, the Court will resolve all disputes over instructions and verdict forms,
21 and consider any additional instructions which could not reasonably have been foreseen
22 prior to trial.

23
24
25 _____
26 ² See WDCR 7(8)

F. **Juror Notes and Questions.** Jurors will be permitted to take notes during trial. Jurors will be permitted to submit questions in writing during trial; however, juror questions will be asked only after the questions are reviewed by counsel and approved by the Court.

G. **Use of Electronically Recorded Depositions.** No depositions recorded by other than stenographic means may be edited until the Court rules on objections. If such a recording is to be used at trial, it must be edited to eliminate cumulative testimony and to present only those matters that are relevant and material.

H. **Evidentiary Rulings.** Every witness that counsel intends to call at trial must be informed by counsel about any rulings that restrict or limit testimony or evidence (e.g., rulings on motions in limine) to inform them that they may not offer or mention any evidence that is subject to that ruling.

I. **Examination Limits.** Absent extraordinary circumstances, counsel will be given the opportunity for one re-direct and one re-cross examination.

VI. MISCELLANEOUS

A. **Civility.** The use of language which characterizes the conduct, arguments or ethics of another is to be avoided unless relevant to a motion or proceeding before the Court. In the appropriate case, the Court will upon motion or sua sponte, consider sanctions, including monetary penalties and/or striking the pleading or document in which such improprieties appear, and may order any other suitable measure the Court deems to be justified. This section of this Order includes, but is not limited to, written material exchanged between counsel, briefs or other written materials submitted to the Court, and conduct at depositions, hearings, trial or meetings with the Court.

1 B. **Communication with Department.** In addition to communication by
2 telephone, letter, or facsimile, counsel may communicate with Department 6 by e-mailing
3 the Judicial Assistant Heidi Boe at: heidi.boe@washoecourts.us, or the Court Clerk, Jenny
4 Martin at jenny.martin@washoecourts.us. All written communications must be copied to
5 all opposing counsel and self-represented litigants.

6 C. **Page Limits.** All pleadings including accompanying legal memoranda
7 submitted in support of any motion may not exceed 20 pages in length; opposition pleadings
8 may not exceed 20 pages in length; and reply pleadings may not exceed 10 pages in
9 length. These limitations are exclusive of exhibits. A party may file a pleading that exceeds
10 these limits by five pages, so long as it is filed with a certification of counsel that good cause
11 existed to exceed the standard page limits and the reasons therefore. Briefs in excess of
12 five pages over these limits may only be filed with prior leave of the Court, upon a showing
13 of good cause.

14 D. **Request for Accommodation.** Counsel must notify the Court no later than
15 thirty (30) days before trial of any reasonable accommodation needed because of a
16 disability, or immediately upon learning of the need if not known in advance.

17 E. **Etiquette and Decorum.** Counsel must at all times adhere to professional
18 standards of courtroom etiquette and decorum, including but not limited to the following:
19

- 20 1. Counsel may not use speaking objections;
- 21 2. Counsel must stand when speaking;
- 22 3. Counsel may not address each other during their
23 respective arguments;
- 24
- 25
- 26

4. Counsel must be punctual; and
5. Counsel must be prepared.

IT IS SO ORDERED.

DATED this 12th day of June, 2019.



DISTRICT JUDGE

CERTIFICATE OF SERVICE

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;
that on the 12th day of June, 2019, I electronically filed the foregoing with the Clerk of
the Court system which will send a notice of electronic filing to the following:

MICHAEL MATUSKA, ESQ.

AUSTIN SWEET, ESQ.

MARK GUNDERSON, ESQ.

And, I deposited in the County mailing system for postage and mailing with the
United States Postal Service in Reno, Nevada, a true and correct copy of the attached
document addressed as follows

Kudi Bore

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,	Plaintiff,	Case No. CV18-00764
10 v.		Dept. No. 6
11 BRIAN MINEAU; LEGION INVESTMENTS,		
12 LLC; 7747 S. May Street, an Unincorporated		
13 Joint Venture; and DOES I-X, inclusive,		
14	Defendants.	

15 **MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

16 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law
17 Offices, Ltd., Michael L. Matuska, and hereby moves pursuant to NRCP 15(a) to file a Second
18 Amended Complaint to add claims of conversion and violation of Nevada's racketeering act,
19 NRS 207.350 et seq., against Brian Mineau and Legion due to their diversion of funds and other
20 predicate acts.

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

24 Dated this 19th day of June, 2019.

25 MATUSKA LAW OFFICES, LTD.

26 By:

Michael L. Matuska

27 MICHAEL L. MATUSKA, SBN 5711
28 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 SECOND 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:

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

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

See Ex. "1" attached hereto.

In his responses to Interrogatories, Mineau admits that Kvam funded \$93,000 toward the purchase and renovation of the Property. (See Response to Interrogatory No. 6, Ex. "2"). \$44,000 was used for the purchase escrow that closed on February 13, 2017. (See Settlement Statement, Ex. "3"). The other \$49,000 was supposed to be used for renovation and resale. The property sold at a loss on November 16, 2018. (See Settlement Statement, Ex. "4"). Mineau concealed that sale from Kvam, who was left to find out about the sale himself. That resulted in Kvam's Motion for Temporary Restraining Order on November 30, 2018 (Transaction #7000744) to prevent the loss of the sale proceeds, Stipulation on December 12, 2018 (Transaction #7021308), and Kvam's Motion for Leave to File First Amended Complaint on December 24, 2018 (Transaction #7037918) to include a new cause of action for fraud. That motion was granted on January 29, 2019 (Transaction # 7091712) and Kvam filed the First Amended Complaint on January 31, 2019 (Transaction # 7095466).

1 Through extensive discovery conducted to date, there is no evidence that Kvam's money
2 was used to improve the Property. Based on the sale for a loss, photographs which indicate that
3 the property was in worse shape, and newly discovered evidence that Mineau, Legion and their
4 cohorts and colleagues were working on other projects at the same time, some of which were sold
5 for a profit, Kvam now seeks to file the Second Amended Complaint to include causes of action
6 for conversion/diversion of funds and RICO violations.

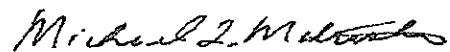
7 Leave to amend should be freely given when justice requires. NRCP 15(a); *Cohen v.*
8 *Mirage Resorts, Inc.*, 119 Nev. 1, 23, 62 P.3d 720 (Nev. 2003). The request is not made in bad
9 faith or with a dilatory motive, so the traditional requirements for granting leave to amend are
10 satisfied and leave to amend should be freely given. *Stephens v. S. Nev. Music Co., Inc.*, 89 Nev.
11 104, 105, 507 P.2d 138, 139 (Nev. 1973). A copy of the proposed Second Amended Complaint is
12 attached hereto as **Ex. "5."**

13 **AFFIRMATION**

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

16 Dated this 19th day of June, 2019.

17 MATUSKA LAW OFFICES, LTD.

18 

19 By:

20 MICHAEL L. MATUSKA, SBN 5711
21 Attorneys for Plaintiff, JAY KVAM,
22 individually and derivatively on behalf of the
23 unincorporated joint venture identified as 7747
24
25
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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 19th day of June, 2019, 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 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	NO. OF PAGES
1	Terms of Agreement	1
2	Response to Interrogatory #6	6
3	Settlement Agreement 02/13/2017	3
4	Settlement Agreement 11/16/2018	3
5	Second Amended Verified Complaint	13

FILED
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CV18-00764
2019-06-19 02:58:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7330147 : csulezic

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

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

Terms of Agreement between Legion Investments LLC (its Members)

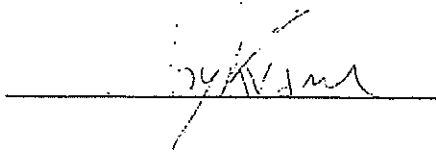
And Jay Kvam (Initial Funding Member of Same)

RE:

7747 S. May Street, Chicago Illinois.

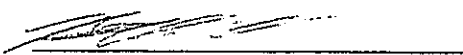
With Regards to acquisition of the aforementioned property, it is understood that the membership of Legion Investments LLC for this acquisition is Brian Mineau, Jay Kvam, and Michael J. Spinola. All parties are entitled to 33.33% of net profit, after all expenses are accounted for, to include interest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



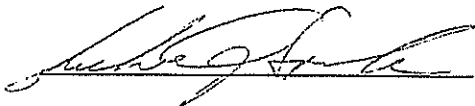
Date 2017-02-14

Brian Mineau

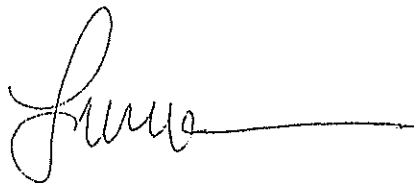
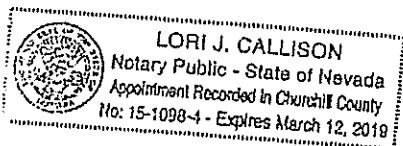


Date 2/13/2017

Michael J. Spinola



Date 2/13/17



FILED
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2019-06-19 02:58:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7330147 : csulezic

EXHIBIT 2
RESPONSE TO INTERROGATORY #6
(Motion for Leave to File Second Amended Complaint)

EXHIBIT 2
RESPONSE TO INTERROGATORY #6
(Motion for Leave to File Second 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
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 SET OF INTERROGATORIES**

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 33 of the Nevada Rules of Civil
Procedure, responds to Plaintiff / Counterdefendant JAY KVAM ("Kvam")'s First Set of
Interrogatories to Mineau and Legion ("Requests") as follows:

///

///

///

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
22 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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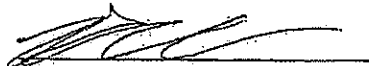
VERIFICATION

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

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


Executed in Reno, NV.

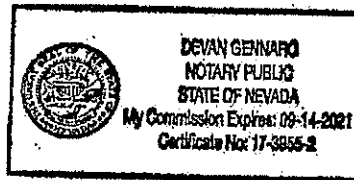
DATED this 1st day of October, 2018.


Brian Mineau

STATE OF NEVADA
COUNTY OF WASHOE


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


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



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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

FILED
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CV18-00764
2019-06-19 02:58:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7330147 : csulezic

EXHIBIT 3
SETTLEMENT AGREEMENT 02/13/2017
(Motion for Leave to File Second Amended Complaint)

EXHIBIT 3
SETTLEMENT AGREEMENT 02/13/2017
(Motion for Leave to File Second Amended Complaint)

American Land Title Association

ALTA Settlement Statement - Cash

Adopted 05-01-2015

File No./Escrow No.: 719630

Citywide Title Corporation

Print Date & Time: 02/13/17 6:24 AM

ALTA Universal ID:

Officer/Escrow Officer:

850 W. Jackson

Settlement Location: Citywide Title

Suite 320

Chicago, IL 60607

Property Address: 7747 South May Street
Chicago, IL 60620

Buyer: Legion Investments

Seller: SDLiVest Group, LLC

Settlement Date: 02/13/2017

Disbursement Date: 02/13/2017

Additional dates per state requirements:

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

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

Acknowledgement

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

Legion Investments

SDLiVest Group, LLC

By _____

Date _____

By _____

Date _____

Escrow Officer

Date

FILED
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CV18-00764
2019-06-19 02:58:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7330147 : csulezic

EXHIBIT 4
SETTLEMENT AGREEMENT 11/16/2018
(Motion for Leave to File Second Amended Complaint)

EXHIBIT 4
SETTLEMENT AGREEMENT 11/16/2018
(Motion for Leave to File Second Amended Complaint)

American Land Title Association

ALTA Settlement Statement - Cash
Adopted 05-01-2015

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

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

Seller		Description	Borrower/Buyer	
Debit	Credit		Debit	Credit
		Financial		
	\$41,000.00	Sale Price of Property	\$41,000.00	
		Deposit		\$1,000.00
		Prorations/Adjustments		
\$2,233.36		County 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 Stenmark 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

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Electronically
CV18-00764
2019-06-19 02:58:48 PM
Jacqueline Bryant
Clerk of the Court
Transaction # 7330147 : csulezic

EXHIBIT 5
SECOND AMENDED VERIFIED COMPLAINT
(Motion for Leave to File Second Amended Complaint)

EXHIBIT 5
SECOND AMENDED VERIFIED COMPLAINT
(Motion for Leave to File Second 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.

Case No. CV18-00764

Dept. No. 6

**SECOND AMENDED VERIFIED
COMPLAINT**

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 ///

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

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

II.

GENERAL ALLEGATIONS

8. On or about February 14, 2017, KVM 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;

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

c. MINEAU would manage the project;

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

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

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

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

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

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

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

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

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

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

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

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

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

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.

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

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

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

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

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

17 **VII.**
18 **FIFTH CAUSE OF ACTION**
19 **(Accounting)**

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

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

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

26 **VIII.**
27 **SIXTH CAUSE OF ACTION**
28 **(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.

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 (Conversion)

59. As a result of the foregoing, KHAM and 7747 have been damaged in an amount to

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

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

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

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

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

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

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

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

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

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

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

1 fully set forth herein.

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

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

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

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

11 WHEREFORE, Plaintiff prays for relief as follows:

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

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

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

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

21 5. For an equitable accounting;

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

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

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

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

26 **AFFIRMATION**

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

1 Dated this _____ day of _____, 2019.

2
3 MATUSKA LAW OFFICES, LTD.

4 By:

5 MICHAEL L. MATUSKA, SBN 5711
6 Attorneys for Plaintiff, JAY KVAM,
7 individually and derivatively on behalf of
8 the unincorporated joint venture identified as 7747
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MATUSKA LAW OFFICES, LTD.
2310 S. Carson Street, #6
Carson City, NV 89701
(775) 350-7220

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 _____ 2019,
by JAY KVAM.

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 ____ day of _____, 2019, I served a true and correct copy of the preceding document entitled **SECOND AMENDED VERIFIED COMPLAINT** as follows:

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

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

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

☐ **BY EMAIL:** (as listed above)

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

☐ **BY FACSIMILE:**

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

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

/s/ SUZETTE TURLEY
SUZETTE TURLEY

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. 6

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

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

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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 This dispute concerns the parties' efforts to acquire the property located at 7747 S. May Street,
4 Chicago, Illinois ("Property"), renovate it, and sell it for a profit. In furtherance of these efforts, the
5 parties entered into the very short and, unfortunately, very poorly worded "Terms of Agreement"
6 signed by Kvam, Mineau, and Michael Spinola ("Terms of Agreement").

7 Pursuant to the Terms of Agreement, Kvam invested approximately \$93,784.31 in the project
8 and Legion invested \$20,000.00 in the project. Approximately \$45,000.00 of Kvam's funds were
9 paid directly from Kvam into escrow to purchase the Property, and the remainder was paid directly
10 from Kvam to the contractor in Illinois, TNT Complete Facility Care Inc. ("TNT"). Legion's
11 \$20,000.00 draw was also paid directly to TNT. Kvam was in direct communication with TNT
12 throughout the course of this project. Critically, *it is undisputed that Kvam never delivered any*
13 *funds to Legion or Mineau and that none of Kvam's funds ever passed through Legion's or*
14 *Mineau's bank accounts.*

15 Unfortunately, the project stalled, TNT did not fulfill its obligations to renovate the Property,
16 and a pipe burst at the Property causing substantial water damage. Rather than attempt to work
17 through these setbacks, Kvam demanded that Mineau immediately "buy him out" of the project.
18 Although Legion offered to do so, Kvam would not accept its terms. Legion therefore offered to
19 transfer the Property to Kvam and assign all claims against TNT to Kvam, as required by the Terms
20 of Agreement in the event the transaction should fail, but Kvam again refused. Instead, Kvam
21 initiated this lawsuit against Legion and Mineau to recover the losses he suffered in the investment
22 and demanded that Legion sell the Property. Then, when Legion acquiesced to Kvam's demand and
23 sold the Property, Kvam amended his complaint to allege that Legion and Mineau fraudulently
24 concealed the fact that they had sold the Property. See First Amended Verified Complaint. The
25 proceeds from the sale have been deposited with the Court.¹

26 _____
27 ¹ Approximately one month after the sale, and after all proceeds had been deposited with the Court
28 pursuant to a *Stipulation to Deposit Funds; Order*, Legion received an additional \$1,864.14 from the
escrow company related to the sale of the Property. Legion requested Kvam's stipulation to deposit
these additional with the Court, but Kvam refused.

1 Kvam now seeks to amend his complaint for a second time to add claims for conversion and
2 RICO violations. The basis of Kvam's Motion is apparently that: (1) there is no evidence that Kvam's
3 money was used to improve the Property; (2) the Property sold for a loss; (3) the Property was in
4 worse shape when it was sold than when it was purchased; and (4) Legion and Mineau were working
5 on other projects at the same time, some of which were profitable. Of course, (1) any claim that
6 Kvam's money was not used to improve the Property should be made against TNT, not Legion or
7 Mineau; (2) the Property sold for a loss because Kvam filed suit and demanded that it be sold
8 immediately, rather than attempting to work through the setbacks, repair the water damage, and finish
9 renovating the Property before selling it; (3) the Property was in worse shape when it was sold than
10 when it was purchased because Kvam filed suit and demanded that it be sold immediately, rather than
11 attempting to work through the setbacks, repair the water damage, and finish renovating the Property
12 before selling it; and (4) there is absolutely nothing unique or improper about Legion and Mineau
13 working on other projects at the same time, some of which were profitable.

14 Regardless, the allegations made in the Motion and the proposed *Second Amended Verified*
15 *Complaint* do not, in any way, support or justify conversion or RICO claims. The Motion must be
16 denied.

17 **II. ARGUMENT**

18 A party may amend its pleading only with the opposing party's written consent or the court's
19 leave. NRCP 15(a)(2). The court should freely give leave when justice so requires. *Id.* "Although
20 the rule states that leave to amend shall be given when justice so requires, this does not mean that a
21 trial judge may not, in a proper case, deny a motion to amend. If that were the intent, leave of court
22 would not be required." Kantor v. Kantor, 116 Nev. 886, 891, 8 P.3d 825, 828 (2000) (internal
23 quotations omitted). "Sufficient reasons to deny a motion to amend a pleading include undue delay,
24 bad faith or dilatory motives on the part of the movant." *Id.* Leave to amend should also be denied
25 "if the proposed amendment would be futile." Gardner on Behalf of L.G. v. Eighth Judicial Dist.
26 Court in & for Cty. of Clark, 405 P.3d 651, 654 (Nev. 2017) (internal citations omitted).

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1 ***A. The Motion Should Be Denied Because Of Undue Delay.***

2 Kvam filed his initial *Verified Complaint* in this action over a year ago, on April 11, 2018.
3 Kvam filed his *First Amended Verified Complaint* over six months ago, on January 31, 2019. Kvam
4 now seeks to amend his complaint for a second time to add claims for conversion and RICO
5 violations.

6 Kvam argues that leave to amend is justified based upon “newly discovered evidence that
7 Mineau, Legion and their cohorts and colleagues were working on other projects at the same time,
8 some of which were sold for a profit....” Motion p. 3. However, neither the Motion nor the proposed
9 *Second Amended Verified Complaint* explain, in any way whatsoever, how this supposedly “newly
10 discovered evidence” justifies amending the complaint or adding new claims for relief. Kvam’s
11 Motion does not offer any other explanation as to why he seeks leave to amend his complaint at this
12 time.

13 Furthermore, Kvam’s proposed *Second Amended Verified Complaint* does not add any new
14 factual allegations whatsoever. Rather, relying upon the same factual allegations made in the *First*
15 *Amended Complaint*, Kvam seeks only to add a claim for conversion and a claim for RICO violations.
16 Again, Kvam offers no explanation as to why he seeks leave to amend his complaint again at this
17 time. Thus, the alleged “newly discovered evidence that Mineau, Legion and their cohorts and
18 colleagues were working on other projects at the same time, some of which were sold for a profit”
19 does not appear to have any bearing on Kvam’s proposed conversion and RICO claims.

20 Kvam offers no explanation or argument justifying why, over a year after this lawsuit was
21 filed and over six months after it was amended the first time, Kvam should be allowed to amend his
22 complaint yet again to plead new claims for relief based upon the exact same facts. Kvam’s delay is
23 unjustified and the Motion should be denied.

24 ***B. The Motion Should Be Denied Because The Proposed Amendment Would Be***
25 ***Futile.***

26 In the Motion, Kvam seeks leave to file a *Second Amended Verified Complaint* adding claims
27 for conversion and RICO violations. Motion p. 3. The basis of Kvam’s Motion is apparently that:
28 (1) there is no evidence that Kvam’s money was used to improve the Property; (2) the Property sold

1 for a loss; (3) the Property was in worse shape when it was sold than when it was purchased; and (4)
2 Legion and Mineau were working on other projects at the same time, some of which were profitable.
3 Id. These allegations, even if true, simply do not support claims for conversion or RICO violations.
4 Thus, the *Second Amended Verified Complaint* would not survive a motion to dismiss, making the
5 proposed amendment futile.

6 1. Kvam cannot establish a conversion claim.

7 To prevail on his proposed claim for conversion, Kvam must establish that Legion and/or
8 Mineau committed a “distinct act of dominion wrongfully exerted over [Kvam’s] personal property
9 in denial of, or inconsistent with his title or rights therein or in derogation, exclusion, or defiance of
10 such title or rights.” M.C. Multi-Family Dev., L.L.C. v. Crestdale Assocs., Ltd., 124 Nev. 901, 910,
11 193 P.3d 536, 542 (2008). In his proposed *Second Amended Verified Complaint*, Kvam seeks to
12 allege that, “[b]y taking title to the property, diverting project funds and keeping proceeds of sale
13 from KVAM, Defendants MINEAU and LEGION committed a distinct act or acts of dominion
14 wrongfully exerted over the joint venture property, project funds and KVAM’s investment.” Motion
15 at Ex. 5 ¶ 57. These allegations simply cannot support a claim for conversion.

16 First, the claim of conversion only applies to *personal* property, so the allegation that Mineau
17 and/or Legion wrongfully took title to the Property (which is adamantly disputed) cannot support a
18 conversion claim. M.C. Multi-Family, *supra*.

19 Second, it is undisputed that Kvam never transferred or delivered any “project funds” to
20 Legion or Mineau. All of Kvam’s funds were sent either directly to escrow or directly to the
21 contractor, TNT. The proposed *Second Amended Verified Complaint* does not, and cannot, allege
22 that Legion or Mineau ever committed any distinct act of dominion over Kvam’s “project funds” or
23 in any other way whatsoever wrongfully “diverted project funds.”

24 Finally, it is undisputed that the proceeds from the sale of the Property are currently held by
25 the clerk of court. See Stipulation to Deposit Funds; Order. It is therefore indisputable that Legion

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1 and Mineau did not wrongfully exert a distinct act of dominion upon the proceeds from the sale to
2 Kvam's detriment.²

3 For these reasons, the proposed *Second Amended Verified Complaint* fails to allege a proper
4 claim for conversion. Even if this Court determines that the Motion is timely (which it is not), the
5 Motion should be denied because the proposed amendment is futile.

6 2. Kvam cannot establish a RICO claim.

7 Any person who is injured in his business or property by reason of any violation of NRS
8 207.400 has a cause of action against a person causing such injury for three times the actual damages
9 sustained. NRS 207.470. NRS 207.400 lists several crimes relating to racketeering activity and
10 criminal syndicates. "Racketeering activity" means engaging in at least two crimes related to
11 racketeering that have the same or similar pattern, intents, results, accomplices, victims, or methods
12 of commission, or are otherwise interrelated by distinguishing characteristics and are not isolated
13 incidents...." NRS 207.390. "Criminal syndicate" means any combination of persons, so structured
14 that the organization will continue its operation even if individual members enter or leave the
15 organization, which engages in or has the purpose of engaging in racketeering activity." NRS
16 207.370.

17 Kvam's Motion offers no argument whatsoever supporting his imaginative efforts to turn this
18 failed investment into a RICO action. Motion p. 3. Kvam simply asserts that: (1) there is no evidence
19 that Kvam's money was used to improve the Property; (2) the Property sold for a loss; (3) the Property
20 was in worse shape when it was sold than when it was purchased; and (4) Legion and Mineau were
21 working on other projects at the same time, some of which were profitable. Id. These assertions have
22 absolutely nothing to do with racketeering or criminal syndicates and certainly do not justify granting
23 Kvam leave to amend his complaint to add a RICO claim.

24 Reviewing Kvam's proposed *Second Amended Verified Complaint* sheds no further light on
25 this incredible claim. In his proposed *Second Amended Verified Complaint*, Kvam alleges that
26 Mineau and Legion "violated predicate racketeering acts," including: (a) fraud, misrepresentation,

27 ² Regardless, Kvam was granted leave to file his *First Amended Verified Complaint* to allege
28 additional claims relating to the sale of the Property. See Kvam's *Motion for Leave to File Amended
Complaint*, filed December 24, 2018, at p. 2. Any additional claims Kvam seeks to allege on these
same grounds are untimely.

1 conversion and embezzlement; (b) obtaining money by false pretenses; (c) perjury; (d) fraud and
2 deceit in connection with the offer, sale and purchase of a security interest in Legion; and (e)
3 fraudulent business practices and conduct. See Motion at Ex. 5 ¶ 62. Of course, even if Kvam could
4 somehow prove these allegations (which he cannot), these claims are an absurdly far cry from a RICO
5 violation.

6 “Racketeering activity” requires at least two similar, yet distinct, crimes. NRS 207.390.
7 Kvam has not alleged that either Legion or Mineau committed any crimes (which of course they have
8 not), let alone two crimes. Furthermore, this entire dispute arises out of a single transaction, and
9 “racketeering activity” requires at least two different instances of criminal conduct. Therefore, by
10 definition, Kvam’s allegations fall well short of adequately alleging that Legion or Mineau engaged
11 in “racketeering activity.”

12 Similarly, a “criminal syndicate” is any combination of persons, so structured that the
13 organization that will continue its operation even if individual members enter or leave. NRS 207.370.
14 Kvam alleges RICO violations against Legion and Mineau, but also alleges that Legion is Mineau’s
15 company. Compare Motion at Ex. 5 ¶ 62 with Motion at Ex. 5 ¶ 13. By definition, Mineau cannot
16 have created a “criminal syndicate” with himself.

17 Finally, even ignoring the deep legal flaws in Kvam’s proposed RICO claim, the factual
18 allegations in the proposed *Second Amended Verified Complaint* are woefully inadequate to support
19 Kvam’s summary allegations of fraud, misrepresentation, perjury, and other misconduct. Allegations
20 of fraud must be stated with particularity, and Kvam’s proposed *Second Amended Verified Complaint*
21 contains no specific factual allegations whatsoever to support these claims. NRCP 9(b).

22 For these reasons, the proposed *Second Amended Verified Complaint* fails to allege a proper
23 claim for RICO violations. Even if this Court determines that the Motion is timely (which it is not),
24 the Motion should be denied because the proposed amendment is futile.

25 **III. CONCLUSION**

26 Through his Motion, Kvam seeks leave to amend his complaint for a second time to add new
27 claims for relief based upon the same facts that have existed and been alleged since the first time he
28 amended his complaint. Kvam’s proposed claims for conversion and RICO violations are not

1 supported by his own allegations, the undisputed facts of this case, or Nevada law. Kvam's Motion
2 is untimely and his proposed amendment would be futile.

3 For these reasons, the Motion should be denied.

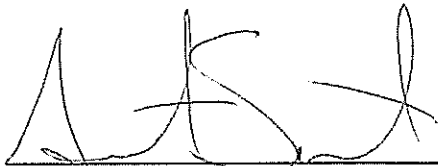
4 **AFFIRMATION**

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

9 DATED this 1 day of July, 2019.

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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

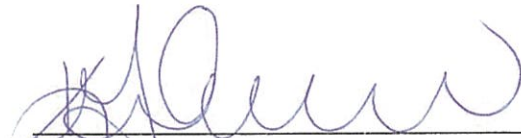
Telephone: 775.829.1222

*Attorneys for Brian Mineau and Legion
Investments*

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 July, 2019, I electronically filed a true and correct copy of the
4 **OPPOSITION TO MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**,
5 with the Clerk of the Court by using the electronic filing system which will send a notice of electronic
6 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