

**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

Electronically Filed  
Jul 21 2020 08:45 a.m.  
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 5**

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JAY KVAM

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70.	Reply to Defendants' Response to Objection to Report of Commissioner (Plaintiff)	04/30/19	4	588-592
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73.	Reply to Opposition to Motion for Dissolution	08/01/18	1	88-93
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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: 3790**

2 Michael L. Matuska, Esq. SBN 5711  
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5 Carson City, NV 89701  
6 Attorneys for Plaintiff

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

9 JAY KVAM,

10 Plaintiff,

Case No. CV18-00764

11 v.

Dept. No. 6

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

15 Defendants.

16 **REPLY TO OPPOSITION TO SECOND MOTION FOR LEAVE TO FILE SECOND**  
17 **AMENDED COMPLAINT**

18 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law  
19 Offices, Ltd., Michael L. Matuska, and hereby files this Reply to Defendants' BRIAN MINEAU  
20 and LEGION INVESTMENTS, LLC (collectively, "Mineau") Opposition to Motion for Leave to  
21 File Second Amended Complaint.

22 **I. BACKGROUND**

23 Mineau's Opposition repeats most of the same allegations that were raised in his  
24 counterclaims, which were dismissed on January 9, 2019 (See Order, Transaction # 7059540), and  
25 in his opposition to Kvam's prior Motion for Leave to file First Amended Complaint, which  
26 motion was granted on January 29, 2019 (See Order, Transaction # 7091712). Mineau's  
27 Opposition simply sets forth his theory of the case, that he was not responsible for the failed  
28 investment project concerning 7747 May Street (the "Property"). Mineau's defense is actually  
part of the fraud as explained briefly below. However, Kvam respectfully declines Mineau's  
invitation to try this case in a Motion for Leave to Amend.

Mineau concedes that Kvam invested \$93,000 in the renovation project. Title to the

1 Property vested in Mineau's limited liability company, Legion Investments, LLC (See Deed, Ex.  
2 "6"). Mineau signed the construction contract with TNT Complete Facility Care Inc. on behalf of  
3 Legion (Ex. "7"). The contract is dated March 22, 2017. The construction contract provided,  
4 inter alia, that the project would be "turnkey" complete by June 1, 2017 at a cost of \$80,000. (See  
5 Addendum "A"). "The Owner (i.e., Mineau/Legion) will approve the percentage of the work at its  
6 sole discretion." (Addendum "B").

7 Mineau now admits that he did not supervise the project or verify the percentage of work  
8 completed, if any. Kvam's name does not appear on the contract with TNT, and the mere fact that  
9 he forwarded progress payments directly to the contractor rather than to Mineau does not absolve  
10 Mineau, the project owner and party to the contract, from responsibility. Evidence that will be  
11 presented at trial will prove that Mineau directed Kvam to make the payments to the contractor.  
12 Kvam is neither the property owner nor the party to the construction contract. It was up to Mineau  
13 to enforce the terms of the construction contract with TNT. He failed to do so. These  
14 responsibilities are in addition to Mineau's fiduciary duties to Kvam as alleged in the first cause of  
15 action due the partnership/joint venture agreement.

16 Mineau's recitation of the negotiations to buy Kvam out of the project (Opposition at 2:15-  
17 25) is improper, inadmissible, inaccurate and irrelevant to this Motion.

18 Kvam filed suit on April 11, 2018. The unfinished project sold for a loss on November 16,  
19 2018. (See Motion, Ex. "4"). Mineau concealed the sale and did not pay the proceeds from the  
20 sale to Kvam. Kvam thereafter moved for leave to file the First Amended Complaint.

21 Legion did not invest \$20,000 as stated in Mineau's Opposition, and there is no admissible  
22 evidence that pipes burst as also claimed by Mineau. The theory that pipes burst was part of  
23 Mineau's counterclaims, wherein he tried to blame Kvam for the loss. Mineau's counterclaims  
24 were dismissed.

25 Predictably, as part of the discovery process, Kvam subpoenaed TNT's bank records, to  
26 verify money received and money spent on the project. The records from JPMorgan Chase bank  
27 have been provided in various tranches in response to a series of subpoenas (See Exs. 8", "9",  
28 "10", "11"). These records revealed that Kvam's investment money, which was earmarked for

7747 May Street, was combined with money for other projects that TNT was working on for Mineau and his cohorts, including 8744 S. Bishop, 8754 S. Michigan, 1404-1408 Wyoming, and 9919 S. Forest. (Ex. "12") Mineau has no accounting records, and no way to verify that Kvam's investment was indeed used on 7747 May Street rather than these other projects, which is the basis for new claims of RICO and Conversion/Diversion of Funds.

## II. ANALYSIS

### A. No Undue Delay

Leave to amend should be freely given when justice requires. NRCP 15(a); *Cohen v. Mirage Resorts, Inc.*, 119 Nev. 1, 23, 62 P.3d 720 (Nev. 2003). Kvam's request is not made in bad faith or with a dilatory motive, so the traditional requirements for granting leave to amend are satisfied and leave to amend should be freely given. *Stephens v. S. Nev. Music Co., Inc.*, 89 Nev. 104, 105, 507 P.2d 138, 139 (Nev. 1973). According to the proposed scheduling order in the Joint Case Conference Report that was filed on August 6, 2018 (Transaction # 6813392) Kvam has until August 6, 2019 to file a motion to amend the pleadings. Kvam's Motion for Leave to File Second Amended Complaint was filed on June 19, 2019, well within that time, and promptly after receipt of the documents from JPMorgan Chase.

### B. The Second Amended Complaint is Not Futile

Mineau argues that "Kvam's proposed *Second Amended Complaint* does not add any new factual allegations whatsoever." (Opposition at 4:13-14). That is largely, but not entirely, correct, and is also the reason why there should be no objection to Kvam's Motion. Kvam is entitled to include all legal theories that are supported by the factual allegations, and wants to avoid any dispute about whether the jury can be instructed on Conversion/Diversion of Funds and RICO.

#### 1. Conversion/Diversion of Funds

Mineau seems to intentionally misconstrue the new claim for Conversion/Diversion of Funds. It is important to note that the tort of conversion focuses on the distinct act of dominion. The tort of conversion is not concerned with the question of who received the illicit proceeds. Personal liability attaches when a person participates in conversion,

1 even if that person does not personally benefit from the conversion. *Casias v. Wal-Mart Stores,*  
2 *Inc.*, 695 F.3d 428, 434 (6<sup>th</sup> Cir. 2012), rehearing and rehearing denied; *Binder v. Disability*  
3 *Group, Inc.*, 772 F.Supp.2d 1172, 1182 (C.D. Cal. 2011); *In re American Home Mortgage*  
4 *Holding*, 458 B.R. 161, 170 (Bankr. D. Del. 2011); *Knepper & Bailey Liability of Corporate*  
5 *Officers and Directors* § 6.07[2] (8<sup>th</sup> ed.) (“It is not necessary that the property be converted for  
6 their own personal benefit.”). Mineau’s argument that a conversion claim will not lie for the  
7 funds that were diverted from 7747 May Street to his other projects is contrary to established case  
8 law.  
9

## 10 2. RICO

11 Mineau also misconstrues the new RICO claim, which incorporates Par. 53:

12 53. The fraud and concealment perpetrated by MINEAU and LEGION  
13 continued throughout their performance of the Agreement and after this lawsuit  
14 was filed, and included concealment about the status of the project, problems with  
15 the project, diversion of project funds to other projects under way by MINEAU,  
16 LEGION and their colleagues and cohorts, some of whom may claim a financial  
17 interest the project, the listing and sale of the House, and the close of escrow and  
18 receipt of funds.

19 There is no requirement that Kvam has to list all of Mineau’s colleagues and cohorts that  
20 may be implicated in the RICO charges. However, this would not be hard to do if necessary, and  
21 most of them are already listed in **Ex. “12”**, including Michael Spinola, Criterion Investments,  
22 Wyoming Partners, LLC, and Imperium 5, LLC. A review of the overlapping ownership groups  
23 of these various limited liability companies is beyond the scope of this Reply. However, those  
24 entities would survive if Mineau left.

25 Mineau’s reference to NRCP 9(b) is unclear. The fraud claim was added by way of the  
26 First Amended Complaint and is not part of the pending Motion for Leave to File Second  
27 Amended Complaint. Mineau’s Opposition cannot be construed as a Motion to Dismiss. The  
28 fraud claim is only relevant to the Second Amended Complaint to the extent that fraud is one of  
the underlying predicate acts, along with misappropriation, conversion and embezzlement;  
obtaining money by false pretenses (i.e., that it was earmarked for 7747 May Street), perjury, and

1 fraudulent business practices (concerning the entire scheme, and lack of accounting) all of which  
2 are suggested by the various causes of action and the record provided to date.

### 3 III. CONCLUSION

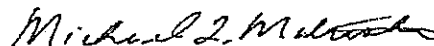
4 Mineau's concern that Kvam is expanding this case is understandable, but irrelevant to the  
5 Motion for Leave to File Second Amended Complaint. Kvam is entitled to add additional theories  
6 based on the previously known record and to add new charges based on information discovered  
7 from JPMorgan Chase. These charges are the foreseeable consequence of Mineau's scheme  
8 whereby he had Kvam spend \$44,000 to purchase a property that was titled in Legion Investments  
9 and then spend another \$49,000 under the belief that the property was being rehabilitated for sale  
10 when in fact that property did not get rehabilitated, the money was sent to the same contractor's  
11 account that was rehabilitating other properties for Mineau and his colleagues, Mineau  
12 purposefully failed to keep any accounting, and he has disclaimed responsibility for the project.  
13 Mineau can file a dispositive motion after the Second Amended Complaint is filed, but Kvam is  
14 entitled to file the Second Amended Complaint pursuant to NRCP 15(a).

### 15 AFFIRMATION

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

18 Dated this 3rd day of July, 2019.

19 MATUSKA LAW OFFICES, LTD.

20 

21 By:

22 MICHAEL L. MATUSKA, SBN 5711  
23 Attorneys for Plaintiff, JAY KVAM,  
24 individually and derivatively on behalf of the  
25 unincorporated joint venture identified as 7747  
26  
27  
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 3rd day of July, 2019, I served a true and correct copy of the preceding document entitled REPLY TO OPPOSITION TO SECOND MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT as follows:

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

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

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

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

☐ **BY FACSIMILE:**

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

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

/s/ SUZETTE TURLEY  
SUZETTE TURLEY



## EXHIBIT INDEX

EXHIBIT	DOCUMENT	NO. OF PAGES
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2	Response to Interrogatory #6	6
3	Settlement Agreement 02/31/2017	3
4	Settlement Agreement 11/16/2018	3
5	Second Amended Verified Complaint	13
6	<b>Warranty Deed dated January 30, 2017</b>	<b>5</b>
7	<b>Contractor Agreement dated March 22, 2017</b>	<b>14</b>
8	<b>Chase Bank Subpoena Duces Tecum dated January 14, 2019</b>	<b>6</b>
9	<b>JPMorgan Chase Bank Subpoena Duces Tecum dated February 26, 2019</b>	<b>6</b>
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12	<b>TNT Complete Facility Care, Inc. – Chase Bank statements</b>	<b>8</b>

EXHIBIT 6  
**WARRANTY DEED DATED JANUARY 30, 2017**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

EXHIBIT 6  
**WARRANTY DEED DATED JANUARY 30, 2017**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

719630 1st

**WARRANTY DEED (Illinois)**

THIS DEED is made as of the 30 day of  
January, 2017, by and between



Doc# 1707413028 Fee \$46.00

**SDL IVEST GROUP, LLC**  
A Nevada Limited Liability Company  
("Grantor," whether one or more),

RHSP FEE: \$9.00 RPRF FEE: \$1.00

KAREN A. YARBROUGH

COOK COUNTY RECORDER OF DEEDS

DATE: 03/15/2017 11:30 AM PG: 1 OF 5

and

**LEGION INVESTMENTS, LLC**  
A Nevada Limited Liability Company  
("Grantee," whether one or more).

(Citywide Title Corporation  
850 W. Jackson Blvd., Ste. 320  
Chicago, IL 60607)

WITNESSETH, that the Grantor, for and in consideration of the sum of Ten Dollars and 00/100 (\$10.00), in hand paid by the Grantee, the receipt whereof is hereby acknowledged, does WARRANT, COVENANT, AND CONVEY unto the Grantee, and to their heirs and assigns, FOREVER, all the following described real estate, situated in the County of Cook and State of Illinois known and described as follows, to wit:

LOT 25 IN FISHER AND MILLER'S SECOND ADDITION TO WEST AUBURN  
SUBDIVISION OF BLOCK 23 OF SUBDIVISION OF THE SOUTHEAST 1/4 OF  
SECTION 29, TOWNSHIP 38 NORTH, RANGE, 14, EAST OF THE THIRD PRINCIPAL  
MERIDIAN, IN COOK COUNTY, ILLINOIS.

P.I.N.: 20-29-417-015-0000 (VOL: 436)

COMMONLY KNOWN AS: 7747 S MAY ST., CHICAGO, IL 60620

Together with all and singular the hereditaments and appurtenances thereunto belonging, or in anywise appertaining, and the reversion and reversions, remainder and remainder, rents issues and profits hereof, and all the estate, right, title, interest, claim or demand whatsoever, of the Grantor, either in law or equity, of, in and to the above described premises, with the hereditaments and appurtenances: TO HAVE AND TO HOLD the said premises as above described, with the appurtenances, unto the Grantee, his heirs and assigns forever.

And the Grantor, for itself, and its successors, does covenant, promise and agree, to and with the Grantee, his heirs and assigns, that it has not done or suffered to be done, anything whereby the said premises hereby granted are, or may be, in any manner encumbered or charged, except as herein recited; and that the said premises, against all persons lawfully claiming, or to claim the same, by, through or under it, it WILL WARRANT AND DEFEND, subject to: Covenants, conditions, restrictions of record, public and utility easements, provided that such exceptions do not impair Purchaser's intended use of the Unit of residential purposes, and general real estate taxes for the year 2017 and subsequent years.

CCPD REVIEWER Ry

IN WITNESS WHEREOF, said Grantor has caused its signature to be hereto affixed, and has caused its name to be signed to these presents, this 30 day of June, 2017.

**SDL IVEST GROUP, LLC**

  
**SONJA D LAWRENCE, Its Manager**

*See Attached  
Acknowledgment or Power*

Instrument prepared by: Rosenthal Law Group, LLC, 3700 W Devon, Ste E, Lincolnwood, IL 60712

MAIL TO:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

SEND SUBSEQUENT TAX BILLS TO:  
LEGION INVESTMENTS, LLC

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

OR

RECORDER'S OFFICE BOX NO. \_\_\_\_\_

STATE OF \_\_\_\_\_ }  
COUNTY OF \_\_\_\_\_ } SS

I, the undersigned, a Notary Public in and for said County and State, do hereby certify that SONJA D LAWRENCE, manager of SDL IVEST GROUP, LLC is/are personally known to me to be the same person(s) whose name(s) is/are subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that they signed, sealed and delivered said instrument as their free and voluntary act for the uses and purposes therein set forth.

Given under my hand and official seal, this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

Notary Public \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

*See Attached  
Acknowledgment or Power*

**CALIFORNIA ALL-PURPOSE  
CERTIFICATE OF ACKNOWLEDGMENT**  
(CALIFORNIA CIVIL CODE § 1189)

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF Los Angeles )

On Jan. 30, 2017 before me, Gia Michael Dang, Notary Public  
(Date) (Here Insert Name and Title of the Officer)

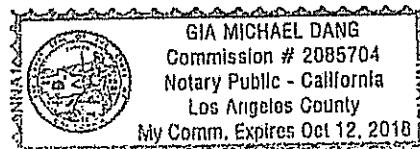
personally appeared Sonja Diane Lawrence,  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same  
in his/her/their authorized capacity(ies), and that, by his/her/their signature(s) on the instrument  
the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

WITNESS my hand and official seal.

Gia Michael Dang  
Signature of Notary Public

(Notary Seal)



**ADDITIONAL OPTIONAL INFORMATION**

**Description of Attached Document**

Title or Type of Document: Warranty Deed (Illinois) Document Date: 01/30/2017  
Number of Pages: 2 Signer(s) Other Than Named Above: None  
Additional Information: \_\_\_\_\_

# REAL ESTATE TRANSFER TAX

21-Feb-2017



**CHICAGO:**

330.00

**CTA:**

132.00

**TOTAL:**

462.00 \*

20-29-417-015-0000 | 20170201614562 | 1-953-747-648

\* Total does not include any applicable penalty or interest due.

# REAL ESTATE TRANSFER TAX

21-Feb-2017



COUNTY:	22.00
ILLINOIS:	44.00
TOTAL:	66.00

20-29-417-015-0000

| 20170201614562 | 0-030-356-160

FILED  
Electronically  
CV18-00764  
2019-07-03 11:55:02 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7354819 : csulezic

EXHIBIT 7  
**CONTRACTOR AGREEMENT DATED MARCH 22, 2017**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

EXHIBIT 7  
**CONTRACTOR AGREEMENT DATED MARCH 22, 2017**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)



Legion Investments  
2171 San Remo Dr., Sparks NV 89434  
Phone – 530-251-3205

### Contractor Agreement

To: Derek Cole & Todd Hartwell, TNT Complete Facility Care Inc, 919 North LaFox. South Elgin IL, 60177

Re: May Street, 7747 S. May St., Chicago, IL, 60620

THIS SUBCONTRACT AGREEMENT (hereinafter referred to as the "Subcontract") is entered into this 22nd, March 2017 between: Legion Investments (hereinafter referred to as "Owner"), with its principal office at 2171 San Remo Dr., Sparks NV 89434, and Derek Cole (hereinafter referred to as "Contractor").

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

1. DOCUMENTS. The Contract Documents includes a description of the work to be performed by Contractor under this Subcontract. Contractor acknowledges that he has carefully examined and studied the contract Documents in their entirety. Contractor further acknowledges that the work of the various Contractors for the Project is interrelated, and Contractor fully understands the character of the work to be performed by him under the Subcontract Documents.
2. WORK COVERED. Contractor agrees to perform in good and workmanlike manner, and to furnish to the Project all labor, materials (all materials shall be new unless otherwise specified by Owner), supplies, equipment, scaffolding, services, machinery, tools, and other facilities of every description required for the prompt and efficient execution of the work (hereinafter referred to as the "Work") as outlined ADDENDUM "A" attached hereto and incorporated herein by this reference. Contractor shall be obligated to perform the Work in strict compliance with the Subcontract Documents and all regulations (including OSHA & all other safety laws) as well as with the provisions of this Subcontract. Contractor acknowledges that the Subcontract Documents permit owner to perform construction or operations related to the Project and that, as a result, Owner may perform portions of the Work, as modified or changed pursuant to the terms hereof.
3. CONTRACT PRICE. For the strict (but not substantial) performance of all its obligations hereunder, Owner shall pay to Contractor the amounts set forth in ADDENDUM "B" attached hereto and incorporated herein by this reference (the "Contract Price").
4. PAYMENT SCHEDULE. So long as Contractor is not in default under any of the provisions of this contract, payment will be made for that portion of the Work completed at the unit price, lump sum price, or prices specified in accordance with the payment schedule set forth in ADDENDUM "B" and as payments are received by Contractor from owner. Contractor shall not be obligated to make progress payments to Contractor until Owner has received:
  - (a) City and County inspections;

(b) Reasonable satisfaction that all legitimate complaints involving Contractor's work has been corrected by Contractor.

Any payment made here under or advances made by Owner prior to full completion and final acceptance of the Work shall not be construed as evidence of acceptance of any portion of the Work. Owner shall have the right to make payments to Contractor hereunder by checks payable jointly to Contractor and his suppliers and laborers, or any of them. Owner may deduct from payments due or to become due to Contractor any amounts payable to Owner by Contractor under this Contractor hereunder unless and until Contractor furnishes to Owner, releases of claims of Contractors, laborers, material men and other Contractors performing work or furnishing material under this Subcontract, which releases of claims shall be in a form satisfactory to Owner, and it is agreed that no payment hereunder shall be made, except at Owner's option, unless and until such releases of claims are furnished. IN ORDER TO TO RECEIVE PAYMENT, CONTRACTOR MUST PROVIDE INVOICES BY TUESDAY ON OR BEFORE 5:00 PM BEFORE THE FRIDAY OF PAY. INVOICE MUST INCLUDE (3) PICTURES OF EACH ROOM AND EACH EXTERIOR SIDE OF THE PROPERTY EVEN IF CONTRACTOR IS NOT PERFORMING WORK ON THAT AREA. PAYMENTS TO CONTRACTOR MAY BE PICKED UP BETWEEN THE HOURS OF 4:00 PM AND 5:00 PM ON FRIDAY. NO EXCEPTIONS!

5. RETENTIONS. Owner shall be entitled to retain and withhold from the amount due Contractor without interest that portion of the Contract Price designated as "Retention" in ADDENDUM "B" until Owner deems job complete and for a period of 7 business days thereafter.

6. ADDITIONS, CHANGES, AND MODIFICATIONS TO SUBCONTRACT. The terms and conditions of this Subcontract are not subject to addition, modification or change, unless such addition, modification or change in writing. Any addition, change, or modification made by a duly authorized representative of Owner makes such addition, modification, or change in writing. Any addition, change, or modification made by any other person or persons shall not be binding upon Owner, nor shall Owner have any responsibility or liability for unauthorized additions, changes, or modifications to this Subcontract. No addition, change, or modification made as herein provided shall void this Subcontract.

7. ADHERENCE TO PLANS AND SPECIFICATIONS. Contractor shall make no changes in nor shall deviate from the Subcontract Documents. Contractor shall be responsible and liable for any and all damage that may result from such changes or deviations. Contractor will be required at his own cost and expense to cause any of his work to conform strictly to the contract Documents, unless a written authorization of Owner executed in accordance with paragraph 6, addressed to Contractor, shall be given, setting forth in detail what specific changes may be made. Should there be any discrepancy between the plans or the specifications, or both, and any governmental laws or regulations, then those, which are more stringent and/or maximum, shall govern. Owner assumes no responsibility for failure of the plans or specifications of the Subcontract Documents to meet with governmental laws or regulations, and it is conclusively presumed that the Contractor is familiar with said governmental laws or regulations, regardless of the provisions of the Contract Documents. Contractor agrees that should any change be required by any governmental authority, such change shall be made by Contractor without increase in the Subcontract Price, Owner agreeing only that it will use its best efforts to have the Subcontract Documents meet with the requirement of governmental authority. If any of the Contract Documents

provide for any performance contrary to any such laws and regulations, Contractor shall be required to notify Owner, in writing, prior to the correction of such Contract Documents to comply with the applicable law or shall be required to notify Owner, in writing, prior to the correction of such Contract Documents to comply with the applicable law or regulation and Contractor shall not perform any such work until the corrected Contract Documents have been approved in writing by Owner in accordance with Paragraph 6 of this Subcontract.

8. EXTRAS. It is agreed that all labor, material, and equipment furnished by Contractor shall be deemed to be included within the Contract Price, even though the labor, materials, and equipment are not specifically required or demanded in this Subcontract or the Contract Document, and that the same nevertheless shall be deemed to be included within the scope of labor, materials, and equipment properly and necessarily required for the performance of the Work. Owner, at any time during the progress of the Project, may order in writing changes, additions, or modifications to the Contract Documents in accordance with Paragraph 6, and the same shall not void this Subcontract, but the value thereof, as designated by Owner in such written authorization, shall be added to or deducted from the Contract Price as the case may be.

9. TAXES. The Contract Price includes the payment by Contractor of any tax under any law now existing, or which may hereafter be adopted by Federal, State, local or other governmental authority, taxing the materials, services required or labor furnished, or any other tax levied by reason of the performance or the Work.

10. COMMENCEMENT AND COMPLETION OF THE WORK. Contractor shall prosecute the Work in a prompt and diligent manner whenever such Work, or any part of it becomes available or at such other time or times as Owner may direct, and so as to promote the general progress of the construction of the Project. Contractor agrees to perform the Work in a prompt and diligent manner, commencing the several parts thereof at such times and proceeding therewith in such order as directed by Owner's superintendent, and agrees to finish the several parts and the whole of the Work, so that in conjunction with other trades engaged thereon, he will assure the uninterrupted progress of the Project. Contractor will cooperate with related work and will not interfere in any manner with the work of Owner or other Contractors. In the event of any conflicts in the construction schedule of Contractor and Owner or any other Contractor, Owner shall decide which work shall have precedence and the decision of Owner shall be final.

11. COOPERATION BY CONTRACTOR; ATTENDANCE, MEETINGS. Contractor shall cooperate with Owner in scheduling and performing his work to avoid conflict or interference with the work of others. Contractor agrees to use his best efforts to attend all meetings, upon twenty-four (24) hours notice, written or oral, called by Owner concerning the Project. Should Contractor fail to so attend two (2) such meetings (whether or not consecutive) Owner may terminate this Subcontract, and Owner shall have all rights or remedies provided at law or in equity, including those specified in Paragraph 21.

12. LINES, GRADES AND MEASUREMENTS. Contractor assumes full responsibility for the proper interpretation of all lines, levels, and measurements and their relation to bench marks, property lines, reference lines, and the work of Owner or other Contractors in all cases where dimensions are governed by conditions already established, the responsibility for correct knowledge of the conditions shall rest entirely on Contractor. No variations from specified lines or grades or dimensions shall be made except on written authority of Owner. All portions of the Work shall be made to conform to actual, final conditions as they develop in the course of

construction.

13. RELATED WORK. By commencement of the Work hereunder, Contractor acknowledges that all related, adjacent or dependent work, services, utilities, or materials are acceptable to him. Unless prior damage is reported in writing by Contractor to Owner, Contractor hereby waives any and all claims for damages or extras with respect to defects in or failure of such work, services, utilities or materials.

14. INTERRUPTION OF WORK. If, as a result of fire, earthquake, act of God, war, strikes, picketing, boycott, lockouts, nonpayment by property owner, nonpayment by construction lender or other causes or conditions beyond the control of Owner, Contractor discontinues the Work prior to its completion, then Contractor shall resume performance as soon as conditions permit, or if Contractor shall discontinue construction because Owner shall consider it inadvisable to proceed with the Work. Contractor will resume the Work promptly upon receiving written notice from Owner to do so, and Contractor shall not be entitled to any damages or compensation on account of cessation of the Work as a result of any of the causes mentioned above.

15. CORRECTION AND REMOVAL OF DEFECTS IN MATERIAL OR WORK. All defects in material used or work performed under this Subcontract as designated by City or County inspectors, Owner or Owner, and which are brought to the attention of Contractor, shall immediately be corrected by Contractor to the satisfaction of Owner and the designating person. If any workmanship or materials are declared in writing by Owner, Owner or any applicable governmental authority to be unsound or improper, then Contractor shall, within twenty-four (24) hours after service upon him of written notice from Owner, Owner, or the appropriate governmental authority to that effect, proceed with due diligence to remove from the site all such materials, whether worked or unworked, and shall take down all such portions of the unsound or improper work and shall make good all work in other trades damaged by such a removal. In the event that all or any portion of such work shall be of such a nature, or the time available to complete the whole work shall be so limited, that in the judgment of Owner it would not be a expedient to order the same replaced or corrected, Owner, at its option, may deduct from the payments due or to become due to Contractor an amount that shall represent the difference between the fair and reasonable value of such work and its value had it been executed in conformity with the Contract Documents.

16. FAILURE TO ADEQUATELY PERFORM. Upon written or oral notification from Owner that Contractor's performance is in any respect unsatisfactory, needs correction or that Contractor has failed to comply fully with the terms of this Subcontract or the Contract Documents, or that the Work has been damaged, Contractor shall, within twenty-four (24) hours after written notification, Owner may terminate this Subcontract and Owner shall have all the rights and remedies provided at law or in equity, including those specified in Paragraph 21. If, in Owner's sole judgment, Contractor displays a pattern of failure to comply with the terms of this Subcontract or the Contract Documents (as evidenced by more than one notice of Contractor's failure to so comply, given pursuant to this Paragraph 16 then, Owner may terminate this Subcontract and Owner shall have all the rights and remedies provided at law or in equity, including those specified in Paragraph 21).

17. DAMAGE TO RELATED WORK. Should Contractor damage the work or installations of Owner or any other Contractor, Contractor shall promptly pay to Owner or such Contractor, as the case may be all cost incurred in repairing the damage. Contractor and his suppliers shall not be permitted to drive any vehicle over

any curb or sidewalk on the Project at any time by any means. Contractor shall take all action necessary to ensure that his suppliers comply fully with the requirements of this Paragraph 17 and shall be fully responsible for all damage to curbs or sidewalk caused by his vehicles or those of his suppliers. All damage to the Work prior to full completion and final acceptance of the Project as a whole, regardless of who caused such damage or how it occurred, shall be promptly repaired or replaced by Contractor at his own cost and expense.

18. HOLD HARMLESS. Contractor will hold Owner harmless from any and all damages caused by defective workmanship or materials, and delays caused thereby, and will pay and reimburse Owner for any and all such damages. In the event any dispute arises as to Contractor's workmanship or the quality of materials furnished, the decision of Owner reasonably made and arrived at shall be binding.

19. GUARANTEE. Contractor guarantees Owner, Owner, and all future owners of the Project, against any loss or damage arising from any defect in materials and workmanship furnished under this Subcontract for the period established in the Contract Documents or, if no such period is established, a period of one (1) year from the date of final acceptance of the Project as a whole. Contractor agrees to execute any special guarantees as provided by the terms of the Contract Documents prior to final payment. Upon written notification of defects from Owner or any such owner, Contractor shall proceed within twenty-four (24) hours of such notice with due diligence, at his own expense, to replace any defective materials or perform any labor necessary to correct any defect in the Work, and upon failure of Contractor to do so, Owner or the affected Owner may furnish or secure, at Contractor's expense, such materials or labor as are necessary to bring the Work up to the required standard, all costs thus incurred thereupon becoming a debt immediately due and payable by Contractor, which debt Contractor shall pay to Owner within fifteen (15) days after written demand from Owner or the affected Owner.

20. DAMAGES TO OWNER FOR DELAY. Inasmuch as Contractor is only one of many Contractors performing services and providing materials to the Project, and since the timely performance of Contractor's work hereunder is essential to the coordination with the completion of the various other Contractors' work, it is mutually recognized that Owner will suffer substantial damage if Contractor fails to perform its work in a timely manner. Contractor agrees to reimburse Owner for any and all liquidated damages that may be assessed against and collected from Owner by Owner, which are attributable to or caused by Contractor's failure to furnish the materials and perform the work required by this Subcontract within the time fixed in the manner provided for herein, and in addition thereto, agrees to pay Owner such other or additional damages as Owner may sustain by reason of such delay by Contractor. The payment of such damages shall not release Contractor from obligation to otherwise fully perform this Subcontract. In the event of such failure or delay in the timely performance of the Work, the damages provided above may, at the option of Owner, be applied against any amount due Contractor hereunder. The remedy herein provided for is to compensate Owner for Contractor's failure or delay in the timely performance of the Work. It is understood and agreed that this remedy is not applicable to any breach or default hereunder by Contractor which results in something other than a delay in performance, and that Owner has the right in addition hereto, to pursue any and all legal and/or equitable remedies as might be available to it in the event Contractor fails in the performance of any of the terms of this Subcontract.

21. RIGHTS OF OWNER ON TERMINATION. In the event of termination of this Subcontract by Owner as provided herein, Contractor hereby authorizes Owner to perform and complete the Work and in connection

therewith, Owner may do any or all of the following:

- (a) Eject Contractor;
- (b) take possession of all materials, appliances, tools and equipment already on the site or intended for the Work, as well as all materials in the course of preparation wherever located, and have any and all rights under all subcontracts of Contractor; and/or
- (c) Go in the open market and secure materials and employ persons which in Owner's judgment are necessary to complete the Work, at Contractor's expense.

Contractor shall not be entitled to receive any further payment until acceptance of the entire Project and then only after the direct and indirect costs incurred by Owner to complete Contractor's work, plus a reasonable allowance for profit for Owner, have been determine. The direct and indirect costs and the allowances for profit shall apply against the Contract Price, and, if in excess of the balance due Contractor, the amount of the excess shall be a debt immediately due and owing from Contractor to Owner.

22. DEFENSE OF PATENTS. The Contractor shall defend all suits or claims for infringement by him of any patent rights that may be brought against Owner.

23. CUTTING, FITTING AND PATCHING; WORK OF OTHERS. Contractor shall, as a part of the Contract Price, do all cutting, fitting, and patching of his work that may be required to make its several parts come together properly, and to fit it to receive or be received by the work of other Contractors, shown upon or reasonably implied by the Contract Documents. Contractor agrees to protect the work of others from damage as a result of his operations. Should Contractor cause damage to the work of any other Contractor, then Contractor agrees to compensate promptly such Contractor to the extent of his damage as provided in Paragraph 17. Should the proper workmanlike and accurate performance of the Work under this Subcontract depend wholly or partially upon the proper workmanlike or accurate performance of any work or materials furnished by Owner or other Contractors on the Project. Contractor agrees to use all means necessary to discover any such defects and report same in writing to Owner before proceeding with his work which is so dependent; and shall allow Owner a reasonable time in which to remedy such defects; and in the event he does not so report to Owner in writing, then it shall be assumed that Contractor has fully accepted the work of others as being satisfactory and Contractor shall be fully responsible thereafter for the satisfactory performance of the Work covered by this Subcontract, regardless of the defective work of others.

24. CLAIMS OF CONTRACTOR FOR DELAY OR DAMAGE. Contractor expressly waives any and all rights to make claim or be entitled to receive any compensation or damages for failure of Owner or other Contractors to have related portions of the Work completed in time for the work of the Contractor to proceed shall have been given to Owner of cancellation reduction in coverage.

25. INDEMNIFICATION. To the fullest extent permitted by law,

(a) Contractor shall indemnify and hold free and harmless Owner, its officers, trustees, directors and employees, from any and all obligations, liability, liens, claims, demands, loss, damage, costs or causes of action whatsoever (hereinafter referred to as "Liability") to, or brought by, any and all persons, including without limitation employees of Contractor, family members of Contractor or heirs of Contractor, or to property, in any way due to or arising out of or claimed to arise out of performance by Contractor of this Subcontract, however the Liability may be caused regardless of whether the Liability is caused by the conduct

or negligence of Owner, including, but not limited to, the following:

(i) Any loss, cost, damage or expense sustained by Owner, including reasonable attorneys' fees, on account of or through the use or misuse of the Project and the improvements and real estate appurtenant thereto, or any part thereof by Contractor, or by any other person thereon at the invitation, express or implied, of Contractor, or by permission of Contractor.

(ii) Any loss, cost, damage, expense including reasonable attorneys' fees, liability or damages as a result of bodily injury, including death, or property damage, sustained at any time by any person or persons, including without limitation Contractor's employees, family members or heirs, arising out of or in consequence of the performance of the Work whether such bodily injuries or such property damage are due to the negligence of Contractor or any other person. Contractor will pay when due every valid Liability created or incurred by Contractor, his agents, servants or employees excepting only the payment to Contractor of the Contract Price at the time and in installments as provided in ADDENDUM "B", subject to the obligations of this Subcontract.

(b) Notwithstanding the foregoing, the indemnity agreement created herein shall apply to indemnify and hold harmless the Owner, its officers, directors or employees against any liability or any and all damage, loss or expense resulting from death or bodily injury to persons or any injury to property arising from the sole negligence or willful misconduct of Owner, its officers, agents, trustees, heirs, employees, servants or independent contractors who are directly responsible to Owner.

(c) Contractor agrees not to allow anyone on Project who is not a direct employee of Contractor. If Contractor allows anyone on site other than a paid employee of its company, then Contractor is fully liable for any and all losses that may happen to that individual including injury or death.

26. INDEPENDENT CONTRACTOR RELATIONSHIP. The relationship of Contractor to Owner during the term of this Subcontract shall be that of an independent contractor. Contractor shall take any and all actions necessary to maintain said independent contractor relationship throughout term of the Subcontract, and Contractor shall at no time be considered an employee of Owner.

27. CLEAN-UP AND STORAGE. Contractor shall maintain, to the satisfaction of Owner, all work sites in a clean, neat, and safe condition and shall comply promptly with any instructions from Owner with respect thereto. As the Work is completed Contractor shall remove from the site thereof, to the satisfaction of Owner, all of Contractor's rubbish, debris, materials, tools and equipment and, if Contractor fails to do so promptly, Owner may remove the same to any place of storage or any dumping ground at Contractor's risk and expense and without incurring any responsibility to Contractor for loss, damage, or theft. All storage and removal costs thus incurred by Owner shall be deducted from any payment or balance due Contractor hereunder.

28. INTEREST RATE ON CHARGEBACKS. Whenever any monies are expended or costs or expenses are incurred by Owner on behalf of or on account of Contractor, for which Contractor should have paid or for which Contractor is required to reimburse Owner, or if Owner continues or completes the Work after default by Contractor, Contractor shall pay to Owner interest at the rate of ten percent (10%) per annum. The said interest charges shall accumulate from the time said monies are expended or said costs or expenses are incurred until the same are paid to Owner by Contractor. Nothing herein contained shall be construed as requiring Owner to make any such expenditure, advance any such monies, or incur any such expenses.

29. USE OF OWNER'S EQUIPMENT. The use of any of Owner's equipment, rigging, blocking, hoist, or

scaffolding by Contractor given, loaned or rented to Contractor by Owner shall be upon the distinct understanding that Contractor use the equipment, rigging, blocking, or scaffolding at his own risk and takes the same "as is" and Contractor assumes all responsibility for and agrees to hold Owner harmless from all claims or damages whatsoever resulting from the use thereof, whether such damage results to Contractor or his own employees or property or to other persons or the employees or properties of other persons. Nothing herein contained shall be deemed to permit any such use by Contractor without the prior written consent by Owner.

30. PERMITS AND LAWS. Contractor shall promptly obtain, at his expense, and before commencing any portion of the Work, all permits and licenses required for the Work. Contractor shall comply with all laws, ordinances, rules, regulations, orders, and requirements of the applicable city and county government, the State, and Federal government, and of any board or commission or any other duly qualified body having jurisdiction, which shall or might affect or apply to the Work. Contractor shall exhibit each such required permit or license to Owner upon its request.

31. ASSIGNMENT. Contractor shall neither assign nor subcontract the whole or any portion of this Subcontract or the payments hereunder without first obtaining in each and every instance permission in writing from Owner, and then only subject to, and upon the same terms and conditions as, the provisions of this Subcontract. Any permission granted by Owner shall not be deemed permission to any subsequent assignment or subcontract. Any assignment or subcontract by Contractor made without the consent of Owner as herein provided shall be null and void and shall at the option of Owner be grounds for termination of this Subcontract, and Owner shall have the right to elect to proceed in accordance with the provisions of Paragraph 21. Any such assignment or subcontract shall contain all of the provisions of this Subcontract and shall require the assignee or Contractor thereunder to be directly liable to Owner in all respects as herein required of Contractor. Any assignment of this Subcontract or assignments of payments permitted by Owner shall be submitted to Owner for its prior written approval and shall not be binding upon Owner until so approved. No assignment shall relieve Contractor from his duties, obligations, and liabilities hereunder, unless specifically relieved in writing by Owner.

32. LIENS. Contractor shall pay when due all claims for labor or material incurred by him in the performance of this Subcontract if any lien of mechanics or materialism, or attachments, garnishments or suits affecting title to real property are filed against the Property, or any portion thereof, Contractor shall, within ten (10) days after written demand of him by Owner, cause the effect of such lien, attachment or suit to be removed from the Property, or any portion thereof, and in the event Contractor shall fail to do so, this Subcontract may be terminated, at Owner's option, upon twenty-four (24) hours notice to Contractor, and Owner shall have all the rights and remedies provided at law or in equity, including those specified in Paragraph 21. Owner is hereby authorized to use whatever means it may deem best to cause the lien, attachment or suit, together with its effect upon the title, to be removed, discharged, satisfied, compromised or dismissed, and the cost thereof, including reasonable attorneys' fees incurred by Owner, shall become immediately due from Contractor to Owner. Contractor may contest any such lien, attachment, or suit, provided that first he shall cause the effect to be removed from the Property, or any part thereof, and shall do such further things as may be necessary to cause Owner not to withhold, by reason of such liens, attachments or suits, monies due to Owner from Owner. If all terms of this Subcontract are not met by Contractor, then Contractor waives any and all rights to liens and cannot file liens or must immediately remove any existing liens at his/her own costs.



33. **INSOLVENCY OR BANKRUPTCY.** In the event Contractor becomes insolvent, is unable to pay his current obligations or commits any act of bankruptcy, this Subcontract may be terminated at the option of Owner upon twenty-four (24) hours' written notice to Contractor, and Owner shall have all the rights or remedies provided at law or in equity, including those specified in Paragraph 21. Contractor hereby authorizes all financial institutions, material men and individuals, to disclose to Owner, Contractor's financial status, credit and manner of meeting obligations. Contractor agrees in the event it files, or others file a petition for relief under the Bankruptcy Code concerning it, and in the event that its performance hereunder is deemed deficient by the General Contractor during such time that Contractor is considering whether to affirm or reject this contract pursuant to its right provided under the Bankruptcy Code, Owner may seek and obtain substitute performance by any means to make up for and cure any such deficiency until such time as Contractor has made its election to affirm or reject. Contractor agrees that any sums Owner expends to obtain such substitute performance shall be deducted from any and all amounts that are or may become due under this contract.

34. **DEATH OF CONTRACTOR.** If Contractor is a sole proprietor, his death automatically terminates this Subcontract.

35. **JOB SITE SUPERINTENDENT.** During the performance of the Work, Contractor shall furnish to each job site sufficient skilled labor, adequate and suitable materials, tools, and equipment to proceed with the Work. A qualified superintendent or foreman shall be designated for each job site to act as the representative of Contractor on the Project, with the right and power to obligate Contractor. Contractor shall continuously employ such superintendent or foreman on each job site wherein Contractor is conducting any portion of the Work under the Contract Documents. Such superintendent or foreman shall at all times be satisfactory to Owner and shall not be changed without written consent of Owner. Upon oral or written notice from Owner that such superintendent or foreman is unsatisfactory to Owner, Contractor shall replace him with a person satisfactory to Owner within twenty-four (24) hours.

36. **TIME OF ESSENCE AND WAIVER.** All time limits stated in this Subcontract are of the essence to the Subcontract. A waiver by Owner of any one of the terms or conditions herein contained shall not be construed as a waiver of any subsequent breach. Any consent by Owner to the delay in the performance of Contractor of any obligations to be performed by Contractor shall be applicable only to the particular transaction to which it relates, and it shall not be applicable to any other obligation or transaction. Delay in the enforcement, of any remedy by Owner in the event of a breach of any term or condition hereof, or the exercise by Owner of any right hereunder, shall not be construed as a waiver.

37. **CONTRACTOR'S WARRANTIES AND REPRESENTATIONS.** As a material inducement to Owner to enter into this Subcontract, Contractor warrants and represents as follows:

- (a) Contractor is familiar with all requirements of the Subcontract and Contract Documents.
- (b) Contractor has invested the Project and has satisfied himself regarding the character of the Work and local conditions that may affect Contractor's performance.
- (c) Contractor is satisfied that the work can be performed and completed in conformance with the Subcontract.
- (d) Contractor accepts all risk directly or indirectly connected with the performance of this Subcontract.

(e) Contractor warrants that in entering into this Contractor he has not been influence by a statement or promise of Owner or its representatives, but only by the Contract Documents.

(f) Contractor is financially solvent

(g) Contractor is experienced and competent to perform this Subcontract.

(h) Contractor is qualified, licensed in good standing and authorized to do business as a contractor in the State where the project is located.

(i) Contractor is familiar with all general and special laws, ordinance and regulations that may affect the Work, its performance or those persons employed with respect thereto.

(j) Contractor is familiar with the tax and labor regulations and with rates of pay that will affect his performance hereunder.

38. PUBLICITY. Contractor shall not disclose or make public to any media or any persons associated with the news media or by advertisement or any kind or nature that Contractor has enter into his Subcontract with Owner, unless such public release is first approved in writing by Owner.

39. CONFLICT OF LAW. The laws if the State of Illinois shall govern the interpretation, validity and construction of the terms and conditions of this Subcontract.

40. SEVERABILITY. Should any of provisions of this Contractor prove to be invalid or otherwise ineffective, the other provisions of this contract shall remain in full force and effect. There shall be substituted for any such invalid or ineffective provision a provision that, as far as legally possible, most nearly reflects the intent of the parties hereto.

41. SAFETY REGULATIONS. Contractor shall comply with all applicable safety regulations and orders, including, but not limited to, regulations and orders of all Federal, State and local agency in connected therewith, and shall hold Owner free and harmless from any and all claims by reason of Contractor's failure to fully comply with such laws, acts, or regulations.

42. HEIRS AND ASSIGNS. This Subcontract shall insure to the benefit of all binding on the heirs, executors, administrators and successors of the respective parties hereto, and the assigns of Owner.

43. NOTICE. Any notices or statements required or designed to be given under this Subcontract, unless otherwise provided herein, shall be personally served by United States mail to the address set forth below, until notice of a difference in address be given.

47. PLACE OF PERFORMANCE. Execution of this Contractor shall be Owner's principal place in business in the City of Chicago, County Cook, State of Illinois, and the property shall be deemed the place performance of this Subcontract for all legal purposes.

48. ACCIDENTS REPORTS. Contractor shall report to Owner all accidents incidental to the work, which result in death or injury to persons or in damage to property.

49. DEBT TO OWNER: If Contractor fails to cure a warranty issue, owes money to Owner or fails to complete

a Project other than the Project directly related to this Subcontract, Owner may deduct monies from Contractor from this Subcontract without Owner losing any rights that Owner has on this Subcontract or any other Subcontract. No other points or paragraphs of this Subcontract or any other Subcontract can be applied by Contractor.

50. A project checklist will be provided at the beginning of each project. Contractor will complete his share of the "project checklist" that was delivered at the time the work began. Contractor will keep his portion of the project checklist up to date and will return the completed checklist at the completion of the project. If the contractor has any issues during the project in regards to the "project checklist" he will contact the developers immediately.

51. The project manager Colleen Burke will be the primary point of contact for any and all concerns that may arise during the rehab process. Please contact her at 773-552-7900 to schedule draw request, project progress inspections, any project checklist questions, and to schedule the utilities turn on times, etc. If Colleen cannot be reached in a timely fashion, then please call Brian Mineau at 530-251-3205.

In WITNESS, WHEREOF, the parties have executed and delivered this Subcontract on the date first set forth above.

OWNER:

Legion Investments

BY: \_\_\_\_\_

DocuSigned by:  
Brian Mineau  
5C279F24A72E245D...

ITS: \_\_\_\_\_

Manager

CONTRACTOR:

TNT Complete Facility Care Inc

Derek Cole

Todd Hartwell

BY: \_\_\_\_\_

DocuSigned by:  
Todd Hartwell  
BY: Derek Cole  
A8B9FDD8F9A84E0...  
88AF04D49B884A7...

BY: \_\_\_\_\_

ITS: \_\_\_\_\_

CEO & Field Operations VP

The above represents and warrants that they are authorized to execute and deliver this Subcontract for the entity referenced above.

ADDENDUM "A"  
DESCRIPTION AND SCOPE OF WORK

Client: Legion investments  
Address: 2171 San Remo DR. Sparks Nevada 89434  
Job title: 7747 S. May St. Chicago IL  
Start date: March 27 2017  
Price: \$80,000

Demo permit application, architect, floor plan design and actual demo will begin as soon as contract signed and down payment received. It is the intention of TNT to execute these tasks in a manner to limit hold time on completion. The Swift action of this will ensure we are complete and on the market by June

Secure all permits, demo all property, design floor plan, secure architectural drawings, submit for approval, execute complete rehab of property including garage, provide a turn key market ready property estimated time 90 days after plans accepted and permit approved. TNT agrees to completely renovate property and be due diligent getting this project planned and approved to complete.

Work to be completed in a timely manner to satisfactory terms and conditions

**PAYMENT TERMS**

\$ 20,000 down to secure permits, architect, demo

\$ 15,000 to begin re construction April 17<sup>th</sup> 2017

\$ 15,000 due April 27<sup>th</sup> 2017

\$ 13,000 due May 8<sup>th</sup> 2017

\$ 9,000 due May 18<sup>th</sup> 2017

Final payment of \$ 8000 due upon punch list completion and key turn over

**DUE DATE:** All work to be completed by June 1st, 2017.

**GENERAL CONTRACTUAL REQUIREMENTS:**

- 1) Time is of the essence, and Contractor may be required to work overtime at his own expense to keep pace with the project.
- 2) Contractor shall be present and work within Owner's established hours.
- 3) Contractor shall mobilize to the site upon notification by the Owner.
- 4) Contractor shall be required to perform multiple mobilizations to perform their work.
- 5) Contractor is responsible for the security of their own stored and installed materials, and the final cleaning of their work until such work is turned over to the owner.
- 6) Contractor shall be responsible for all dust and erosion control that is associated with their work.
- 7) Contractor shall be responsible for their own entire layout from Owner provided control points.
- 8) Contractor's filed representative(s) must walk all required Building & Engineering Inspections when requested.
- 9) Contractor shall attend all required job site coordination meetings, as scheduled by the Owner.
- 10) Contractor shall be responsible to remove all trash and debris from the job site daily.
- 11) Contractor shall only drill and cut structural members, as per the Structural Engineer and building code requirements and limitations. All mechanical or electrical materials shall be installed within the joist and or wall space, unless indicated otherwise on the drawings or directed by Architect.
- 12) Time and material work will not be paid without a previously approved Change Order.
- 13) Contractor shall comply with all Federal, State and local safety regulations.

14) All work shall be in accordance with the plans and specifications as prepared by Architect.

15) Contractor includes all work described in the plans, specifications, and Architect's bid scope sheet. All work shall be performed in accordance with all Federal, State, and City requirements and standards.

GENERAL CONSTRUCTION REQUIREMENTS:

1. Includes necessary preparation for a complete job, including filling nail holes in woodwork to receive paint stain.
2. Includes caulking of all interior sides of all windows and doors.
3. Includes painting of all doors and frames.
4. Includes painting of all roof penetrations to match roof shingles.
5. Includes installing piping to code
6. Includes protection of existing finished surfaces.
7. Includes all site painting as needed bollards, handrails etc.
8. Includes crew for all punch list touch-up as part of your normal contract.
9. Make smooth transitions between old and new work.
10. All invoicing MUST be submitted to Owner's fax no later than the Tuesday preceding the Friday of payment.

For the construction of:

7747 S. May St.  
Chicago, IL 60620

Legion Investments

ADDENDUM "B"

Contract Price

Owner agrees to pay to Contractor for the satisfactory completion of the herein described work the sum of:  
\$80,000.00

Weekly payments will be made up to 90% of the work performed until project completion. The Owner will approve the percentage of the work at its sole discretion.

FILED  
Electronically  
CV18-00764  
2019-07-03 11:55:02 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7354819 : csulezic

EXHIBIT 8  
**CHASE BANK SUBPOENA DUCES TECUM DATED JANUARY 14, 2019**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

EXHIBIT 8  
**CHASE BANK SUBPOENA DUCES TECUM DATED JANUARY 14, 2019**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

1 **CODE: 4065**

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

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

9 JAY KVAM,

Plaintiff,

Case No. CV18-00764

10 v.

Dept. No. 3

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

Date: January 31, 2019  
Time: 2:00 p.m.

Defendants.

14 **SUBPOENA DUCES TECUM**

15 **FROM: MICHAEL L. MATUSKA, ESQ. , Attorney for Plaintiff JAY KVAM**

16 **TO:** Custodian of Records  
17 CHASE BANK  
18 18300 Wedge Parkway  
19 Reno, NV 89511

20 **GREETINGS.**

21 Pursuant to Nevada Rule of Civil Procedure ("NRCP") 45, WE COMMAND YOU, all  
22 business and excuses being laid aside, to appear at Matuska Law Offices, located at 2310 South  
23 Carson Street, Suite 6, Carson City, Nevada 89701, telephone (775) 350-7220 on the 31<sup>st</sup> day of  
24 January 2019, at 2:00 p.m., to produce at that time the documents identified on *Exhibit A*, attached  
25 hereto.

26 **IN LIEU OF APPEARING AS ABOVE COMMANDED**, you may, instead, produce  
27 the following documents identified on *Exhibit A* attached hereto to Matuska Law Offices, located  
28



1 at 2310 South Carson Street, Suite 6, Carson City, Nevada 89701, telephone (775) 350-7220  
2 before the above-referenced date.

3 **STATUTORY NOTICE**  
4 **(NRCP 45(a)(1)(D))**

5 NRCP 45 provides as follows:

6 NRCP 45 (c): Protection of Persons Subject to Subpoena.

7 (1) A party or an attorney responsible for the issuance and service of a subpoena shall  
8 take reasonable steps to avoid imposing undue burden or expense on a person subject to that  
9 subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and  
10 impose upon the party or attorney in breach of this duty an appropriate sanction, which may  
11 include, but is not limited to, lost earnings and a reasonable attorney's fee.

12 (2) (A) A person commanded to produce and permit inspection and copying of  
13 designated books, papers, documents or tangible things, or inspection of premises need not appear  
14 in person at the place of production or inspection unless commanded to appear for deposition,  
15 hearing or trial.

16 (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce  
17 and permit inspection and copying may, within 14 days after service of the subpoena or before the  
18 time specified for compliance if such time is less than 14 days after service, serve upon the party  
19 or attorney designated in the subpoena written objection to inspection or copying of any or all of  
20 the designated materials or of the premises. If objection is made, the party serving the subpoena  
21 shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an  
22 order of the court by which the subpoena was issued. If objection has been made, the party serving  
23 the subpoena may, upon notice to the person commanded to produce, move at any time for an  
24 order to compel the production. Such an order to compel production shall protect any person who  
25  
26  
27  
28

1 is not a party or an officer of a party from significant expense resulting from the inspection and  
2 copying commanded.

3 (3) (A) On timely motion, the court by which a subpoena was issued shall quash or  
4 modify the subpoena if it:

5 (i) fails to allow reasonable time for compliance;

6 (ii) requires a person who is not a party or an officer of a party to travel  
7 to a place more than 100 miles from the place where that person resides, is employed or regularly  
8 transacts business in person, except that such a person may in order to attend trial be commanded  
9 to travel from any such place within the state in which the trial is held; or

10 (iii) requires disclosure of privileged or other protected matter and no  
11 exception or waiver applies; or

12 (iv) subjects a person to undue burden.

13 (B) If a subpoena

14 (i) requires disclosure of a trade secret or other confidential research,  
15 development, or commercial information, or

16 (ii) requires disclosure of an unretained expert's opinion or information  
17 not describing specific events or occurrences in dispute and resulting from the expert's study made  
18 not at the request of any party, the court may, to protect a person subject to or affected by the  
19 subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued  
20 shows a substantial need for the testimony or material that cannot be otherwise met without undue  
21 hardship and assures that the person to whom the subpoena is addressed will be reasonably  
22 compensated, the court may order appearance or production only upon specified conditions.

23 NRCP 45 (d): Duties in Responding to Subpoena.  
24  
25  
26  
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28

1 (1) A person responding to a subpoena to produce documents shall produce them as  
2 they are kept in the usual course of business or shall organize and label them to correspond with  
3 the categories in the demand.

4 (2) When information subject to a subpoena is withheld on a claim that it is privileged  
5 or subject to protection as trial preparation materials, the claim shall be made expressly and shall  
6 be supported by a description of the nature of the documents, communications, or things not  
7 produced that is sufficient to enable the demanding party to contest the claim.

8 Pursuant to NRCP 45(a)(3), this Subpoena is issued by an attorney, authorized to practice law in  
9 Nevada, as an officer of the Court, on behalf of the Court.  
10

11 Dated this 14th day of January 2019.

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

MATUSKA LAW OFFICES, LTD.

15  
16 By: 

17 MICHAEL L. MATUSKA, ESQ., SBN 5711  
18 2310 South Carson Street, Suite 6  
19 Carson City NV 89701  
20 Attorneys for Plaintiff Jay Kvam  
21  
22  
23  
24  
25  
26  
27  
28

EXHIBIT A

1. All bank statements for TNT Complete Facility Care, Inc. from January 1, 2017 until the present.

2. All bank statements for Brian Mineau, 2170 San Remo Drive, Sparks, Nevada 89434 from January 1, 2017 until the present.

3. All bank statements for Legion Investments, LLC from July 1, 2014 until the present.

**CERTIFICATE OF SERVICE**

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

Austin K. Sweet, Esq.  
GUNDERSON LAW FIRM  
3895 Warren Way  
Reno, NV 89509  
[asweet@gundersonlaw.com](mailto: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.

  
SUZETTE TURLEY

FILED  
Electronically  
CV18-00764  
2019-07-03 11:55:02 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7354819 : csulezic

**EXHIBIT 9**  
**JPMORGAN CHASE BANK SUBPOENA DUCES TECUM**  
**DATED FEBRUARY 26, 2019**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

**EXHIBIT 9**  
**JPMORGAN CHASE BANK SUBPOENA DUCES TECUM**  
**DATED FEBRUARY 26, 2019**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

1 **CODE: 4065**  
Michael L. Matuska, Esq. SBN 5711  
2 MATUSKA LAW OFFICES, LTD.  
2310 South Carson Street, Suite 6  
3 Carson City, NV 89701  
Attorneys for Plaintiff  
4  
5

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

9 JAY KVAM,	Plaintiff,	Case No. CV18-00764
10 v.		Dept. No. 3
11 BRIAN MINEAU; LEGION INVESTMENTS,		Date: March 13, 2019
12 LLC; 7747 S. May Street, an Unincorporated		Time: 2:00 p.m.
13 Joint Venture; and DOES I-X, inclusive,		
14 Defendants.		

15 **SUBPOENA DUCES TECUM**

16 **FROM: MICHAEL L. MATUSKA, ESQ. , Attorney for Plaintiff JAY KVAM**

17 **TO:** Custodian of Records  
J.P. Morgan Chase Bank  
18 7610 W. Washington Street  
Indianapolis, IN 46231

19 **GREETINGS.**

20 Pursuant to Nevada Rule of Civil Procedure ("NRCP") 45, WE COMMAND YOU, all  
21 business and excuses being laid aside, to appear at Matuska Law Offices, located at 2310 South  
22 Carson Street, Suite 6, Carson City, Nevada 89701, telephone (775) 350-7220 on the 13<sup>th</sup> day of  
23 March 2019, at 2:00 p.m., to produce at that time the documents identified on *Exhibit A*, attached  
24 hereto.  
25

26 **IN LIEU OF APPEARING AS ABOVE COMMANDED,** you may, instead, produce  
27 the following documents identified on *Exhibit A* attached hereto to Matuska Law Offices, located  
28

1 at 2310 South Carson Street, Suite 6, Carson City, Nevada 89701, telephone (775) 350-7220  
2 before the above-referenced date.

3 **STATUTORY NOTICE**  
4 **(NRCP 45(a)(1)(D))**

5 NRCP 45 provides as follows:

6 NRCP 45 (c): Protection of Persons Subject to Subpoena.

7 (1) A party or an attorney responsible for the issuance and service of a subpoena shall  
8 take reasonable steps to avoid imposing undue burden or expense on a person subject to that  
9 subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and  
10 impose upon the party or attorney in breach of this duty an appropriate sanction, which may  
11 include, but is not limited to, lost earnings and a reasonable attorney's fee.

12 (2) (A) A person commanded to produce and permit inspection and copying of  
13 designated books, papers, documents or tangible things, or inspection of premises need not appear  
14 in person at the place of production or inspection unless commanded to appear for deposition,  
15 hearing or trial.

16 (B) Subject to paragraph (d)(2) of this rule, a person commanded to produce  
17 and permit inspection and copying may, within 14 days after service of the subpoena or before the  
18 time specified for compliance if such time is less than 14 days after service, serve upon the party  
19 or attorney designated in the subpoena written objection to inspection or copying of any or all of  
20 the designated materials or of the premises. If objection is made, the party serving the subpoena  
21 shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an  
22 order of the court by which the subpoena was issued. If objection has been made, the party serving  
23 the subpoena may, upon notice to the person commanded to produce, move at any time for an  
24 order to compel the production. Such an order to compel production shall protect any person who  
25  
26  
27  
28



1 is not a party-or an officer of a party from significant expense resulting from the inspection and  
2 copying commanded.

3 (3) (A) On timely motion, the court by which a subpoena was issued shall quash or  
4 modify the subpoena if it:

5 (i) fails to allow reasonable time for compliance;

6 (ii) requires a person who is not a party or an officer of a party to travel  
7 to a place more than 100 miles from the place where that person resides, is employed or regularly  
8 transacts business in person, except that such a person may in order to attend trial be commanded  
9 to travel from any such place within the state in which the trial is held; or  
10

11 (iii) requires disclosure of privileged or other protected matter and no  
12 exception or waiver applies; or  
13

14 (iv) subjects a person to undue burden.

15 (B) If a subpoena

16 (i) requires disclosure of a trade secret or other confidential research,  
17 development, or commercial information, or

18 (ii) requires disclosure of an unretained expert's opinion or information  
19 not describing specific events or occurrences in dispute and resulting from the expert's study made  
20 not at the request of any party, the court may, to protect a person subject to or affected by the  
21 subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued  
22 shows a substantial need for the testimony or material that cannot be otherwise met without undue  
23 hardship and assures that the person to whom the subpoena is addressed will be reasonably  
24 compensated, the court may order appearance or production only upon specified conditions.  
25

26 NRCP 45 (d): Duties in Responding to Subpoena.  
27  
28

1 (1) A person responding to a subpoena to produce documents shall produce them as  
2 they are kept in the usual course of business or shall organize and label them to correspond with  
3 the categories in the demand.

4 (2) When information subject to a subpoena is withheld on a claim that it is privileged  
5 or subject to protection as trial preparation materials, the claim shall be made expressly and shall  
6 be supported by a description of the nature of the documents, communications, or things not  
7 produced that is sufficient to enable the demanding party to contest the claim.

8 Pursuant to NRCP 45(a)(3), this Subpoena is issued by an attorney, authorized to practice law in  
9 Nevada, as an officer of the Court, on behalf of the Court.  
10

11 Dated this 26th day of February, 2019.

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

MATUSKA LAW OFFICES, LTD.

15  
16 By: 

MICHAEL L. MATUSKA, ESQ., SBN 5711  
2310 South Carson Street, Suite 6  
Carson City NV 89701  
Attorneys for Plaintiff Jay Kvam

EXHIBIT A

1. All bank statements for depository accounts, to include checking and savings, wire transfers and offsets, for TNT Complete Facility Care, Inc., for account 603831855, and all other associated account numbers, from January 1, 2017 until the present.

2. All bank statements for depository accounts, to include checking and savings, wire transfers and offsets, for Brian Mineau, 2171 San Remo Drive, Sparks, Nevada 89434 from January 1, 2017 until the present.

3. All bank statements for depository accounts, to include checking and savings, wire transfers and offsets for Legion Investments, LLC from January 1, 2017 until the present.

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

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 26th day of February 2019, I served a true and correct copy of the preceding document entitled **SUBPOENA DUCES TECUM** as follows:

Austin K. Sweet, Esq.  
GUNDERSON LAW FIRM  
3895 Warren Way  
Reno, NV 89509  
[asweet@gundersonlaw.com](mailto: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.

  
SUZETTE TURLEY

FILED  
Electronically  
CV18-00764  
2019-07-03 11:55:02 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7354819 : csulezic

**EXHIBIT 10**  
**JPMORGAN CHASE BANK SUBPOENA DUCES TECUM**  
**DATED MARCH 26, 2019**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

**EXHIBIT 10**  
**JPMORGAN CHASE BANK SUBPOENA DUCES TECUM**  
**DATED MARCH 26, 2019**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

1 **CODE: 4065**

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. 3

Date: April 9, 2019  
Time: 2:00 p.m.

14 **SUBPOENA DUCES TECUM**

15 **FROM: MICHAEL L. MATUSKA, ESQ., Attorney for Plaintiff JAY KVAM**

16 **TO: Custodian of Records**

17 J.P. Morgan Chase Bank

18 7610 W. Washington Street

19 Indianapolis, IN 46231

20 **GREETINGS.**

21 Pursuant to Nevada Rule of Civil Procedure ("NRCP") 45, WE COMMAND YOU, all  
22 business and excuses being laid aside, to appear at Matuska Law Offices, located at 2310 South  
23 Carson Street, Suite 6, Carson City, Nevada 89701, telephone (775) 350-7220 on the 9<sup>th</sup> day of  
24 April, 2019, at 2:00 p.m., to produce at that time the documents identified on *Exhibit A*, attached  
25 hereto.  
26  
27  
28

**STATUTORY NOTICE**  
**(NRC 45(a)(1)(D))**

NRCP 45 (c): Protection of Persons Subject to Subpoena.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

710

1 is not a party or an officer of a party from significant expense resulting from the inspection and  
2 copying commanded.

3 (3) (A) On timely motion, the court by which a subpoena was issued shall quash or  
4 modify the subpoena if it:

5 (i) fails to allow reasonable time for compliance;

6 (ii) requires a person who is not a party or an officer of a party to travel  
7 to a place more than 100 miles from the place where that person resides, is employed or regularly  
8 transacts business in person, except that such a person may in order to attend trial be commanded  
9 to travel from any such place within the state in which the trial is held; or

10 (iii) requires disclosure of privileged or other protected matter and no  
11 exception or waiver applies; or

12 (iv) subjects a person to undue burden.

13 (B) If a subpoena

14 (i) requires disclosure of a trade secret or other confidential research,  
15 development, or commercial information, or

16 (ii) requires disclosure of an unretained expert's opinion or information  
17 not describing specific events or occurrences in dispute and resulting from the expert's study made  
18 not at the request of any party, the court may, to protect a person subject to or affected by the  
19 subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued  
20 shows a substantial need for the testimony or material that cannot be otherwise met without undue  
21 hardship and assures that the person to whom the subpoena is addressed will be reasonably  
22 compensated, the court may order appearance or production only upon specified conditions.

23 NRCP 45 (d): Duties in Responding to Subpoena.

24 (1) A person responding to a subpoena to produce documents shall produce them as  
25 they are kept in the usual course of business or shall organize and label them to correspond with  
26 the categories in the demand.

27 (2) When information subject to a subpoena is withheld on a claim that it is privileged  
28 or subject to protection as trial preparation materials, the claim shall be made expressly and shall



1 be supported by a description of the nature of the documents, communications, or things not  
2 produced that is sufficient to enable the demanding party to contest the claim.

3 Pursuant to NRCP 45(a)(3), this Subpoena is issued by an attorney, authorized to practice law in  
4 Nevada, as an officer of the Court, on behalf of the Court.

5 Dated this 26th day of March, 2019.

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

8 MATUSKA LAW OFFICES, LTD.

9  
10 By: Michael L. Matuska  
11 MICHAEL L. MATUSKA, ESQ., SBN 5711  
12 2310 South Carson Street, Suite 6  
13 Carson City NV 89701  
14 Attorneys for Plaintiff Jay Kvam  
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EXHIBIT A

1. All bank statements for depository account 169971220, and all other associated account numbers, from January 1, 2017 until the present.
2. All deposits, checks, wire transfers and withdrawals to and from depository account 169971220, to include checking and savings, and all other associated account numbers, from January 1, 2017 until the present.

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 26th day of March 2019, I served a true and correct copy of the preceding document entitled **SUBPOENA DUCES TECUM** as follows:

Austin K. Sweet, Esq.  
GUNDERSON LAW FIRM  
3895 Warren Way  
Reno, NV 89509  
[asweet@gundersonlaw.com](mailto: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.

  
SUZETTE TURLEY

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CV18-00764  
2019-07-03 11:55:02 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7354819 : csulezic

**EXHIBIT 11**  
**JPMORGAN CHASE BANK SUBPOENA DUCES TECUM**  
**DATED JUNE 18, 2019**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

**EXHIBIT 11**  
**JPMORGAN CHASE BANK SUBPOENA DUCES TECUM DATED**  
**JUNE 18, 2019**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

1 **CODE: 4065**  
Michael L. Matuska, Esq. SBN 5711  
2 MATUSKA LAW OFFICES, LTD.  
2310 South Carson Street, Suite 6  
3 Carson City, NV 89701  
Attorneys for Plaintiff  
4  
5

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

9 JAY KVAM,

Plaintiff,

Case No. CV18-00764

10 v.

Dept. No. 3

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

Date: July 8, 2019  
Time: 2:00 p.m.

13 Defendants.  
14

15 **SUBPOENA DUCES TECUM**

16 **FROM: MICHAEL L. MATUSKA, ESQ.,** Attorney for Plaintiff JAY KVAM

17 **TO:** Custodian of Records

18 J.P. Morgan Chase Bank

19 7610 W. Washington Street

20 Indianapolis, IN 46231  
21

22 **GREETINGS.**

23 Pursuant to Nevada Rule of Civil Procedure ("NRCP") 45, WE COMMAND YOU, all  
24 business and excuses being laid aside, to appear at Matuska Law Offices, located at 2310 South  
25 Carson Street, Suite 6, Carson City, Nevada 89701, telephone (775) 350-7220 on the 8th day of  
26 July, 2019, at 2:00 p.m., to produce at that time the documents identified on *Exhibit A*, attached  
27 hereto.  
28 //

IN LIEU OF APPEARING AS ABOVE COMMANDED, you may, instead, produce the following documents identified on *Exhibit A* attached hereto to Matuska Law Offices, located at 2310 South Carson Street, Suite 6, Carson City, Nevada 89701, telephone (775) 350-7220 before the above-referenced date.

## **STATUTORY NOTICE**

(NRCP 45(a)(1)(D))

NRCP 45 provides as follows:

NRCP 45 (c): Protection of Persons Subject to Subpoena.

(1) A party or an attorney responsible for the issuance and service of a subpoena shall take reasonable steps to avoid imposing undue burden or expense on a person subject to that subpoena. The court on behalf of which the subpoena was issued shall enforce this duty and impose upon the party or attorney in breach of this duty an appropriate sanction, which may include, but is not limited to, lost earnings and a reasonable attorney's fee.

(2) (A) A person commanded to produce and permit inspection and copying of designated books, papers, documents or tangible things, or inspection of premises need not appear in person at the place of production or inspection unless commanded to appear for deposition, hearing or trial.

(B) Subject to paragraph (d)(2) of this rule, a person commanded to produce and permit inspection and copying may, within 14 days after service of the subpoena or before the time specified for compliance if such time is less than 14 days after service, serve upon the party or attorney designated in the subpoena written objection to inspection or copying of any or all of the designated materials or of the premises. If objection is made, the party serving the subpoena shall not be entitled to inspect and copy the materials or inspect the premises except pursuant to an order of the court by which the subpoena was issued. If objection has been made, the party serving the subpoena may, upon notice to the person commanded to produce, move at any time for an order to compel the production. Such an order to compel production shall protect any person who

//

1 is not a party or an officer of a party from significant expense resulting from the inspection and  
2 copying commanded.

3 (3) (A) On timely motion, the court by which a subpoena was issued shall quash or  
4 modify the subpoena if it:

5 (i) fails to allow reasonable time for compliance;

6 (ii) requires a person who is not a party or an officer of a party to travel  
7 to a place more than 100 miles from the place where that person resides, is employed or regularly  
8 transacts business in person, except that such a person may in order to attend trial be commanded  
9 to travel from any such place within the state in which the trial is held; or

10 (iii) requires disclosure of privileged or other protected matter and no  
11 exception or waiver applies; or

12 (iv) subjects a person to undue burden.

13 (B) If a subpoena

14 (i) requires disclosure of a trade secret or other confidential research,  
15 development, or commercial information, or

16 (ii) requires disclosure of an unretained expert's opinion or information  
17 not describing specific events or occurrences in dispute and resulting from the expert's study made  
18 not at the request of any party, the court may, to protect a person subject to or affected by the  
19 subpoena, quash or modify the subpoena or, if the party in whose behalf the subpoena is issued  
20 shows a substantial need for the testimony or material that cannot be otherwise met without undue  
21 hardship and assures that the person to whom the subpoena is addressed will be reasonably  
22 compensated, the court may order appearance or production only upon specified conditions.

23 NRCP 45 (d): Duties in Responding to Subpoena.

24 (1) A person responding to a subpoena to produce documents shall produce them as  
25 they are kept in the usual course of business or shall organize and label them to correspond with  
26 the categories in the demand.

27 (2) When information subject to a subpoena is withheld on a claim that it is privileged  
28 or subject to protection as trial preparation materials, the claim shall be made expressly and shall

1 be supported by a description of the nature of the documents, communications, or things not  
2 produced that is sufficient to enable the demanding party to contest the claim.

3 Pursuant to NRCP 45(a)(3), this Subpoena is issued by an attorney, authorized to practice law in  
4 Nevada, as an officer of the Court, on behalf of the Court.

5 Dated this 18th day of June, 2019.

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

8 MATUSKA LAW OFFICES, LTD.

9  
10 By: Michael L. Matuska  
11 MICHAEL L. MATUSKA, ESQ., SBN 5711  
12 2310 South Carson Street, Suite 6  
13 Carson City NV 89701  
14 Attorneys for Plaintiff Jay Kvam  
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EXHIBIT A

1. All checks to and from the following depository accounts, to include checking and savings, from January 1, 2017 until the present:

603831855

708288167

708287185

828025911

232093697

3370873365

377532681

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

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 18th day of June 2019, I served a true and correct copy of the preceding document entitled **SUBPOENA DUCES TECUM** as follows:

Austin K. Sweet, Esq.  
GUNDERSON LAW FIRM  
3895 Warren Way  
Reno, NV 89509  
[asweet@gundersonlaw.com](mailto: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.

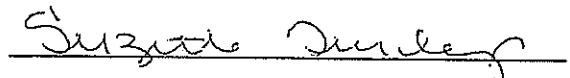
☐ **BY EMAIL:** (as listed above)

☐ **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.

  
SUZETTE TURLEY

FILED  
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2019-07-03 11:55:02 AM  
Jacqueline Bryant  
Clerk of the Court  
Transaction # 7354819 : csulezic

EXHIBIT 12  
**TNT COMPLETE FACILITY CARE, INC. –  
CHASE BANK STATEMENTS**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)

EXHIBIT 12  
**TNT COMPLETE FACILITY CARE, INC. –  
CHASE BANK STATEMENTS**  
( Reply to Opposition to Second Motion for Leave to File Second Amended  
Complaint)



JPMorgan Chase Bank, N.A.  
P.O. Box 659754  
San Antonio, TX 78265-9754

March 01, 2017 through March 31, 2017  
Account Number: 000000603831855

#### CUSTOMER SERVICE INFORMATION

Web site: Chase.com  
Service Center: 1-800-242-7338  
Deaf and Hard of Hearing: 1-800-242-7383  
Para Espanol: 1-888-622-4273  
International Calls: 1-713-262-1679

00014010 DRE 111 212 09517 NNNNNNNNNN 1 000000000 D9 0000  
TNT COMPLETE FACILITY CARE, INC.  
PO BOX 6017  
ELGIN IL 60121-6017



#### CHECKING SUMMARY

Chase Performance Business Checking

	INSTANCES	AMOUNT
Beginning Balance		\$10,358.33
Deposits and Additions	17	144,375.77
Checks Paid	40	-27,431.72
ATM & Debit Card Withdrawals	56	-8,592.31
Electronic Withdrawals	34	-109,786.16
Other Withdrawals	3	-8,245.54
Fees	2	-177.00
Ending Balance	152	\$501.37

#### DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
03/06	Deposit 1655531489	\$25,844.38
03/06	Deposit 1672998492	5,000.00
03/06	Online Transfer From Chk ...3365 Transaction#: 6054302791	1,500.00
03/09	Schneider Enterp Sni_Jpm_El 2258127 CCD ID: 2203982737	9,682.40
03/10	Deposit 1678132539	1,448.60
03/10	Online Transfer From Chk ...7185 Transaction#: 6066818160	2,800.00
03/13	Online Transfer From Chk ...7185 Transaction#: 6073886166	5,000.00
03/14	Deposit 1678132589	18,047.62
03/21	Fedwire Credit Via: Greater Nevada Credit Union/321280143 B/O: Legion Investments, LLC Sparks NV 89434 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=O/B Gtr NV CU C Obi=9919 S Forest/11 Imad: 0321GmqImp01013651 Trn: 5541309080FI	10,000.00
03/21	Deposit 1677681731	7,750.79
03/22	Schneider Enterp Sni_Jpm_El 2275276 CCD ID: 2203982737	9,867.62
03/23	Card Purchase Return 03/22 Staples 00116590 South Elgin IL Card 0690	48.38
03/23	Fedwire Credit Via: Atty Bank/124003116 B/O: Jay Kvam Reno NV 89511-1476 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=2213514 Obi=77 47 South May St Legion Investments Jay Kvam Imad: 0323MmqImp000175 Trn: 5237909082FI	20,000.00
03/24	Card Purchase Return 03/20 Cna Insurance Companies Chicago IL Card 0690	175.00



JPMorgan Chase Bank, N.A.  
P O Box 659754  
San Antonio, TX 78265-9754

April 01, 2017 through April 28, 2017  
Account Number: 000000603831855

#### CUSTOMER SERVICE INFORMATION

Web site: Chase.com  
Service Center: 1-800-242-7338  
Deaf and Hard of Hearing: 1-800-242-7383  
Para Espanol: 1-888-622-4273  
International Calls: 1-713-262-1679

00014083 DRE 111 212 12317 NNNNNNNNNN 1 000000000 09 0000  
TNT COMPLETE FACILITY CARE, INC.  
PO BOX 6017  
ELGIN IL 60121-6017



#### CHECKING SUMMARY

Chase Performance Business Checking

	INSTANCES	AMOUNT
Beginning Balance		\$501.37
Deposits and Additions	15	205,334.68
Checks Paid	22	-22,337.50
ATM & Debit Card Withdrawals	51	-9,587.43
Electronic Withdrawals	35	-171,404.70
Other Withdrawals	1	-250.00
Fees	1	-88.00
Ending Balance	125	\$2,168.42

#### DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
04/03	Deposit 1678732846	\$29,270.86
04/03	Online Transfer From Chk ...3365 Transaction#: 6118758231	4,000.00
04/06	Card Purchase Return 04/05 Paypal *Epicmarketa 4029357733 CA Card 0690	1,250.00
04/06	Fedwire Credit Via: Greater Nevada Credit Union/321280143 B/O: Legion Investments, LLC Brian Minoau/Owner Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=9919 S. Forest // Imad: 0406GmqImp01008695 Trn: 4169009096FI	17,000.00
04/06	Schneider Enterp Sni _Jpm_El 2292353 CCD ID: 2203682737	6,433.70
04/10	Deposit 1678581825	30,411.70
04/13	Fedwire Credit Via: Greater Nevada Credit Union/321280143 B/O: Legion Investments, LLC Brian Minoau/Owner Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=9919 S. Forest //3 Imad: 0413GmqImp01010142 Trn: 4764709103FI	7,500.00
04/17	Fedwire Credit Via: U.S. Bank/121201694 B/O: Jay J Kvam Reno,NV,89511 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=170417016143 O Bt=Second Draw Legion Investments J Ay Kvam Imad: 0417MmqImp31001641 Trn: 2504709107FI	20,000.00
04/17	Deposit 1678881758	58,618.71
04/17	Online Transfer From Chk ...8167 Transaction#: 6152727391	1,000.00
04/21	Deposit 1678881719	100.00
04/24	Deposit 1678881835	16,399.23

Page 1 of 6

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JPMorgan Chase Bank, N.A.  
P O Box 559754  
San Antonio, TX 78265-5754

April 29, 2017 through May 31, 2017  
Account Number: 00000603831855

#### CUSTOMER SERVICE INFORMATION

Web site: Chase.com  
Service Center: 1-800-242-7338  
Deaf and Hard of Hearing: 1-800-242-7383  
Para Espanol: 1-888-622-4273  
International Calls: 1-713-262-1679

00014165 DRE 111 212 15417 NNNNNNNNNN 1 00003000 09 0000  
TNT COMPLETE FACILITY CARE, INC.  
PO BOX 6017  
ELGIN IL 60121-6017



#### CHECKING SUMMARY

Chase Performance Business Checking

	INSTANCES	AMOUNT
Beginning Balance		\$2,168.42
Deposits and Additions	24	364,724.28
Checks Paid	20	-17,049.06
ATM & Debit Card Withdrawals	63	-9,252.71
Electronic Withdrawals	50	-255,145.23
Other Withdrawals	2	-1,350.00
Fees	1	-49.00
Ending Balance	150	\$44,045.70

#### DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
05/01	Fedwire Credit Via: United Community Bank/061112843 B/O: Atlanta's Reliable Roofing CO Doraville, GA 303600000 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 501216017/Ac-000000006038 Rlb=O/S United Com M Imad. 0501L1L1b16C000056 Trn 1412009121FI	\$5,805.00
05/01	Deposit 1678431685	32,592.99
05/01	Online Transfer From Mma ...3760 Transaction#: 6199648041	1,000.00
05/02	Online Transfer From Chk ...3265 Transaction#: 6198923034	500.00
05/04	Fedwire Credit Via: United Community Bank/061112843 B/O: Atlanta's Reliable Roofing CO Doraville, GA 303600000 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 501216017/Ac-000000006038 Rlb=O/S United Com M Imad. 0504L1L1b16C000205 Trn. 5071609124FI	28,290.00
05/04	Online Transfer From Chk ...7185 Transaction#: 6196719926	4,000.00
05/05	Fedwire Credit Via: Wells Fargo Bank/121000248 B/O: Amicus Ventures LLC Henderson, NV 89074-7770 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 501216017/Ac-000000006038 Rlb=00068811252852 29 Obl=Reference Todd Hartwell Refe Rence 6744 S Bishop Draw 1 Imad: 050511B7033R016178 Trn: 5348309125FI	20,000.00
05/08	Card Purchase Return 05/04 Paypal *Twincitiesd 4029357733 CA Card 0590	15.00
05/09	Fedwire Credit Via: Wells Fargo Bank/121000248 B/O: Amicus Ventures LLC Henderson, NV 89074-7770 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 501216017/Ac-000000006038 Rlb=00068811252712 49 Obl=Reference Todd Hartwell 8754 S. Michigan Draw 1 Imad: 050911B7033R006206 Trn: 2491609129FI	10,000.00
05/09	Schneider Enterp Sni_Jprn_El 2335505 CCD ID: 2203882737	7,996.80

Page 1 of 6

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April 29, 2017 through May 31, 2017  
Account Number: 000000603831855

### DEPOSITS AND ADDITIONS (continued)

DATE	DESCRIPTION	AMOUNT
05/12	Fedwire Credit Via: United Community Bank/061112843 B/O: Atlanta's Reliable Roofing CO Doraville, GA 303600000 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-0000000000038 Rib=O/B United Com M Imad: 0512L1Lib6C000054 Trn: 1671609132FI	17,088.50
05/12	Deposit 1692885145	23,310.53
05/15	Deposit 1693765460	18,117.03
05/16	Deposit 1693035451	10,000.00
05/17	Online Transfer 6219786512 From Ted Card Account #####6241 Transaction ID: 6219786512	300.00
05/18	Fedwire Credit Via: United Community Bank/061112843 B/O: Atlanta's Reliable Roofing CO Doraville, GA 303600000 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-0000000000038 Rib=O/B United Com M Imad: 0518L1Lib6C0000173 Trn: 5474809136FI	25,885.50
05/18	Fedwire Credit Via: U.S. Bank/121201694 B/O: Jay J Kvern Reno, NV 89511 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-0000000000038 Rib=170518026592 O Bi=Half of Third Installment Imad: 0518J1Q504C0002525 Trn: 4495109136FI	9,000.00
05/19	Fedwire Credit Via: Greater Nevada Credit Union/321260143 B/O: Legion Investments, LLC Sparks NV 89434 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-0000000000038 Rib=9919 S Forest Obi=Final Payment Imad: 0519Gmqlmp01017725 Trn: 5945009139FI	7,500.00
05/19	Fedwire Credit Via: Wells Fargo Bank/121000248 B/O: Amicus Ventures LLC Henderson, NV 89074-7770 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-0000000000038 Rib=00023431392499 30 Obi=Reference Todd Hartwell Role Rence 8744 S Bishop Draw 2 Imad: 0519I1B7032R011403 Trn: 3917109139FI	6,800.00
05/23	Deposit 1693035497	51,573.27
05/23	Schneider: Entorp Sni_jpm_EI 2352813 CCD ID: 2203882737	3,601.50
05/25	Fedwire Credit Via: United Community Bank/061112843 B/O: Atlanta's Reliable Roofing CO Doraville, GA 303600000 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-0000000000038 Rib=C/B United Com M Imad: 0525L1Lib6C0000114 Trn: 3689809145FI	5,000.00
05/26	Fedwire Credit Via: Mutual of Omaha Bank/104002894 B/O: Criterion NV LLC Reno NV 89511-1475 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-0000000000038 Rib=May Street Imad: 0526Gmqlmp01020340 Trn: 6911709146FI	20,000.00
05/31	Deposit 1693485286	45,348.16
Total Deposits and Additions		\$364,724.28

### CHECKS PAID

CHECK NO.	DESCRIPTION	DATE PAID	AMOUNT
1951 ^	05/13	05/15	\$500.00
1952 ^	05/15	05/15	50.00
8160 ^ ^		05/02	2,250.00
8226 ^ ^	04/29	05/01	210.00
8228 ^ ^		05/30	499.00
8229 ^		05/15	338.00
8230 ^		05/22	350.00
8231 ^		05/15	400.00
8233 ^ ^		05/08	1,200.00
8274 ^ ^		05/16	150.00
8275 ^		05/23	2,350.00
8276 ^		05/26	2,250.00
8277 ^		05/31	338.00
8278 ^		05/30	208.00

Page 2 of 6



June 01, 2017 through June 30, 2017  
Account Number: 000000603831855

### DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
06/01	Fedwire Credit Via: United Community Bank/061112843 B/O: Atlanta's Reliable Roofing CO Doraville, GA 303600000 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=O/B United Com M Imad: 0601L1Lb16CC0221 Trn: 6176909152FI	\$18,123.80
06/06	Deposit 1693635427	12,188.65
06/06	Schneider Enterp Sni_Jpm_El 2369159 CCD ID: 2203882737	8,349.60
06/08	Fedwire Credit Via: United Community Bank/061112843 B/O: Atlanta's Reliable Roofing CO Doraville, GA 303600000 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=O/B United Com M Imad: 0601L1Lb16CC000195 Trn: 4934809159FI	13,188.50
06/09	Fedwire Credit Via: Wells Fargo Bank/121000248 B/O: Amicus Ventures LLC Henderson, NV 89074-7770 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=00088811591559 12 Bbl=Bnl/6744 S Bishop Draw 3 Imad: 060911B7C32F007420 Trn: 2449309160FI	20,000.00
06/12	Deposit 1693943710	22,437.36
06/12	Online Transfer From Chk ...5911 Transaction#: 6267242371	2,300.00
06/12	Online Transfer From Chk ...1220 Transaction#: 6287245099	2,000.00
06/14	ATM Check Deposit 06/14 270 S Randall Rd Elgin IL Card 0690	1,625.00
06/16	Fedwire Credit Via: Greater Nevada Credit Union/321280143 B/O: Legion Investments, LLC Sparks NV 89434 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=O/B Grtr NV CU C Obl=Ref 17047 Ref 1404 Wyoming Imad: 0616GmqImp01006892 Trn: 2820409167FI	3,875.00
06/16	Deposit 1694093891	4,400.00
06/19	Deposit 1693493606	2,117.74
06/19	Schneider Enterp Sni_Jpm_El 2383794 CCD ID: 2203882737	9,032.50
06/20	Deposit 1693493936	34,111.78
06/20	2026-Phoenix Ext Dir Dep PPD ID: 1208593669	5,830.00
06/22	Schneider Enterp Sni_Jpm_El 2387150 CCD ID: 2203882737	4,601.49
06/23	Fedwire Credit Via: U.S. Bank/121201694 B/O: Wyoming Partners LLC Reno, NV, 89509 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=170623037918 O Bl=1400 Wyoming Imad: 0623L3L1151C003776 Trn: 5495309174FI	2,700.00
06/23	Deposit 1693493981	1,030.06
06/23	2026-Phoenix Ext Dir Dep PPD ID: 1208593669	7,044.55
06/26	Deposit 1694093804	17,578.61
06/29	Fedwire Credit Via: United Community Bank/061112843 B/O: Atlanta's Reliable Roofing CO Doraville, GA 303600000 Ref: Chase Nyc/Ctr/Bnl=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000006038 Rfb=O/B United Com M Imad: 0629L1Lb16CC000243 Trn: 5235709160FI	11,510.00
06/29	Schneider Enterp Sni_Jpm_El 2395272 CCD ID: 2203882737	1,025.00
06/30	Card Purchase Return 06/29 Best Buy Mkt 00006072 South Elgin IL Card 0690	100.99
06/30	2026-Phoenix Ext Dir Dep PPD ID: 1208593669	6,910.00
06/30	Online Transfer From Chk ...1220 Transaction#: 6334850401	288.00
Total Deposits and Additions		\$212,368.32

### CHECKS PAID

CHECK NO.	DESCRIPTION	DATE PAID	AMOUNT
7910 ^		06/05	\$2,250.00
8110 ^ ^		06/20	156.00
8161 ^ ^		06/05	300.00
8227 ^ ^		06/02	600.00
8280 ^ ^		06/02	500.00
8281 ^		06/05	132.00

Page 2 of 6





August 01, 2017 through August 31, 2017  
Account Number: 000000603831855

### DEPOSITS AND ADDITIONS (continued)

DATE	DESCRIPTION	AMOUNT
08/15	Fedwire Credit Via: Wells Fargo Bank/121000248 B/O: Amicus Ventures LLC Henderson, NV 89074-7770 Ref: Chase Nyc/Ctr/Bnl=Tnl Complete Facility Care, Inc Elgin, IL 601216017/Ac-000000006038 Rib=00678572276060 08 Obis=Re 8754 S Michigan Ave Chica Go IL 60620 Inv No 2 5000 Dollars R E 8744 S Bishop Chicago IL Imad: 08151187031R016634 Trn: 5814409227F1	15,000.00
08/15	Deposit 1706189074	22,735.88
08/17	Online Transfer From Chk ...5911 Transaction#: 6450608216	2,306.00
08/18	Card Purchase Return 08/17 Autozone #1699 South Elgin IL Card 0690	130.04
08/21	Deposit 1706197830	23,218.15
08/22	Schneider Enterp Sni Jprn_El 2460086 CCD ID: 2203882737	17,743.88
08/28	Deposit 1706047516	95,948.22
08/31	Online Transfer From Chk ...7185 Transaction#: 6481314262	3,500.00
08/31	Online Transfer From Chk ...5911 Transaction#: 6481521865	2,250.00
Total Deposits and Additions		\$224,717.57

### CHECKS PAID

CHECK NO.	DESCRIPTION	DATE PAID	AMOUNT
8393 ^		08/31	\$2,250.00
8307 ^		08/07	163.14
8308 ^		08/04	295.53
8310 ^		08/04	408.00
8311 ^		08/07	206.00
8312 ^		08/07	200.00
8313 ^		08/07	262.00
8314 ^	08/07	08/07	198.00
8315 ^		08/07	1,100.00
8316 ^		08/11	1,000.00
8317 ^	08/10	08/10	1,500.00
8318 ^	08/11	08/11	768.00
8319 ^	08/11	08/11	1,104.00
8320 ^		08/17	129.00
8321 ^		08/22	208.00
8325 ^		08/17	400.00
8326 ^		08/22	150.00
8327 ^		08/23	210.00
8337 ^		08/29	260.00
8338 ^		08/31	150.00
8339 ^		08/28	160.00
Total Checks Paid			\$11,115.67

If you see a description in the Checks Paid section, it means that we received only electronic information about the check, not the original or an image of the check. As a result, we're not able to return the check to you or show you an image.

\* All of your recent checks may not be on this statement, either because they haven't cleared yet or they were listed on one of your previous statements.

^ An image of this check may be available for you to view on Chase.com.



JPMorgan Chase Bank, N.A.  
P.O. Box 659754  
San Antonio, TX 78265-9754

September 01, 2017 through September 28, 2017

Account Number: 000000503831855

#### CUSTOMER SERVICE INFORMATION

Web site: Chase.com  
Service Center: 1-800-242-7338  
Deaf and Hard of Hearing: 1-800-242-7368  
Para Español: 1-888-622-4273  
International Calls: 1-713-262-1679

0001417 DRE 111 212 27717 NNNNNNNNNNN 1 00002000 09 0000  
TNT COMPLETE FACILITY CARE, INC.  
PO BOX 6017  
ELGIN IL 60121-6017



#### CHECKING SUMMARY

Chase Performance Business Checking

	INSTANCES	AMOUNT
Beginning Balance		\$5,352.54
Deposits and Additions	18	205,447.31
Checks Paid	16	-10,903.22
ATM & Debit Card Withdrawals	107	-13,535.28
Electronic Withdrawals	31	-180,483.48
Other Withdrawals	3	-4,625.00
Fees	1	-766.40
Ending Balance	176	\$1,486.47

#### DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
09/01	Online Transfer From Chk ...5911 Transaction#: 5487794250	53,500.00
09/05	Deposit 1693635493	63,201.41
09/06	Schneider Enterp Sni_Jpm_El 2477393 CCD ID: 2203882737	3,616.20
09/07	Online Transfer From Chk ...7185 Transaction#: 6501338220	4,000.00
09/08	Online Transfer From Chk ...7185 Transaction#: 6503505587	4,000.00
09/11	Deposit 1693643886	24,171.21
09/11	Deposit 1693643914	7,431.85
09/11	Schneider Enterp Sni_Jpm_El 2483005 CCD ID: 2203882737	5,492.50
09/13	Deposit 923831347	1,205.00
09/14	Fedwire Credit Via: Wells Fargo Bank/121000240 B/O: Amicus Ventures LLC Henderson, NV 89074-7770 Ref: Chaso Nyc/Ctr/Ent=Tnl Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000000038 R/b=00064412570255 50 Obl=Ref 8744 S Bishop Drav 3 Imad: 09141187032R015167 Tr: 5317109257F1	20,000.00
09/15	Deposit 1693793778	2,000.00
09/18	Online Transfer From Chk ...8167 Transaction#: 6526709557	2,000.00
09/19	Deposit 1723678361	41,448.55
09/19	Online Transfer From Chk ...7185 Transaction#: 6528701288	3,500.00
09/22	Schneider Enterp Sni_Jpm_El 2495338 CCD ID: 2203882737	2,205.00
09/25	Deposit 1723678226	5,826.91
09/28	Purchase Return 09/28 Mnrcl-Elgin 825 South R Elgin IL Card 0590	48.68
09/28	Online Transfer From Chk ...5911 Transaction#: 6549596130	800.00
Total Deposits and Additions		\$206,447.31

Page 1 of 10



JPMorgan Chase Bank, N.A.  
P O Box 659754  
San Antonio, TX 78265-9754

September 30, 2017 through October 31, 2017  
Account Number: 000000603831855

#### CUSTOMER SERVICE INFORMATION

Web site: Chase.com  
Service Center: 1-800-242-7338  
Deaf and Hard of Hearing: 1-800-242-7338  
Para Espanol: 1-888-622-4273  
International Calls: 1-713-262-1679

00014386 DNE 111 212 30717 KNNNNNNNNNN 1 0000000000 09 0000  
TNT COMPLETE FACILITY CARE, INC.  
PO BOX 6017  
ELGIN IL 60121-6017



#### CHECKING SUMMARY

Chase Performance Business Checking

	INSTANCES	AMOUNT
Beginning Balance		\$1,486.47
Deposits and Additions	17	274,529.09
Checks Paid	6	-3,224.75
ATM & Debit Card Withdrawals	99	-10,169.09
Electronic Withdrawals	43	-252,813.96
Other Withdrawals	2	-3,473.38
Fees	2	-710.60
Ending Balance	169	\$5,623.70

#### DEPOSITS AND ADDITIONS

DATE	DESCRIPTION	AMOUNT
10/02	Online Transfer From Chk ...5811 Transaction#: 6557579114	\$250.00
10/03	Deposit 1725412915	\$5,282.79
10/04	Fedwire Credit Via. Wells Fargo Bank/121000248 B/O: Amicus Ventures LLC Henderson, NV 89074-7770 Ref: Chase Nyc/Ctr/Bnf=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000000038 Rfb=00678572778119 22 Obj=Attn Derek Cole Re Property Address 8754 S Michigan Ave Construc Clion Draw Imad: 10041157033R017157 Trn. 5599909275FI	12,000.00
10/04	Deposit 1725636370	3,500.00
10/05	Fedwire Credit Via. United Community Bank/061112843 B/O: Atlanta's Reliable Roofing CO Doraville, GA 303600000 Ref: Chase Nyc/Ctr/Bnf=Tnt Complete Facility Care, Inc. Elgin, IL 601216017/Ac-000000000038 Rfb=O/B United Com M Imad: 100611157033R017157 Trn. 6127609275FI	2,229.00
10/06	Schneider Enterp Sni_Jpm_El 2512443 CCD ID: 2203882737	11,807.50
10/10	Deposit 1724215501	5,045.28
10/10	Schneider Enterp Sni_Jpm_El 2517626 CCD ID: 2203882737	9,035.60
10/11	Online Transfer From Chk ...1220 Transaction#: 6585947012	2,229.00
10/12	Card Purchase Return 10/11 Bodyasdoctor 4029357733 CO Card C690	28.21
10/13	Schneider Enterp Sni_Jpm_El 2523834 CCD ID: 2203882737	975.00
10/16	Deposit 1724665753	30,264.38
10/24	Deposit 1724665788	72,023.27
10/24	Schneider Enterp Sni_Jpm_El 2540993 CCD ID: 2203882737	8,727.88

1 **CODE: 3860**  
2 Michael L. Matuska, Esq. SBN 5711  
3 MATUSKA LAW OFFICES, LTD.  
4 2310 South Carson Street, Suite 6  
5 Carson City, NV 89701  
6 Attorneys for Plaintiff

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

9 JAY KVAM,	Plaintiff,	Case No. CV18-00764
10 v.		Dept. No. 3
11 BRIAN MINEAU; LEGION INVESTMENTS,		
12 LLC; 7747 S. May Street, an Unincorporated		
13 Joint Venture; and DOES I-X, inclusive,		
14	Defendants.	

15 **REQUEST FOR SUBMISSION**

16 COMES NOW Plaintiff, JAY KVAM, by and through his counsel of record, Matuska Law  
17 Offices, Ltd., Michael L. Matuska, and hereby requests that the Plaintiff's MOTION FOR LEAVE  
18 TO FILE SECOND AMENDED COMPLAINT, filed June 19, 2019 be submitted for approval by  
19 the Court and the [Proposed] Order provided herewith be submitted for signature by the Court.

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

22 Respectfully submitted,

23 Dated this 8th day of July 2019.

24 MATUSKA LAW OFFICES, LTD.

25 *Michael L. Matuska*

26 By:

27 MICHAEL L. MATUSKA, SBN 5711  
28 Attorneys for Plaintiff, JAY KVAM,

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 8th day of July 2019, I served a true and correct copy of the preceding document entitled **REQUEST FOR SUBMISSION** as follows:

Austin K. Sweet, Esq.  
GUNDERSON LAW FIRM  
3895 Warren Way  
Reno, NV 89509  
[asweet@gundersonlaw.com](mailto:asweet@gundersonlaw.com)

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

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically filed a true and correct copy of the above-identified document with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the person named above.

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

☐ **BY FACSIMILE:**

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

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

/S/ SUZETTE TURLEY  
SUZETTE TURLEY

1 **CODE: 3060**

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

7  
8 JAY KVAM,

Plaintiff,

Case No. CV18-00764

9 v.

Dept. No. 6

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

12 Defendants.

13 **ORDER GRANTING MOTION FOR LEAVE**

14 **TO FILE SECOND AMENDED COMPLAINT**

15  
16 This matter comes before the court on Plaintiff Jay Kvam's Motion for Leave to File  
17 Second Amended Complaint, in which Kvam seeks leave to add a new causes of action for  
18 conversion/diversion of project funds and RICO violations following the sale of the subject  
19 property at 7747 May Street, Chicago, Illinois on November 16, 2018.

20 Leave to amend should be freely given when justice requires. NRCP 15(a); *Cohen v.*  
21 *Mirage Resorts, Inc.*, 119 Nev. 1, 23, 62 P.3d 720 (Nev. 2003). Kvam's request is not made in  
22 bad faith or with a dilatory motive, so the traditional requirements for granting leave to amend are  
23 satisfied and leave to amend should be freely given. *Stephens v. S. Nev. Music Co., Inc.*, 89 Nev.  
24 104, 105, 507 P.2d 138, 139 (Nev. 1973). Based on the foregoing, and for good cause appearing,  
25 Kvam's Motion for Leave to File Second Amended Complaint shall be and is hereby GRANTED.

26 Kvam may file the Second Amended Complaint that was attached as Exhibit 5 to his  
27 Motion.  
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IT IS SO ORDERED.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

\_\_\_\_\_  
DISTRICT COURT JUDGE

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

**CODE: 3980**

Michael L. Matuska, Esq. SBN 5711  
MATUSKA LAW OFFICES, LTD.  
2310 South Carson Street, Suite 6  
Carson City, NV 89701  
(775) 350-7220  
Attorneys for Plaintiff / Counter-Defendant

Austin K. Sweet, Esq. SBN 11725  
Mark H. Gunderson, Esq. SBN 2134  
GUNDERSON LAW FIRM  
3895 Warren Way  
Reno, Nevada 89509  
(775) 829-1222  
Attorneys for Defendants / Counterclaimants

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

JAY KVAM,

Plaintiff / Counter-Defendant,

v.

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

Defendants / Counterclaimants.

Case No. CV18-00764

Dept. No. 6

**STIPULATION TO MODIFY SCHEDULING ORDER**

COMES NOW Plaintiff, Jay Kvam, by and through his counsel of record, Matuska Law  
Offices, Ltd, Michael L. Matuska, and Defendants, Brian Mineau and Legion Investments, LLC,  
by and through their counsel of record, Gunderson Law Firm, Austin K. Sweet, and hereby state,  
stipulate and agree that the deadlines identified in the Joint Case Conference Report that was filed  
on August 6, 2018 shall be and are hereby extended as follows:



1. Close of discovery:
- i. Discovery other than expert witness discovery: **December 6, 2019**
- ii. Discovery concerning expert witnesses: **January 2, 2020**
2. Final date to file motions to amend pleadings or add parties (without further court order) (not later than 90 days before close of discovery): **90 days before close of discovery**
3. Final dates for expert disclosures:
- i. Initial disclosure: **September 30, 2019**
- ii. Rebuttal disclosures **November 29, 2019**
4. Final date to file dispositive motions (not later than 30 days after discovery cut-off): **Per June 12, 2019**

**Supplemental Uniform Pretrial Order**

**AFFIRMATION**

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

IT IS SO STIPULATED.

Dated this 1st day of August, 2019.

MATUSKA LAW OFFICES, LTD.

By: Michael L. Matuska  
MICHAEL L. MATUSKA, SBN 5711  
Attorney for Plaintiff / Counter-Defendant

Dated this 1st day of August, 2019.

GUNDERSON LAW FIRM

By: /S/ AUSTIN K. SWEET  
Austin K. Sweet, Esq. SBN 11725  
Mark H. Gunderson, Esq. SBN 2134  
3895 Warren Way  
Reno, Nevada 89509  
(775) 829-1222  
Attorneys for Defendants / Counterclaimants

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 1st day of August, 2019, I served a true and correct copy of the preceding document entitled **STIPULATION TO MODIFY SCHEDULING ORDER** as follows:

Austin K. Sweet, Esq.  
GUNDERSON LAW FIRM  
3895 Warren Way  
Reno, NV 89509  
[asweet@gundersonlaw.com](mailto:asweet@gundersonlaw.com)

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

☒ **BY E-MAIL OR ELECTRONIC TRANSMISSION:** I electronically filed a true and correct copy of the above-identified document with the Clerk of the Court by using the electronic filing system which will send a notice of electronic filing to the person named above.

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

☐ **BY FACSIMILE:**

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

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

/S/ SUZETTE TURLEY  
SUZETTE TURLEY

1 **CODE: 3980**

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

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

9 JAY KVAM,

10 Plaintiff,

11 v.

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

15 Defendants.

Case No. CV18-00764

Dept. No. 6

16 **ORDER MODIFYING SCHEDULING ORDER**

17 Based on the stipulation entered into between the parties, and for good cause, the deadlines  
18 identified in the Joint Case Conference Report that was filed on August 6, 2018 shall be and are  
19 hereby extended as follows:

20 1. Close of discovery:

21 i. Discovery other than expert witness discovery: **December 6, 2019**

22 ii. Discovery concerning expert witnesses: **January 2, 2020**

23 2. Final date to file motions to amend pleadings or add parties (without further court  
24 order) (not later than 90 days before close of discovery) **90 days before close of discovery**

25 3. Final dates for expert disclosures:

26 i. Initial disclosure: **September 30, 2019**

27 ii. Rebuttal disclosures **November 29, 2019**

28 //

//

1 4. Final date to file dispositive motions (not later than 30 days after discovery cut-  
2 off):

Per June 12, 2019  
Supplemental Uniform Pretrial Order

3  
4 **IT IS SO ORDERED.**

5 Dated this 5<sup>th</sup> day of August, 2019

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9 DISTRICT JUDGE  
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1 **CODE: 2540**

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

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

9 JAY KVAM,

Plaintiff,

Case No. CV18-00764

10 v.

Dept. No. 6

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

Defendants.

14 **NOTICE OF ENTRY OF ORDER**

15 PLEASE TAKE NOTICE that on August 5, 2019, the Court entered its *Order* in the  
16 above-mentioned matter, a copy of which is attached hereto as Exhibit "1."

17 **AFFIRMATION**

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

21 Dated this 5th day of August 2019.

22 MATUSKA LAW OFFICES, LTD.

23 *Michael L. Matuska*

24 By:

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

**CERTIFICATE OF SERVICE**

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

Austin K. Sweet, Esq.  
GUNDERSON LAW FIRM  
3895 Warren Way  
Reno, NV 89509  
[asweet@gundersonlaw.com](mailto: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
1	Order Modifying Scheduling Order	2

**EXHIBIT 1**  
**ORDER MODIFYING SCHEDULING ORDER**  
(Notice of Entry of Order)

**EXHIBIT 1**  
**ORDER MODIFYING SCHEDULING ORDER**  
(Notice of Entry of Order)



1 **CODE: 3980**

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

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

9 JAY KVAM,

10 Plaintiff,

11 v.

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

15 Defendants.

Case No. CV18-00764

Dept. No. 6

16 **ORDER MODIFYING SCHEDULING ORDER**

17 Based on the stipulation entered into between the parties, and for good cause, the deadlines  
18 identified in the Joint Case Conference Report that was filed on August 6, 2018 shall be and are  
19 hereby extended as follows:

20 1. Close of discovery:

21 i. Discovery other than expert witness discovery: **December 6, 2019**

22 ii. Discovery concerning expert witnesses: **January 2, 2020**

23 2. Final date to file motions to amend pleadings or add parties (without further court  
24 order) (not later than 90 days before close of discovery) **90 days before close of discovery**

25 3. Final dates for expert disclosures:

26 i. Initial disclosure: **September 30, 2019**

27 ii. Rebuttal disclosures **November 29, 2019**

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4. Final date to file dispositive motions (not later than 30 days after discovery cut-

off):

Per June 12, 2019  
Supplemental Uniform Pretrial Order

**IT IS SO ORDERED.**

Dated this 5<sup>th</sup> day of August, 2019

  
DISTRICT JUDGE

1 **CODE: 2540**  
2 Michael L. Matuska, Esq. SBN 5711  
3 MATUSKA LAW OFFICES, LTD.  
4 2310 South Carson Street, Suite 6  
5 Carson City, NV 89701  
6 Attorneys for Plaintiff

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

9 JAY KVAM,

Plaintiff,

Case No. CV18-00764

10 v.

Dept. No. 6

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

13 Defendants.

14 **NOTICE OF ENTRY OF ORDER**

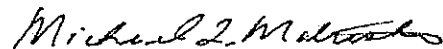
15 PLEASE TAKE NOTICE that on September 9, 2019, the Court entered its *Order* in the  
16 above-mentioned matter, a copy of which is attached hereto as Exhibit "1."

17 **AFFIRMATION**

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

21 Dated this 11th day of September 2019.

22 MATUSKA LAW OFFICES, LTD.

23 

24 By:

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

**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of Matuska Law Offices, Ltd. and that on the 11th day of September 2019, I served a true and correct copy of the preceding document entitled *Notice of Entry of Order* as follows:

Austin K. Sweet, Esq.  
GUNDERSON LAW FIRM  
3895 Warren Way  
Reno, NV 89509  
[asweet@gundersonlaw.com](mailto:asweet@gundersonlaw.com)

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

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/s/ SUZETTE TURLEY  
SUZETTE TURLEY

## EXHIBIT INDEX

EXHIBIT	DOCUMENT	NO. OF PAGES
1	Order Granting Motion for Leave to File a Second Amended Complaint	6

EXHIBIT 1  
**ORDER GRANTING MOTION FOR LEAVE TO FILE  
A SECOND AMENDED COMPLAINT**  
(Notice of Entry of Order)

EXHIBIT 1  
**ORDER GRANTING MOTION FOR LEAVE TO FILE  
A SECOND AMENDED COMPLAINT**  
(Notice of Entry of Order)

1 Code:  
2  
3  
4  
5

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

9 JAY KVAM,

10 Plaintiff,

Case No.: CV18-00764

11 vs.  
12

Dept. No: 6

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

15 Defendants.  
16 \_\_\_\_\_/

17 **ORDER GRANTING MOTION FOR LEAVE**  
18 **TO FILE A SECOND AMENDED COMPLAINT**

19 Currently before the Court is Plaintiff JAY KVAM's ("Kvam") *Motion for Leave to*  
20 *File Second Amended Complaint ("Motion")*. Defendants BRIAN MINEAU and LEGION  
21 INVESTMENTS, LLC (collectively "Defendants," unless individually referenced) filed their  
22 *Opposition to Motion for Leave to File Second Amended Complaint ("Opposition")*.  
23 Thereafter, Kvam filed his *Reply to Opposition to Second Motion for Leave to File Second*  
24 *Amended Complaint ("Reply")* and the matter was submitted.  
25

26 Upon careful review of the record, the Court finds good cause exists to grant  
27 Kvam's *Motion*.  
28

1           **I.       PROCEDURAL AND FACTUAL HISTORY.**

2           On or about February 14, 2017, the parties executed an agreement to purchase,  
3 restore, and resell a house in Chicago. Kvam provided funding for the house, and,  
4 pursuant to the agreement, was allegedly entitled to a seven percent (7%) annual return  
5 on his investment. Defendants were designated to manage the operation.  
6

7           Kvam asserts he demanded his money back as a result of not receiving any  
8 interest payment because renovation activity on the property ceased. Kvam also asserts  
9 that he is entitled to receive a return of his investment prior to the sale of the property. In  
10 addition, Kvam alleges Defendants sold the property at a loss and concealed the sale.  
11 Defendants dispute these allegations.  
12

13           On April 11, 2018, Kvam filed his Complaint asserting claims of relief for: (1)  
14 Declaration of Joint Venture; (2) Rescission or Reformation of Agreement; (3) Breach of  
15 Contract; (4) Breach of Contract and Tortious Breach of Implied Covenant of Good Faith  
16 and Fair Dealing; (5) Accounting; (6) Court Supervision of Dissolution and Winding Up,  
17 and Appointment of Receiver; (7) Temporary and Permanent Injunction; and (8)  
18 Derivative Claim. Kvam filed his First Amended Complaint, after seeking leave of Court,  
19 to include a claim for Fraud on January 31, 2019.  
20

21           Pursuant to NRCP 15(a), Kvam now moves to amend his Second Amended  
22 Complaint and add claims against Defendants for Conversion and Violation of Nevada's  
23 Racketeering Act pursuant to NRS 207.350 et seq. ("RICO").  
24

25           **II.       APPLICABLE LAW & ANALYSIS.**

26           Pursuant to Rule 15 of the Nevada Rules of Civil Procedure, a party may amend its  
27 pleading only with the opposing party's written consent or the court's leave. The court  
28 should freely give leave when justice so requires. NRCP 15(a)(2). Further, NRCP 15(c)



1 states whenever a claim or defense asserted in the amended pleading arose out of the  
2 conduct, transaction, or occurrence set forth or attempted to be set forth in the original  
3 pleading, the amendment relates back to the date of the original pleading.

4 Although NRCP 15(a) states leave to amend shall be freely given when justice so  
5 requires, "[t]his does not ... mean that a trial judge may not, in a proper case, deny a  
6 motion to amend." Stephens v. Southern Nevada Music Co., 89 Nev. 104, 105, 507 P.2d  
7 138, 139 (1973). Sufficient reasons to deny a motion to amend a pleading include undue  
8 delay, bad faith or dilatory motives on the part of the movant. Id. at 105-06, 507 P.2d at  
9 139. In addition, leave to amend "should not be granted if the proposed amendment  
10 would be futile." Gardner on Behalf of L.G. v. Eighth Judicial Dist. Court in & for Cty. of  
11 Clark, 133 Nev. 730, 732, 405 P.3d 651, 654 (2017). "A motion for leave to amend  
12 pursuant to NRCP 15(a) is addressed to the sound discretion of the trial court, and its  
13 action in denying such a motion will not be held to be error in the absence of a showing of  
14 abuse of discretion." Connell v. Carl's Air Conditioning, 97 Nev. 436, 439, 634 P.2d 673,  
15 675 (1981); Nelson v. Sierra Const. Corp., 77 Nev. 334, 364 P.2d 402 (1961).

16 Courts generally liberally construe motions to amend pleadings under NRCP 15(a)  
17 to afford parties an opportunity to test claims on the merits. Courts "err on the side of  
18 caution and permit amendments that appear arguable or even borderline, because denial  
19 of a proposed pleading amendment amounts to denial of the opportunity to explore any  
20 potential merit it might have had." Nutton v. Sunset Station, Inc., 131 Nev. Adv. Op. 34,  
21 357 P.3d 966, 975 (2015); Foman v. Davis, 371 U.S. 178, 182, 83 S. Ct. 227 (1962).

22 As stated, Kvam now seeks leave of the Court to file a Second Amended  
23 Complaint to state a claim for Conversion and Nevada's Racketeering Act, under NRS  
24 207.350 et seq., against Defendants. *Motion*. Specifically, Kvam seeks to add the  
25  
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1   aforementioned claims based upon recent discovery indicating Kvam's money was not  
2   used to improve the property; the property was sold for a loss; the property was in worse  
3   shape when it was sold than when it was purchased; and, Defendants were working on  
4   other projects for profit. *Motion*, p. 2-3.

5           Defendants contend Kvam's *Motion* serves to unduly delay the proceedings  
6   because it offers no explanation justifying why Kvam should be allowed to amend his  
7   complaint a second time, based on the same facts, more than a year after his initial filing  
8   and over six months after the *First Amended Complaint* was filed. *Opposition*, p. 4. Kvam  
9   asserts his request to file a seconded amended complaint does not constitute an undue  
10   delay because the proposed scheduling order in the Joint Case Conference Report allows  
11   Kvam until August 6, 2019 to file his *Motion* and he did so before that date. *Reply*, p. 3.

12           Defendants also maintain Kvam's conversion claim is futile because the claim of  
13   conversion only applies to personal property, and Kvam is unable to allege Defendants  
14   committed any distinct act of dominion over Kvam's "project funds," or upon the proceeds  
15   from the property sale. *Opposition*, p. 4-5. In response, Kvam emphasizes his  
16   conversion claim is not futile because personal liability attaches when a person  
17   participates in conversion, even if that person does not personally benefit from said  
18   conversion. *Reply*, 3-4.

19           Defendants posit that Kvam's RICO claim is futile because, in short, none of  
20   Kvam's assertions regarding the sale of the property and disbursement of its proceeds  
21   are associated with racketeering or criminal syndicates as contemplated under NRS  
22   207.370. *Opposition*, p. 6-7. In his *Reply*, Kvam maintains that his RICO claim is not  
23   futile because he has sufficiently pled fraud in his first amended complaint, alongside a  
24   series of other underlying predicate acts required under NRS 207.370. *Reply*, 4-5.

1 The Court first addresses Defendants' opposition based upon their assertion of  
2 undue delay. Having reviewed the arguments and legal authorities set forth in the  
3 pleadings, the Court does not find that the amendment to the *First Amended Complaint*,  
4 as requested in the present *Motion*, would cause any delay to this proceeding or put the  
5 March 2, 2019 trial date in jeopardy. As such, this Court finds there is sufficient time to  
6 respond to new claims stated in a second amended complaint.  
7

8 The Court now addresses Defendants' argument regarding the futility of the  
9 amendment. This Court finds that the proposed second amended complaint has put  
10 Defendants on notice of the factual situation from which the new claims for conversion  
11 and RICO are asserted. Therefore, the Court finds that Plaintiff's proposed amendment is  
12 not futile, but rather serves the interest of justice in this case as the merits of the claims  
13 can be tested. Therefore, Kvam is granted leave to file a second amended complaint.  
14

15 **III. CONCLUSION AND ORDER**

16 Based on the foregoing and good cause appearing,

17  
18 IT IS HEREBY ORDERED that Kvam's *Motion for Leave to File Second Amended*  
19 *Complaint ("Motion")* is GRANTED.

20 IT IS FURTHER ORDERED Kvam shall file his Second Amended Complaint within  
21 fifteen (15) days of entry of this order.

22 DATED this 9th day of September, 2019.

23  
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DISTRICT JUDGE

**CERTIFICATE OF SERVICE**

I certify that I am an employee of THE SECOND JUDICIAL DISTRICT COURT;  
that on the 9th day of September, 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:

Hildi Bre

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,

Case No. CV18-00764

10 v.

Dept. No. 6

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

**SECOND AMENDED VERIFIED  
COMPLAINT**

13 Defendants.

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

17 **I.**

18 **PARTIES**

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

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

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

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

28 ///

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

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

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

3                   c.       MINEAU would manage the project;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18. KVAM is now disassociated from 7747.

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

### III.

**FIRST CAUSE OF ACTION**  
**(Declaration of Joint Venture)**

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

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

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

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

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

11

//



**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 fully set forth herein.

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

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

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

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

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

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

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

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

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

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

## XI. NINTH CAUSE OF ACTION (Conversion)

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

57. By taking title to the property, diverting project funds and keeping proceeds of sale from KVAM, Defendants MINEAU and LEGION committed a distinct act or acts of dominion wrongfully exerted over the joint venture property, project funds and KVAM's investment; and

58. The aforementioned acts of dominion were in denial of, or inconsistent with, KHAM's title and rights.

59. As a result of the foregoing, KVAM 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 11<sup>th</sup> day of September, 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 Carson City } ss.

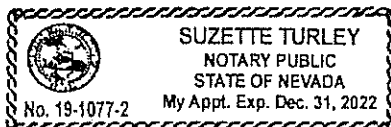
JAY KVAM, being first duly sworn, deposes and says:

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

Jay Kvam  
JAY KVAM

SUBSCRIBED AND SWORN to before me,  
this 14th day of September 2019,  
by JAY KVAM.

Suzette Turley  
NOTARY PUBLIC





**CERTIFICATE OF SERVICE**

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

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

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

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

☐ **BY EMAIL:** (as listed above)

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

☐ **BY FACSIMILE:**

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

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

/s/ SUZETTE TURLEY  
**SUZETTE TURLEY**

1 **CODE 1140**

2 **GUNDERSON LAW FIRM**

3 Austin K. Sweet, Esq.

4 Nevada State Bar No. 11725

5 Mark H. Gunderson, Esq.

6 Nevada State Bar No. 2134

7 3895 Warren Way

8 Reno, Nevada 89509

9 Telephone: 775.829.1222

10 *Attorneys for Brian Mineau and Legion Investments*

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

14 JAY KVAM,

Case No. CV18-00764

15 Plaintiff / Counterdefendant,

Dept. No. 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 **ANSWER TO SECOND AMENDED VERIFIED COMPLAINT**

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

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

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

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

- 1           4.       Mineau and Legion deny the allegations set forth in Paragraph 9 of the Complaint.
- 2           5.       Mineau and Legion admit that Kvam funded \$93,781.31 pursuant to the Agreement.
- 3 Mineau and Legion deny all other allegations set forth in Paragraph 10 of the Complaint, including
- 4 all subparts.
- 5           6.       Mineau and Legion deny the allegations set forth in Paragraph 11 of the Complaint.
- 6           7.       Mineau and Legion admit that Kvam has not received any annual interest payments
- 7 pursuant to the Agreement. Mineau and Legion deny all other allegations set forth in Paragraph 12
- 8 of the Complaint.
- 9           8.       Mineau and Legion admit that the House was owned by Legion and that Mineau is
- 10 Legion's sole member. Mineau and Legion deny all other allegations set forth in Paragraph 13 of the
- 11 Complaint.
- 12           9.       Mineau and Legion deny the allegations set forth in Paragraphs 14 through 29 of the
- 13 Complaint.
- 14           10.      Mineau and Legion admit that Kvam has demanded repayment of the monies funded
- 15 pursuant to the Agreement and that Legion has failed and refused to make such payments at this time.
- 16 Mineau and Legion deny all other allegations set forth in Paragraph 30 of the Complaint.
- 17           11.      Mineau and Legion deny the allegations set forth in Paragraphs 31 through 70 of the
- 18 Complaint.
- 19           12.      To the extent any allegations set forth in the Complaint are not specifically addressed
- 20 in this Answer, such allegations are denied.

21                                   **AFFIRMATIVE DEFENSES**

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

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

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


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



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 September, 2019, I electronically filed a true and correct copy of  
4 the **ANSWER TO SECOND AMENDED VERIFIED COMPLAINT**, with the Clerk of the Court  
5 by using the 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